CORA Cork Open Research Archive
Cartlann Taighde Oscailte Chorcaí

Title	The protection and security of vulnerable populations in complex emergencies using the Dadaab refugee camps in the north eastern province of Kenya as a case study
Authors	McSweeney, Damien Patrick John
Publication date	2012-02
Original Citation	McSweeney, D. P. J. 2012. The protection and security of vulnerable populations in complex emergencies using the Dadaab refugee camps in the north eastern province of Kenya as a case study. PhD Thesis, University College Cork.
Type of publication	Doctoral thesis
Rights	© 2012, Damien McSweeney - http://creativecommons.org/licenses/by-nc-nd/3.0/
Download date	2026-11-11 18:37:16
Item downloaded from	https://hdl.handle.net/10468/584

UCC
University College Cork, Ireland
Coláiste na hOllscoile Corcaigh

The Protection and Security of Vulnerable Populations in Complex Emergencies using the Dadaab Refugee Camps in the North Eastern Province of Kenya as a Case Study



Thesis submitted for the Degree of PhD

Candidate	**Damien Mc Sweeney**
Institute	**National University of Ireland, Cork.**
Department	**Department of Government**
Submitted	**February 2012**
Head of Department	**Prof. Neil Collins**
Supervisor	**Dr. Andrew Cotty**

Contents

Acronyms 6
Declaration 9
Brief Biography 10
Introduction 11

Methodology 16
i. Personal Experience 17
ii. Literature 18
iii. Interviews and Informal Discussions with Key Informants 18
iv. Structure of Thesis 20

Humanitarianism: Definitions, Dimensions, Dilemmas 22
1.1 Humanitarianism: A Brief History 22
1.2 Humanitarianism: Definitions and Descriptions 25
1.3 Religion and Humanitarianism 26
1.4 Humanitarianism and Culture 27
1.5 Humanitarianism and Human Rights 31
1.6 Politicization of Humanitarianism: New versus Classical 31
1.7 Humanitarianism and State Sovereignty 33
1.8 Humanitarianism: The Dilemmas 34
1.9 Humanitarianism: A Force for Good 38
1.10 Humanitarianism: A Contested Concept 42
1.11 Humanitarianism and its Three Main Pillars 43

Chapter 2: The Somalia-Kenya Refugee Crisis 45
2.1 Somalia: A Recent History 45
2.1.1 Humanitarian Interventions in Somalia (1992 – 1995) 48
2.1.2 Evolution of the Transfederal Government (TFG) 50
2.1.3 The Rise of Islamists and Jihadists 54
2.1.4 Somalia: Contemporary Events 58
2.2 Kenya 59
2.2.1 Refugees in Kenya: A Brief History 59
2.2.2 Dadaab: A Kenyan/Somali Transnational Crisis 61
2.2.3 Refugee Situation in Kenya as of Early 2012 65
2.2.4 Geography Matters 66
2.2.5 Government of Kenya 2006 Refugee Act and the Department of Refugee Affairs 67
2.2.6 Kenya and Refugee Status Determination (RSD) 69
2.3 Conclusion 70

Chapter 3: Dadaab: Refugee Camp or Complex Emergency? 73
3.1 The Dadaab Refugee Complex 73

3.2 Geography of Dadaab 81
3.3 Environment around Dadaab 83
3.4 Dadaab: Complex Emergency? 86
3.5 UN Operation Dadaab 88
3.5.1 Dadaab Emergency Operation 89
3.5.1.1 Dadaab Camps Full 90
3.5.1.2 Dadaab Reopened 92
3.5.2 The Protracted Refugee Population 93
3.5.3 The Host Community 94
3.6 Developments Affecting Dadaab in 2011 99

Chapter 4: Dadaab Refugee Camps: Protection and Security Concerns for the Refugee Population 101
4.1 Closure of the Border and the Perilous Journey to Dadaab: Protection and Security Concerns for Asylum Seekers 101
4.2 Insecurity and the UN Dadaab Operation 103
4.2.1 UN Security Phases Explained 104
4.3 Bandits (Shiftas) 106
4.4 Islamists/Militias 108
4.5 Interclan Violence 110
4.6 Ethnic Violence 113
4.7 Youth in Dadaab Camps 114
4.8 Gender Based Sexual Violence (GBSV) 118
4.9 Host Community Tensions 121
4.10 Security Actors in Dadaab 122
4.10.1 Kenyan Police 123
4.10.2 Administration Police 123
4.10.3 General Service Unit 125
4.10.4 G4S - Private Security Company 126
4.10.5 Community Peace and Security Teams (CPSTs) 127
4.11 The Problems with the Security Forces 130
4.12 Recent Efforts to Enhance Security and Protection of Refugees: The Security Partnership Project 132
4.13 Conclusion 134

Chapter 5: Dadaab and Humanitarian Response/Assistance 136
5.1 Funding for the Dadaab Operation 136
5.2 UNHCR and Partners: Coordination 138
5.3 Humanitarian Assistance in Dadaab 142
5.3.1 Food and Nutrition 144
5.3.2 Water, Sanitation and Hygiene (WASH) 145
5.3.3 Emergency Shelter 147
5.3.4 Durable Solutions 149
5.3.4.1 Local Integration 149
5.3.4.2 Repatriation 150

5.3.4.3 Resettlement 151
5.4 Dadaab: Development Assistance in a Protracted Complex Emergency Context 153
5.4.1 Education Sector 154
5.4.2 Health Sector 158
5.4.3 Livelihoods 166
5.5 Conclusion 171

Chapter 6: International Law and the Protection and Security of Refugees in Dadaab 174
6.1 International Humanitarian Law 174
6.1.1 Criticisms of International Humanitarian Law 176
6.2 International Human Rights Law 179
6.2.1 The International Criminal Court 181
6.2.2 Criticisms of International Human Rights Law 182
6.3 International Refugee Law 185
6.3.1 The Principle of Asylum 187
6.3.2 The Principle of Non-Refoulement 189
6.3.3 The Principle of Non-Discrimination 190
6.3.4 The Principle of Protection 191
6.3.5 The Principle of International Co-operation 192
6.3.6 The Principle of Solutions 193
6.3.7 Contemporary Challenges for International Refugee Law 193
6.4 Kenya and Dadaab: Refugees and International Law 194
6.4.1 The Right to Asylum 195
6.4.2 The Right to Non Refoulement 197
6.4.3 Right to Freedom of Movement 199
6.4.4 Refugees Right to Work and Equal Pay 201
6.4.5 Right to Protection against Statelessness: Citizenship by Birth or Registration 204
6.4.6 Dadaab and the Right to Development 205
6.4.7 Dadaab and Infringements of International Humanitarian Law 207
6.5 Conclusion 211

Chapter 7: Dadaab: Humanitarian Intervention and Responsibility to Protect (R2P) 213
7.1 Origins of Humanitarian Intervention 214
7.2 Recent History 215
7.3 The Range of Tools Available to the UN Security Council for Humanitarian Interventions 219
7.3.1 Peacekeeping 219
7.3.2 Enforcement 220
7.3.3 Peace Enforcement 222
7.3.4 Problems Associated with UN Missions 223
7.4 Humanitarian Intervention and its Evolution to the Responsibility to Protect 223
7.4.1 The International Commission on Intervention and State Sovereignty 224
7.4.2 Responsibility to Protect: Further Developments 226
7.5 Dadaab and Humanitarian Intervention 230
7.6 Kenyan Unilateral Military Intervention and the Azania/Jubaland Initiative 232

7.6.1 The Consequences of the Kenyan Intervention for Dadaab 234
7.6.2 Dadaab: R2P and the International Community's Obligations 237
7.7 Conclusion 239

Chapter 8: Conclusions 241
8.1 Security and Protection Concerns Continue in Dadaab 242
8.2 Dadaab and Humanitarian Pillar One: Humanitarian Assistance/Response 243
8.3 Dadaab and Humanitarian Pillar Two: International Law 244
8.4 Dadaab and Humanitarian Pillar Three: Humanitarian Intervention/R2P 245
8.5 International Burden Sharing and Durable Solutions 247
8.6 International Mechanism to Deal with PRS 250
8.7 Epilogue 250

Bibliography 252

Tables and Charts

1.1 The Three Pillars of Humanitarianism 44
2.1 Refugee Population of Kenya 1990 -2011 63
2.2 Bar Chart of Refugee Population of Kenya 1990 -2011 64
2.3 Refugee Population in Kenya (as of 30th November 2011) 65
2.4 Breakdown of Refugees by area in Kenya (as of 30th November 2011) 66
3.1 Population per camp in Dadaab (as of 30 November 2011) 80
5.1 Global Cluster Leads 139
5.2 UNHCR Partners and Activities in Dadaab camps in 2011 141
5.3 UNHCR Partners in the Education Sector in Dadaab camps in 2011 154
5.4 UNHCR Partners in the Health Sector in Dadaab Camps 2011 159
5.5 Livelihood Activities Observed in Dadaab Camps in 2010 169
7.1 The Peacekeeping to Full Scale Enforcement Spectrum 219

Maps

2.1 Greater Somalia 62
3.1 Kenya and Provinces 74
3.2 Location of Dadaab 75
3.3 Overview of the Dadaab Refugee Camps 76
3.4 Overview of Ifo Refugee Camp 77
3.5 Overview of Dagahaley Camp 78
3.6 Overview of Hagadera Camp 79
3.7 UNHCR-supported Host Community Projects 98
7.1 Possible State of Azania 234

Acronyms

ACRWC	African Charter on the Rights and Welfare of the Child
ADEO	African Development Emergency Organization
AFDL	Alliance des Forces Democratiques pour la 1ibération du Congo-Zaire
AMISOM	African Union Mission in Somalia
AP	Administration Police
ARPCT	Alliance for the Restoration of Peace and Counterterrorism
ARS	Alliance for the Re-liberation of Somalia
ASWJ	Ahlu Sunna Wal Jamaa
AU	African Union
BPRM	Bureau of Population, Refugees and Migration
BSFP	Blanket Supplementary Feeding Programme
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CPST	Community Peace and Security Team
CRC	Convention on the Rights for the Child
CSB	Corn Soya Blend
CTC	The Centre for Disease Control
CTC	Community Therapeutic Care
DRA	Department of Refugee Affairs
DRC	Danish Refugee Council
EPI	Expanded Programme on Immunization
ERO	External Relations Officer
FAIDA	Fafi Integrated Development Association
GBSV	Gender Based Sexual Violence
GIZ	Gesellschaft für Internationale Zusammenarbeit
GoK	Government of Kenya
GSU	General Service Unit
GTZ	Gesellschaft für Technische Zusammenarbeit
HoA	Heads of Agency
HoU	Head of Unit
HRW	Human Rights Watch
IASC	Inter-Agency Standing Committee
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights and Economic, Social and Cultural Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICISS	International Commission on Intervention and State Sovereignty
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICTY	International Criminal Tribunal for the former Yugoslavia

IDP	Internally Displaced Person
IGAD	Intergovernmental Organisation on Development
IHL	International Humanitarian law
IHRL	International Human Rights Law
INGO	International Non-Government Organization
IOM	International Organization for Migration
IP	Implementing Partner
IRC	International Rescue Committee
IRL	International Refugee Law
KRCS	Kenya Red Cross Society
LWF	Lutheran World Federation
MDGs	Millennium Development Goals
MIRP	Ministry of State for Immigration and Registration of Persons
MONUC	United Nations Mission in the Democratic Republic of Congo
MsF	Medicines' San Frontiers
NATO	North Atlantic Treaty Organization
NBR	The National Bureau of Registration
NCCK	National Council of the Churches of Kenya
NEP	North Eastern Provence
NFD	Northern Frontier District
NFDLA	Northern Frontier Districts Liberation Army
NFIs	Non-Food Items
NGO	Non-Government Organization
NRC	Norwegian Refugee Council
OAU	Organisation of African Unity
OP	Operational Partner
ORH	Operation Restore Hope
ORT	Oral Rehydration Therapy
OTP	Outpatient Therapeutic Program
PEP	Post Exposure Prophylaxis
PRS	Protracted Refugee Situation
R2P	Responsibility to Protect
RPF	Rwandan Patriotic Front
RRDO	Relief Reconstruction and Development Organization
RSD	Refugee Status Determination
SC	Stabilization Centre
SCUK	Save the Children UK
SFP	Supplementary Feeding Program
SNM	Somali National Movement
SPM	Somali Patriotic Movement
SPP	Security Partnership Project
SRC	Supreme Revolutionary Council
SRRC	Somali Reconciliation and Rehabilitation Council
SSDM	Somali Salvation Democratic Movement

TFG	Trans Federal Government
TFIs	Transitional Federal Institutions
TNG	Trans National Government
UDHR	Universal Declaration of Human Rights
UIC	Union of Islamic Courts
UN	United Nations
UNAMIR	United Nations Assistance Mission for Rwanda
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHCR	United Nations High Commissioner for Refugees
UNHCR ExCom	UNHCR Executive Committee
UNICEF	United Nations International Children's Emergency Fund,
UNITAF	Unified Task Force
UNOCHA	United Nations Office for the Coordination if Humanitarian Affairs
UNOSOM	United Nations Operation in Somalia
UNPREDEP	United Nations Preventive Deployment Force
UNPROFOR	United Nations Protection Force
UNSC	United Nations Security Council
UNSECOORD	United Nations Security Coordinator
UNSG	United Nations Secretary General
UNSTAMIH	United Nations Stabilization Mission in Haiti
UNTAET	United Nations Transitional Administration in East Timor
USC	United Somali Congress
WASH	Water, Sanitation and Hygiene
WFP	World Food Programme

Declaration

I declare that this thesis is the result of my own work and has not been submitted for another degree, either at University College Cork or any other Institution.

_____

Damien Mc Sweeney

Brief Biography

This PhD journey has been unconventional, filled with diversity and one which has taken many twists and turns along the path of life. After working in the private sector for 14 years culminating with the ownership of a number of businesses I found myself deeply unhappy and at a crossroads in my life. In 2002 I spent some time travelling around India and reflecting on where my future lay and it was there that I had a 'eureka' moment and decided to return to university to retrain and pursue a career in humanitarianism/development. This decision wasn't as 'crazy' as it sounds as I have always been avidly interested in international politics and having travelled extensively from a young age, I had seen extreme poverty and suffering in many countries which led me to question the international system which allows this to happen. Since returning to college I have been like a knowledge-hungry 'sponge' completing a Diploma in Development and a BSc (Hons) in International Development and Food Policy in the National University of Ireland, Cork and simultaneously a Diploma in Environment and Development and a BSc (Open) with a focus on International Relations. I have also worked for the Centre for Sustainable Livelihoods, the Emergency and Recovery Section of Irish Aid (Department of Foreign Affairs), became a member of the Irish Rapid Response Corps (Humanitarian Affairs Officer - Coordination/Liaison/Reports) and was deployed to work with UNHCR as their External Relations Officer in Dadaab, Kenya. As of April 2012, I am lecturing on the Diploma in Development Studies in the NUI, Cork; the very first third level course in Development I ever completed.

I have always been more drawn towards humanitarianism as opposed to development although I do see them as two sides of the same coin, intricately connected, especially in contemporary times with the proliferation of Protracted Refugee Situations and complex emergencies. This thesis was originally meant to examine humanitarian coordination mechanisms in particularly Civil - Military coordination/cooperation in complex emergencies. However, my deployment to Dadaab resulted in the morphing of these original plans into something which I consider to be so much more and so much better as well as being research which will be of use to practitioners in the future, one of my original objectives when I set out on this PhD journey, while hopefully making life in Dadaab a little bit more secure for the close to half a million souls forgotten there.

Introduction

Protracted Refugee Situations (PRS), are defined[1] as situations in which refugees have been in exile 'for 5 years or more after their initial displacement, without immediate prospects for implementation of durable solutions' [2](UNHCR, 2009). In the past two decades there has been a huge proliferation of these with more than 7.2 million refugees are trapped in these PRS, with a further 16 million internally displaced persons[3] (IDPs) trapped in camps within their own countries (Long, 2011). There are some 30 major PRS around the world, with the average length of stay in these states of virtual limbo now approaching 20 years, up from an average of nine years in the early 1990s. Thus not only is there a greater percentage of the world's refugees in protracted exile than before but these situations are lasting longer (Milner and Loescher, 2011, p. 3). However, these figures are even quite conservative as UNHCR estimations of refugees in prolonged exile does not include many of those long-term displaced in urban settings around the world or smaller residual displaced populations who remain in exile after others have returned home. Nor does it include the millions of Palestinian refugees throughout the Middle East under the mandate of UNRWA, the UN Relief and Works Administration. And there are over two million Iraqi refugees in the region adjoining Iraq who will find themselves in a protracted situation if long-term solutions are not found for them soon (Loescher and Milner, 2009). Examples of PRS include Somali refugees in Dadaab, Kenya; South Sudanese refugees in Kakuma, Kenya; Bhutanese refugees in Beldangi, Nepal; Burmese refugees at Mae La in Thailand and Bosnian, Croatian and Kosovan refugees in camps in Serbia. The long-term presence of refugee populations, the majority of which are in the developing world, has come to be seen by many host states as a source of insecurity and these states, including Kenya where Dadaab is located, have enacted policies of containing refugees in isolated and insecure camps, facing severe restrictions on their access to basic rights, such as freedom of movement and the right to work.

[1] As Defined by the 2009 UNHCR Executive Committee's (ExCom) Conclusion on Protracted Refugee Situations

[2]UNHCR has outlined three durable solutions open to refugees: voluntary repatriation, local integration and resettlement

[3]UNHCR´s original mandate does not specifically cover IDPs, but because of the agency´s expertise on displacement, it has for many years been assisting millions of them, more recently through the "cluster approach." Under this approach, UNHCR has the lead role in overseeing the protection and shelter needs of IDPs as well as coordination and management of camps.

The Dadaab refugee complex in Kenya is the most significant and extreme example in recent times of a PRS. It was established in 1991 following the collapse of the Somali Government of Dictator Siad Barre, and the disintegration of Somalia into the chaos that still exists today. Somalia is an example of both a failed state and a complex emergency, which has resulted in many deaths and a massive population displacement where since 1991, although figures vary, it is believed that more than 1,500,000 Somalis have fled their homeland as a result of a brutal civil war which in-turn became a battle between various factional clan groups fighting for control of both land and resources which led to an influx of many Somalis into Ethiopia, Djibouti, Yemen and Kenya. As well as this, as of 2011-2012, 1.43 million out of a population of nine million are internally displaced persons (IDPs), many living in makeshift camps, denied international assistance by Islamists who threaten humanitarian workers and refuse to allow aid through. Even among failed states, those countries unable to exercise authority over their territory, protect their citizens or even provide the most basic services to them, Somalia stands apart. Since the fall of Barre's regime in 1991 Somalia has lacked a central government and conflict, poverty, famine and insecurity are endemic. The average life expectancy there is only fifty, less than 40 percent of Somalis are literate and more than one in ten children dies before reaching the age of five (Central Intelligence Agency, 2012). Failed States such as Somalia produce a host of problems such as conflict, warlords, bandits, Islamic Jihadists, pirates and inevitably refugees which spill over beyond their borders, most notably Kenya's Dadaab refugee camp. This Somali/Kenyan transnational relationship shall be explored in chapter two.

The United Nations High Commissioner for Refugees (UNHCR) is the international organization tasked with dealing with refugees/IDPs and is responsible for the Dadaab complex. Its core mandate responsibilities are 'to provide international protection for refugees and to find durable solutions to their plight, through repatriation, local integration, or the resettlement of refugees to a third country' (Loescher et al., 2008, p. 13). When they were established the refugee camps were originally to accommodate 90,000 refugees and as of January 2012 now hold over five times their intended capacity. The camps are located approximately 50 miles from the Kenya-Somali border in a remote, harsh and hostile desert area with temperatures of up to 48 degrees Celsius in the dry season as well as suffering from extreme flooding in the rainy season. The camps and the surrounding areas are very unsecure due to low government investment, a very thin police presence and Islamist and bandit activities. Refugees many of whom are there over 20 years are not allowed leave the camps or gain employment and are mainly dependant on UNHCR and its partners for assistance.

Dadaab's significance, complexity and extremity as a PRS is due to the fact that it is not only a PRS, but it is also a complex emergency in its own right because of the collapse of state institutions there, the breakdown of law and order, banditry and chaos, shortages of food, water and other basic necessities and the displacement of large amounts of the civilian population. As well as this humanitarian relief operations are constrained by lack of access and danger to aid workers. UNOCHA attributes four main characteristics to complex emergencies. Firstly, that there is extensive violence and loss of life, massive displacements of people and widespread damage to society and the economy. Secondly, that there is need for large-scale, multi-faceted humanitarian assistance. Thirdly, that there is a hindrance or prevention of humanitarian assistance by political and military constraints and finally that there is the existence of significant security risks for humanitarian relief workers (Keen, 2008, p. 2). Using these criteria in the Dadaab context, firstly, in the camps extensive violence exists and they hold nearly half a million people who have been displaced causing widespread damage to their society and their economy. Secondly, the humanitarian intervention Dadaab is huge and multi-faceted with a mix of humanitarian assistance, developmental assistance and even host community assistance overseen by UNHCR and with over 30 Implementing and Operational partners involved in the response. Thirdly, there is a hindrance of humanitarian assistance by political and military constraints as bomb attacks on police and humanitarian convoys in November and December 2011 (BBC News, 2011a), have left a number of police officers dead and resulted in the withdrawal of humanitarians from the camps and the curtailment of the humanitarian operation there. And finally, the kidnapping of humanitarian workers in September and October 2011 (Ombati, 2011b) proves there is the existence of significant security risks for humanitarian relief workers.

Humanitarianism can be defined as the 'the doctrine that man's duty is to strive to promote the welfare of mankind,'(Collins English Dictionary quoted in Dictionary.com) while the international humanitarian system aims to protect those in immediate danger, be it from manmade or natural emergencies, and the prevention of unnecessary suffering. In contemporary times, there are broadly speaking, three main pillars associated with humanitarianism: humanitarian assistance/response, international law and humanitarian intervention/Responsibility to Protect (R2P), working both individually and together to preserve and protect life. The first pillar, humanitarian assistance/response, deals with the issues of aid, its appropriateness, timeliness, funding mechanisms, standards, accountability, impacts and reforms. The second pillar, international law deals with three separate but often related bodies of law: international humanitarian law, international human rights law and

international refugee law. While some of their rules are similar, these bodies of law have developed separately and are contained in different treaties. International Humanitarian Law (IHL) also known as the law of armed conflict or simply the laws of war, is the branch international law that comprises the rules, which, in times of armed conflict, seek to protect people who are not or are no longer taking part in the hostilities, restrict the methods and means of warfare employed, and resolve matters of humanitarian concern resulting from war (International Committee of the Red Cross, 2003). International Human Rights Law (IHRL) is the branch that comprises of rules that seeks to protect the basic rights and freedoms that all people (on the basis of being human) are entitled to (International Committee of the Red Cross, 2003). International Refugee Law (IRL) are the rules and procedures that aim to protect, first, persons seeking asylum from persecution, and second those recognized as refugees under the relevant instruments (The Rule of Law in Armed Conflicts Project, 2011a). Finally, the third pillar, humanitarian intervention/R2P can be describes as the 'forcible military action by an external agent in the relevant political community with the predominant purpose of preventing, reducing, or halting an on-going or impending grievous suffering or loss of life (Pattison, 2010, p. 28). Humanitarian intervention has in recent times evolved into the Responsibility to Protect which first asserts that it is the responsibility of sovereigns to protect their own populations, secondly, the international community has responsibility to develop the institutional capacities and behaviours necessary to prevent genocide and mass atrocities, assist states in the fulfilment of their responsibilities, and improve the effectiveness of peaceful and consensual measures, and thirdly, that the UN Security Council has the authority to intervene to protect people if it sees fit to do so (Bellamy and Davies, 2011, p. 24). These pillars will be dealt with collectively in chapter one and framed individually in the context of Dadaab in chapters five, six and seven.

The past two decades has seen a dramatic upheaval in the international world order: the end of the Cold War, the 9/11 attacks and the subsequent 'War on Terror', increased Jihadist activities, the accelerated pace of globalization, climate change and the 2008 global financial crisis have contributed to fear, uncertainty, poverty, conflict, massive displacements of populations of asylum seekers and refugees globally and a proliferation of Protracted Refugee Situations. PRS such as Dadaab raise particular issues about humanitarianism in terms of aid, protection, security, human rights and the actions (or inaction) of the various stakeholders on an international, national and local level. This thesis will investigate these issues by the use of a case study methodology on Dadaab as a PRS, framed in the context of humanitarianism and in particular the issues that arise in terms of

how the international community, the UN system and individual states provide assistance and protection to vulnerable populations. It must be noted that while this thesis focuses specifically on the PRS in Dadaab, there are also one and a half million IDPs within Somalia who have many of the same security and protection issues as the refugees in the Dadaab camps. I would like to note that these people are not being dismissed or forgotten about, but as they remain IDPs inside Somalia they remain the responsibility of the Somalia state (to the extent it exists) and pose a somewhat different set of questions and challenges for external actors and the international community.

Methodology

The approach taken for this thesis is a case study approach which utilizes a single case study, the Dadaab refugee camps, as a method whose purpose is to examine this individual case in great detail to ascertain whether this vulnerable population is being protected and made more secure by the international community and the UN, as well as addressing broader lessons and conclusions that can be drawn about Protracted Refugee Situations. This case study approach is framed within the context of humanitarianism, in particular, the three main pillars of humanitarian assistance/response, international law and humanitarian intervention/R2P. Yin defines the case study research method as:

> an empirical inquiry that investigates a contemporary phenomenon within its real-life context; when the boundaries between phenomenon and context are not clearly evident; and in which multiple sources of evidence are used (Yin, 1984, p. 23).

This definition corresponds with the main reasons that this methodology was chosen. Firstly, in my opinion and experience, there is a considerable disconnect between academia (theory) and the field (practice) and I felt that this case study approach would assist in bridging this gap. Secondly, because of the complex and dangerous nature of the camps, the circumstances on the ground were changing on a constant basis and the use of the case study methodology allowed for the identification, observation, tracking and analysis of these changes as well as opportunity to work with the various situations that presented themselves in Dadaab. Thirdly, because of the complex, protracted and transformative nature of the situation, multiple sources of information and evidence were utilized. Finally, the fact that I was deployed to Dadaab, with unprecedented access to a conflict prone, complex emergency and Protracted Refugee Situation warranted such an in-depth and comprehensive case study approach.

Tellis believes that one of the reasons for the recognition of case study as a research method is that researchers were becoming more concerned about the limitations of quantitative methods in providing holistic and in-depth explanations of the social and behavioural problems in question (Tellis, 1997). Through case study methods, a researcher is able to go beyond the quantitative statistical results and understand the behavioural conditions through the actor's perspective. By including both quantitative and qualitative data, a case study approach helps explain both the process and outcome of a phenomenon through complete observation, reconstruction and analysis of the cases under investigation

(Tellis, 1997). Thus the case study approach taken for this thesis provides detailed empirical review and analysis of Dadaab through the inclusion of both qualitative and quantitative data, which helps to investigate and analyse the many issues and processes involved in the Dadaab refugee complex as a PRS, framed from the perspective of humanitarianism and humanitarian policy. Although the refugee camps have been in existence (as of 2012) for over 20 years, there has never been such a detailed study of Dadaab undertaken to date. In addition, there has been very little substantive research done in the area of protracted refugee situations in general, with the exceptions of work done by Professor Gil Loescher, Dr. Alexander Betts and James H. S. Milner. It is in this respect that I envisage this thesis as adding to the body of knowledge in this area. Methodologically, my approach to this thesis has drawn on three main sources:

1. Personal Experience

I was deployed at the beginning of March 2010, at short notice by Irish Aid as a member of their Rapid Response Corps, to Dadaab Refugee camp in the North Eastern territories of Kenya, to work with UNHCR as their External Relations Officer (ERO). The deployment was originally to last three months but because of the continued conflict in Somalia resulting in increased influxes of refugees, and the excessive bureaucracy involved in any staff recruitment within the UN system (for my replacement) this was extended twice and turned into eight months with my return to Ireland being the end of October 2010.

During my eight month deployment I spent the vast majority of my time in the field interacting with refugees, the host community, Implementing/Operational partners (IP/OPs), UNHCR units and staff as well as donors, politicians (local, national and international) and Government of Kenya (GoK) officials. As I was responsible also for the logistics, management and security of missions to Dadaab, I interacted with security and the police on a near daily basis. This gave me a unique view and first hand observations on the many, humanitarian, development, psychosocial, security and protection issues that affect the vulnerable population in the camps there. Another one of my key operational duties was the compilation of the weekly Situation Report (Sit Rep) which comprised of inputs from all sixteen UNHCR units on the ground there, thus all relevant information in relation to the Humanitarian Operation 'flowed' through me, giving me exclusive access to vast amounts of primary and secondary qualitative and quantitative literature.

2. Literature

This thesis has utilized a large, diverse and wide ranging body of literature which includes:

- Primary literature such as situation reports, donor reports, briefing notes, operational reports compiled by myself as part of my duties for UNHCR, reports and statistics from the various UNHCR units (Health, Education, Livelihoods, Protection etc.) working in Dadaab, security briefings and reports compiled by the Area Security Management Team, national reports, briefings and statistics from the UNHCR Branch in Nairobi as well as statistics and reports from the Government of Kenya. In addition I utilized literature from other United Nations agencies such as UNOCHA, UNICEF, the United Nations Department of Safety and Security, the World Food Programme (WFP) as well as Non-Governmental Organizations (NGO) such as the Lutheran World Federation, Médecins Sans Frontières, Human Rights Watch, Amnesty International and the International Committee of the Red Cross (ICRC); international institutions such as the World Bank and the International Organization for Migration. Also during my time in Dadaab I compiled a log/diary and this primary source is listed as an item in bibliography and referred to at various points throughout the thesis. Finally, because of the complex nature of the emergency in Dadaab, the situation there can change very suddenly. As a result, one of the few sources of primary information often available on current developments is from the news media and these have also been utilized.

- Secondary literature from and academic sources such as Dr. Afyare Abdi Elmi, Dr. Jeff Crisp, Dr. Cindy Horst, Professor Alex Bellamy, Dr. Anna Lindley, Dr. Ken Menkhaus and Professor Gil Loescher in the form of books, papers and journal articles which I drew upon for my analysis of humanitarianism, the conflict in Somalia and PRS in general.

3. Interviews and informal discussions with Key Informants.

Being the Head of Unit (HoU) for External Relations and a member of the UNHCR management team in Dadaab also gave me unparalleled access to meetings, the camps, insecure areas, UNHCR, IP/OP and GoK facilities and staff as well as key informants from

the host and refugee community. As I coordinated all missions coming to Dadaab it also gave me access to the views and opinions of ambassadors from various countries, government officials, donors, journalists and high ranking UN officials. These interviews were essential to the research because they gave the case study a grounded, real, operational focus which assisted in bridging the gap between the theoretical and the practical. The methodology utilized in Dadaab for interviewing key informants was the technique known as in-depth interviewing, which is also known as unstructured interviewing. It is a type of interview which researchers use to elicit information in order to achieve a holistic understanding of the interviewee's point of view or situation; it can also be used to explore interesting areas for further investigation. This type of interview involves asking informants open-ended questions, and probing wherever necessary to obtain data deemed useful by the researcher (Berry, 1999). Patton suggests three basic approaches to conducting qualitative interviewing:

1. The Informal Conversational Interview: This type of interview resembles a chat, during which the informants may sometimes forget that they are being interviewed. Most of the questions asked will flow from the immediate context. Informal conversational interviews are useful for exploring interesting topic/s for investigation and are typical of 'ongoing' participant observation fieldwork.
2. The General Interview Guide Approach (commonly called guided interview): When employing this approach for interviewing, a basic checklist is prepared to make sure that all relevant topics are covered. The interviewer is still free to explore, probe and ask questions deemed interesting to the researcher. This type of interview approach is useful for eliciting information about specific topics.
3. The Standardized Open-Ended Interview: Researchers using this approach prepare a set of open-ended questions which are carefully worded and arranged for the purpose of minimizing variation in the questions posed to the interviewees. In view of this, this method is often preferred for collecting interviewing data when two or more researchers are involved in the data collecting process (Patton, 1987, p. 112).

During the research carried out in Dadaab the main approach which was used was the 'Informal, Conversational Interview' because of the diversity of issues being investigated, the diversity of informants and the conflict prone nature of the area which meant that if an opportunity for an interview presented itself it was more efficient and effective to 'grab the moment' with no predetermined questions, in order to remain as open and adaptable as

possible to the interviewee's knowledge, nature and priorities. The 'General Interview Guide Approach' was also used to a lesser extent especially when interviewing informants that were security actors in order to make sure that all relevant topics in relation to protection and security were covered, while allowing for considerable freedom to cover topics of interest to both the interviewee and interviewer. The 'Standardized Open-Ended Interview' was not utilized in Dadaab because the other two approaches were much more appropriate for the situation there and the case study methodology chosen.

Structure of the Thesis

Chapter one looks at the various definitions of humanitarianism and examines its many dimensions, focusing on its interactions with culture, religion, state sovereignty, human rights as well as contemporary developments, advances and debates on its politicization. It also introduces the three main pillars of humanitarianism: humanitarian assistance/response, international law and humanitarian intervention/Responsibility to Protect (R2P) which will be used to frame the question of whether there exists adequate protection and security for the vulnerable population in Dadaab in chapters five, six and seven. Chapter two explores the major refugee crisis in Kenya resulting from the influx of refugees, from conflict and instability, mainly from Somalia, but to a lesser degree, Ethiopia and Sudan. It focuses on the origin and background of this crisis, exploring the instability in Somalia, the depth of this crisis and the Government of Kenya (GoK) response to it. It also highlights the transnational nature of the conflict in Somalia and how events there have a direct bearing on events in Kenya, particularly in Dadaab. Chapter three examines Dadaab as a PRS and investigates whether it is actually a complex emergency itself. It also gives an in-depth overview of the Dadaab refugee complex, identifying the various camps, examining the complex's location, environment, and geography and population statistics as well as exploring the three strategic components of the UNHCR operation there: the long term protracted refugee population, the emergency operation and support projects to the host community. In addition it reports on the complex developments of 2011 which led to increased insecurity and the scale back of the humanitarian operation there. Chapter four examines the many and varied security and protection concerns that exist in Dadaab, such as sexual violence, rape, clan violence, bandits and Islamists. It also examines the actors involved in security such as the three police forces, community police and private security as well as investigating whether some insecurity and protection concerns can be traced to the effects of the GoK encampment policy which basically imprisons refugees in the camps, the vast majority unemployed with a lack of future

prospects and dependence on humanitarian aid. Finally it examines how the famine and mass influx of 2011, the subsequent deterioration in the security situation there and the problem of protecting the refugees there. Chapter five uses the framework of the first humanitarian pillar (humanitarian assistance/response) to investigate the humanitarian response and the assistance that Dadaab receives. The diverse and numerous needs and priorities of the population there and the various responses which range from immediate lifesaving interventions, to the longer term support for infrastructure, health, education, livelihoods and services are examined here in detail, to ascertain whether this contributes to appropriate protection and security of refugees there. Chapter six focuses on international law, the second pillar of humanitarianism, exploring international humanitarian law, international human rights law and international refugee law and investigates the myriad of protection and rights to refugees afforded in theory to refugees in Dadaab and all other PRS. . However these protections and rights are only as effective as the respect given to them by states and as there is a serious lack of enforcement mechanisms in case of infringement, many states and non-state parties either break or ignore them impacting negatively on the protection and security of vulnerable populations. Chapter seven explores the third pillar of humanitarianism: the concept of humanitarian intervention and the more recent Responsibility to Protect (R2P) and examines their relevance to the protection and security of people in complex emergencies, the various tools such as diplomacy, sanctions, coercion or military intervention that the UNSC has at its disposal. It then examines whether some of these tools can be applicable in the Dadaab context and (as of April 2012) the continuing Kenyan military intervention in Somalia. Finally it examines the Azania/Jubaland Initiative to create a buffer zone in Somalia between Kenya and the conflict there, as well as the possibility that the initiative is just a precursor to the mass refoulement of Somali refugees and the closure of Dadaab completely. Finally, chapter eight discusses a number of conclusions in relation to the Dadaab situation and PRS, which are framed around the three humanitarian pillars of humanitarian assistance/response, international law and humanitarian intervention/R2P. In addition, further issues such as the continued security and protection concerns in Dadaab, international burden sharing, durable solutions and the lack of an appropriate mechanism to deal effectively with PRS are discussed.

Chapter 1

Humanitarianism: Definitions, Dimensions, Dilemmas

> As man advances in civilization and small tribes are united into larger communities the simplest reason would tell each individual that he ought to extend his social instincts and sympathies to all the members of the same nation, though personally unknown to him. This point being once reached, there is only an artificial barrier to prevent his sympathies extending to the men of all nations and races.
>
> Charles Darwin (as quoted in Wright, 2000)

When we hear of humanitarianism, to some it brings forth images of drought, starving babies with Bob Geldof and Bono organizing truckloads of food aid, to others it brings images of NATO jets pounding Libyan army positions outside Benghazi to halt their threat to the civilian population there and yet to others it brings thoughts of the politicization of aid and the evolution of it into what they see as a business with humanitarian organizations chasing donors and competing with one other for an ever decreasing pool of funds. There are many further variations and perceptions of humanitarianism: in short it is many things to many people. To add future confusion to the mix, according to the Collins English dictionary there exists a number of very different and diverse definitions for 'Humanitarianism' which includes 'the doctrine that man's duty is to strive to promote the welfare of mankind,' 'the doctrine that man can achieve perfection through his own resources' and 'the belief that Jesus Christ was only a mortal man' (Collins English Dictionary quoted in Dictionary.com). For the purpose of this thesis humanitarianism is defined as the 'the doctrine that man's duty is to strive to promote the welfare of mankind.' This Chapter will explore the many dimensions of humanitarianism; examine the various dilemmas it faces in contemporary times and introduce the three main pillars of humanitarianism used to frame the analysis of the Dadaab case study in chapters five, six and seven.

1.1 Humanitarianism: A Brief History

Many people from different cultures, religions and beliefs throughout history have practiced humanitarianism by such actions as preaching about compassion towards others and restraint in the field of warfare. One of the earliest recordings of what might be, if not humanitarian, at

least charitable action comes from the tomb inscriptions of Harkhuf, the governor of Upper Egypt in the twenty-third century BC. The inscriptions on his tomb document his many trading ventures south into what is now Sudan and proclaim that: 'I gave bread to the hungry, clothing to the naked, I ferried him who had no boat' (Walker and Maxwell, 2009, p. 14). Moving to the other side of the world and to the fourth century B.C., Sun Tzu's classic, 'The Art of War' noted that there was an obligation to care for the wounded and prisoners of war (Lauren, 2003, p. 58). In 634 A.D., Caliph Abu Bakr leader of the first Muslim Arab Army invading Christian Syria, in what can only be described as a humanitarian gesture, instructed his men to learn certain rules by heart:

> Do not commit treachery, nor depart from the right path. You must not mutilate, neither kill a child or aged man or woman. Do not destroy a palm tree, nor burn it with fire and do not cut any fruitful tree. You must not slay any of the flock or the herds or the camels, save for your subsistence. You are likely to pass by people who have devoted their lives to monastic services; leave them to that to which they have devoted their lives (Khadduri, 2006, p. 102).

In the sixteenth and seventeenth centuries, classical writers and theorists such as Francisco de Vitoria, Francisco Suárez, Alberico Gentili and Hugo Grotius treated gross abuses of human rights as legitimate grounds for resorting to war - a component of the 'just war doctrine'[4], or, as some modern international lawyers would put it, as a justification for humanitarian intervention. Many of the rules developed by the just war tradition have since been codified into contemporary international laws governing armed conflict, such as the United Nations Charter and the Hague and Geneva Conventions (Orend, 2008, p. 1). The 18th century saw humanitarian aspirations such as freedom, human rights and civil rights becoming a reality for some with the advent of the French and American Revolutions. These revolutions inspired people to fight tyrannical regimes and to spread the human rights credo of an emerging liberal age as envisaged by many of the earlier European writers and theorists. In fact John Adams (1735—1826), revolutionary and second president of the United States would later report that the American Revolution was 'Locke, Sidney, Rousseau, and de Mably,' that is, the ideas of European philosophers put into practice (Ishay, 2008, p. 96).

[4] The origins of the Just War Doctrine are a synthesis of classical Greco-Roman and Christian values which can be traced back to the works of Aristotle, Cicero and Augustine. Just war theory can be meaningfully divided into three parts, which in the literature are referred to as: 1) J*us ad Bellum*, which concerns the justice of resorting to war in the first place; 2) J*usin Bello*, which concerns the justice of conduct within war, after it has begun; and 3) J*us post Bellum*, which concerns the justice of peace agreements and the termination phase of war.

Humanitarianism continued to evolve during the 19th century with this evolution associated with the rise of the profession of nursing and the foundation of the Red Cross movement. The care of the wounded was promoted in the work of Mary Seacole (1805 – 1881) and Florence Nightingale (1820 – 1910) during the Crimean War (1854 – 1856) as well as Clara Barton (1821 – 1912) during the US Civil War (1861 – 1865), who are commonly attributed with establishing the nursing profession (Mitcham and Muoz, 2010, p. 18 - 19). As well as this a pivotal event occurred in 1859 which many depict as being the beginning of modern humanitarianism. This event was the Battle of Solferino which was witnessed first-hand by a Swiss businessman called Henry Dunant (1826 – 1910). He watched in horror as men were cut down and left unattended to die as well as soldiers mercilessly killing wounded men (McLuskey, 2003, p. 7). When the battle was over there was six thousand dead and over forty thousand injured (Hoffman and Weiss, 2006, p. 39). More shocking were the survivors, left unattended on the bloody battlefield, many of them severely wounded and near death. Overcome by the brutality of the scene before him, Dunant took the initiative to organize the civilian population, especially the women and girls, to provide assistance to the injured and sick soldiers, regardless of which side they came from by using the slogan 'Tutti fratelli' translated as 'All are brothers' (McLuskey, 2003, p. 7). Dunant's actions there as well as subsequent actions led to the founding of the Red Cross and the ratification of the Geneva Conventions and the evolution of International Humanitarian Law as we know it today.

The twentieth century saw two World Wars and the cold war with the many 'proxy wars' associated with it causing tens of millions of deaths, extreme suffering and the mass movement of refugee populations. This led to many developments in the area of humanitarianism such as the evolution of an international humanitarian response system, the expansion of the Red Cross and development of the Red Crescent movement, the founding of the United Nations (and its organs such as UNHCR) and its Charter, the Universal Declaration of Human Rights, the evolution of International Humanitarian law, International Human Rights Law and International Refugee Law, the rise of Non-Government Organizations (NGOs), as well as the use of humanitarian interventions and the evolution of the Responsibility to Protect (R2P) doctrine.

Humanitarianism as described as the 'doctrine that man's duty is to strive to promote the welfare of mankind' has been demonstrated by many examples throughout the

centuries. It is fair therefore to say that the concept of humanitarianism, even if it is not referred to as such, is probably as old as history itself.

1.2 Humanitarianism: Definitions and Descriptions

The definition that humanitarianism is the 'doctrine that man's duty is to strive to promote the welfare of mankind' has been criticized by many to be weak and vague. In fact, this definition actually dates back to a 1986 judgment by the International Court of Justice[5] in a case brought by Nicaragua against the United States[6] which failed to come up with a sharper definition and rather than try to provide any more specificity, the judges basically referred to the International Committee of the Red Cross's (ICRC) principles and work (Minear and Weiss, 1993, p. 7 - 10). Because humanitarianism means many different things to many different people and also because of the difficulty in finding an exact, universally agreed upon definition, it is important that the concept be explored. Nicolas de Torrente of Medicines' San Frontiers (MSF) captures very concisely the aims and aspirations of humanitarianism for many when he asserts that:

> The most important principles of humanitarian action are humanity, which posits the conviction that all people have equal dignity by virtue of their membership in humanity, impartiality, which directs that assistance is provided based solely on need, without discrimination among recipients, neutrality, which stipulates that humanitarian organizations must refrain from taking part in hostilities or taking actions that advantage one side of the conflict over another, and independence, which is necessary to ensure that humanitarian action only serves the interests of war victims, and not political, religious, or other agendas. These fundamental principles serve two essential purposes. They embody humanitarian action's single-minded

[5]The International Court of Justice (ICJ) which was established in 1945 by the Charter of the United Nations has no jurisdiction over individuals and mainly functions as a means to settle legal disputes submitted to it by states. The ICJ is separate from, and should not be confused with, the International Criminal Court (ICC) which was established in 2002 as a permanent tribunal to prosecute individuals for genocide, crimes against humanity and war crimes.

[6]The Republic of Nicaragua versus The United States of America was a case taken in 1986 to the International Court of Justice (ICJ) in which the ICJ ruled in favour of Nicaragua and against the United States and awarded reparations to Nicaragua. The ICJ held that the U.S. had violated international law by supporting Contra guerrillas in their rebellion against the Nicaraguan government and by mining Nicaragua's harbours. The United States refused to participate in the proceedings after the Court rejected its argument that the ICJ lacked jurisdiction to hear the case. The U.S. later blocked enforcement of the judgment by the United Nations Security Council and thereby prevented Nicaragua from obtaining any actual compensation. The Nicaraguan government finally withdrew the complaint from the court in September 1992

> purpose of alleviating suffering, unconditionally and without any ulterior motive. They also serve as operational tools that help in obtaining both the consent of belligerents and the trust of communities for the presence and activities of humanitarian organizations, particularly in highly volatile contexts (De Torrente, 2004, p. 4 - 5)

It is clear that humanitarianism is a very wide ranging term and concept, encompassing many different characteristics and positions. These include such dimensions as religion, politics, culture, the provision of aid, protection and security, international law, and even the possibility of humanitarian military intervention.

1.3 Religion and Humanitarianism

The philosophy of humanitarianism has over the years become tied with the evolution of religious ideals and institutions such as those found in Judaism. Islam and Christianity and these have most directly contributed humanitarianism today. For example, the Judaic concept of 'tikkun olam' translated as the healing, mending and repairing of the world, appears in the 'Mishnah' the first attempt to codify Jewish oral law and even today offers the motivation for involvement by Jewish people in humanitarian work (Jacobs, 2007). In Islam humanitarianism has had a 1,400-year-old tradition with the redistribution of wealth in the form of charitable giving being an obligation on every Muslim. This wealth redistribution takes place in the form of zakat (obligatory charity), sadaqah (voluntary charity) and waqf (public endowment) that continues today (Abuarqub and Phillips, 2009, p. 3 - 7). Humanitarianism is also very much prevalent in Buddhism with its total rejection of violence and war as well as its teachings and philosophy being based on non-violence which must be practiced at all times. In its text the 'Karaniya Metta Sutra' human beings (and also all other sentient beings) are elevated to a level of deserving compassion, equal respect and protection. 2600 years ago, long before the UN and other organizations developed contemporary humanitarianism, Buddha propounded what commentators such as A.T. Ariyaratne call a 'Declaration on Sanctity of All Sentient Life' (Ariyaratne, 2003). In the Christian tradition, it is believed that the birth of Christ was announced by angels by 'Peace on earth to all men' (Luke 2:1-19, the Bible). Christ's message is considered by many to be humanitarian at its core. For example in his Sermon on the Mount and the Beatitudes he advocates for love, peace and charity as well as the rejection of war and violence (Matthew 5 - 7, the Bible). In fact Christ's first disciples were all from the ranks of the marginalized in the society at the

time: slaves, Jews, and women. As well as this the gospel which Christ preached featured the abandonment of riches and pride, and the abjuration of might and force in favour of love, justice and charity, which many consider to be Christianity's most valuable and palpable legacy (Eyffinger, 2003). This laid the foundation for the works of future theorists such as Thomas Aquinas and Hugo Grotius, as well as much of modern Western thought on the concept of humanitarianism.

1.4 Humanitarianism and Culture

One position adopted by many commentators is that because the contemporary humanitarian system is mainly funded by donors such as Europe and the US it is deemed to be both a construct of western culture and a western dominated industry. As Donini and Minear assert:

> The web of linkages between Western politics, economics, values and behavior, on the one side, and the posture and processes of humanitarian action on the other, are not altogether new, but the polarization resulting from Iraq and Afghanistan has brought these linkages into much starker view. The fact that traditional humanitarian action is largely funded by a small club of Western donors is also problematic in terms of universality (Donini and Minear quoted in De Cordier, 2008, p. 3).

As mentioned earlier the Islamic based relief and development sector has a 1,400-year-old tradition of humanitarianism and in many countries state agencies collect zakat as part of the public taxation system and numerous NGOs and humanitarian organizations such as Islamic relief and the Red Crescent movement, thrive in the Muslim world. According to Saudi government figures, its aid to the developing world, both through unilateral and bilateral funds, places it among the largest donors in the world (Kroessin, 2007, p. 36). However, since much of this assistance often comes from non-traditional sources such as Diaspora remittances, contributions made by families, communities and Islamic organizations as well as contributions from governments and other donors in the Islamic world, these contributions while substantial in many cases remain unrecognized and largely unrecorded (Donini and Minear quoted in De Cordier, 2008, p. 3)

Islamist countries such as Sudan, Pakistan, Iran, and Saudi Arabia have criticized the Universal Declaration of Human Rights (UNDR) for its perceived failure to take into the account the cultural and religious context of Islamic countries because their governments and legal systems were based on Sharia law. Saudi Arabia has refused even to sign it because of

its reference to freedom of religion (Waardenburg, 2002, p. 167). An example of this criticism is the statement in 1983 by Iran's ambassador to the UN, Said Rajaie-Khorassani, that:

> The Universal Declaration or Human Rights, which represented secular understanding of the Judeo-Christian tradition, could not be implemented by Muslins and did not accord with the system or values recognized by the Islamic Republic or Iran; his country would therefore not hesitate to violate its provisions, since it had to choose between violating the divine law of the country and violating secular conventions (Brems, 2001, p. 201).

The main reasons that Islamists reject some aspects of humanitarianism such as International Human Rights Law (IHRL), apart from the fact that it is manmade, are women's rights, religious freedom, discrimination on the basis of religion and the illegality of Islamic 'hudud' punishments (punishment which involve death or mutilation). This can be explained by the fact that in these areas the actual law of many Islamic states is based on the sharia (Darraj, 2010, p. 103). In many Islamic states women are discriminated against with little or no rights. As Azam Kainguian of the Committee to Defend women's Rights in the Middle East writes:

> In Iran, the Sudan, Pakistan and Afghanistan, Islamic regimes proceeded to transform women's homes into prison houses, where confinement of women, their exclusion from many fields of work and education, and their brutal treatment became the law of the land (Kainguain as quoted in Darraj, 2010, p. 106).

She also points out that under sharia, a woman's testimony equals only half that of a man, which biases domestic cases in favor of the husband, and that in inheritance cases, sharia dictates that daughters inherit only half as much as sons (Kainguain as quoted in Darraj, 2010, p. 106). Also in these countries Muslims are not allowed marry non-Muslims, religious freedom is nonexistent with Muslims who change faith (Apostasy) subject to the death penalty or imprisonment. As well as this, Sharia criminal law identifies hudud crimes, six crimes that the Qur'an considers particularly serious and for which a particular type of punishment is prescribed entailing the infliction of pain. Apostasy, theft, banditry, adultery and even drinking alcohol are subject to punishments such as amputation of hands or legs, crucifixion, stoning to death or flagellation (Brems, 2001, p. 216 - 217). All these Islamic laws are odds with both the UDHR and IHRL.

Another criticism is that many of the mainly Western powers, who champion humanitarianism and push for its enforcement, often condemning African, Asian and Arab countries for their human rights records, are the very countries that violate IHRL when it suits them. For example one only has to look at the United States and its invasion of Iraq, rendition policy, use of torture and their off shore detention of prisoners in Guantanamo bay. Because the detention center is located on Guantanamo Bay, Cuba, the United States authorities claim that it is beyond US sovereign territory and as such attempts to circumvent the application of human rights protections in the United States constitution and access to United States courts. As well as this, the detainees are referred to as 'enemy combatants' a classification invented to thwart the non-application of the protections of both IHRL, and especially IHL which classifies people as wounded, sick or shipwrecked armed forces, civilians or prisoners of war (Duffy, 2005, p. 378). These violations are viewed as hypocrisy in relation to IHRL and in its annual survey of the state of human rights in 2004, Human Rights Watch stated that abuses committed by the United States in Guantánamo and Iraq significantly weakened the world's ability to protect human rights. It goes on to say that:

> Not only does the United States invite others to mimic its policy by openly defying the law, but it reduces its leverage over others because Washington seems hypocritical when calling upon others to uphold principles that it violates (Weiss and Thakur, 2010, p. 283).

By violating IHRL the US has lost much of its moral authority and this has impacted negatively on the promotion of humanitarianism. Addressing the United Nations in 2007, Zimbabwe's president, Robert Mugabe, himself a massive violator of IHRL, accused U.S. President George W. Bush of 'rank hypocrisy' for lecturing him on human rights and likened the U.S. Guantanamo Bay prison to a concentration camp. As he said, 'his hands drip with innocent blood of many nationalities. He kills in Iraq. He kills in Afghanistan. And this is supposed to be our master on human rights?'(Parsons, 2007).

Finally, some critics assert that humanitarianism is just another form of Western imperialism and domination over the sovereignty of smaller, non-western nations. For example many believe that IHRL holds the rights of the individual above all else, including, in some cases, the security of the family and society. For non- western nations and cultures that place greater emphasis on family, society and the state this is very problematic. This argument is also sometimes referred to as the 'Asian values challenge', because many or its

critics often come from Asian societies (Darraj, 2010, p. 101). An example of this is Singapore which places restrictions on freedom of speech, freedom of assembly and the freedom of the press, which the government asserts are necessary to preserve economic prosperity and racial and religious harmony (Green and Karolides, 2005, p. 514). In recent times they have also made increasing use of the defamation laws to those who report or express dissenting views. In November 2010, British author Alan Shadrake was convicted of contempt of court and given a US$15,400 fine as well as six weeks in prison for his critical review of Singapore's death penalty law and administration in his book *Once a Jolly Hangman: Singapore Justice in the Dock* (The Telegraph, 2010). As a member state of the United Nations Singapore is bound to respect 'fundamental human rights' enshrined in the Universal Declaration on Human Rights, in which Freedom of Expression is guaranteed by Article 19, however Singapore's government's view is different. They assert that humanitarian principles and conceptions are dominated by Western perceptions and argue for an 'Asian Values' interpretation of human rights, characterized by the primacy of duty to the community over individual rights and the expectation of trust in authority and dominance of the state leaders (Stacy, 2009, p. 12).

In contemporary times, with the advent of globalization, the proliferation of international institutions, international law and greater cooperation amongst states, many people believe that that the world is moving increasingly towards a global human rights based community. For example Immanuel Kant maintained that:

> The peoples of the earth… have entered in varying degrees into a universal community, and it has developed to the point where a violation of rights in one part of the world is felt everywhere. The cosmopolitan right is therefore not fantastic and overstrained; it is a necessary compliment to the unwritten code of political and international right, transforming it into a universal right of humanity (Kant as quoted in Bromley and Smith, 2004, p. 533)

However, despite this cosmopolitan assertion that we are moving towards greater global integration and a community based on universal human rights, it is clear that the debates on humanitarianism continue to be shaped by larger global questions of culture and are often therefore controversial. As mentioned, non-Western critics maintain that humanitarianism is essentially a Western construct imposed on rest of the world with supporters arguing that humanitarianism reflects truly universal values and needs to be embraced globally by everyone. This debate and its associated controversies are unlikely to go away anytime soon.

1.5 Humanitarianism and Human Rights

Outside the cultural diversity of the concept of humanitarianism, there also needs to be a differentiation between the commitment to humanitarian action which can be described as the efforts to assist people in crisis situations and the commitment to human rights which can be defined as the basic rights and freedoms to which all humans are entitled, including the right to life and liberty, freedom of thought and expression, and equality before the law. Although the two are closely linked and can often overlap, humanitarian action typically involves an effort to alleviate human suffering by responding to human needs, but not necessarily on the basis of respect for individual human rights. For example, it could be argued from a humanitarian standpoint that slavery should be rejected because of the pain and suffering it causes slaves while from a human rights standpoint it should be rejected because it is incompatible with basic natural human rights (Mitcham and Muoz, 2010, p. 12 - 13). With both standpoints rejecting slavery outright there is overlap, thus, both come under the umbrella of humanitarianism. However, many of those that work in humanitarian organizations see a critical difference between what they do and what human rights organizations do, and over the last two decades they have spent considerable energy defending their humanitarian space from human rights activists. A good illustration is the 2009 decision by the International Criminal Court (ICC) to indict several Sudanese leaders for genocide. Human rights activists declared it a major victory for justice, humanitarian organizations, on the other hand, were appalled that the ICC publically thanked aid organizations operating in Darfur for providing critical information and felt no surprise when Sudanese President Omar al-Bashir evicted a dozen aid agencies on the grounds that they were not keeping people alive but rather helping Sudan's enemies. Many aid agencies argued that what Darfuris needed was not rights but basic protections in order to keep them alive (Barnett, 2011, p. 16). So even here, despite all the similarities and linkages there is still considerable confusion and disagreement.

1.6 Politicization of Humanitarianism: New versus Classical

The Rwandan genocide and the Bosnian conflict contributed to another important debate that is raging in humanitarianism today which has divided many people, including relief groups, politicians, and academic observers. That debate is the meaning of neutrality in humanitarian operations. There are two main strands of thought here with supporters of what could be called ‘classical’ humanitarianism such as the ICRC adhering to the principle of strict

neutrality, arguing that anything less violates the spirit of humanitarian universalism. Critics of this approach, often called 'new' humanitarians, argue that adherence to neutrality in humanitarian emergencies often constitutes moral irresponsibility. New humanitarianism is highly political and it sees apolitical, neutral, humanitarian relief as both naive and morally questionable. Instead new humanitarians argue for a more politically conscious aid which can assess the present and future impact of aid interventions on the politics of conflict and ensure that aid is linked to military and diplomatic tools in a coherent conflict-resolution strategy (Fox, 2001, p. 275). It is a clear, conscious attempt to break from the past and move beyond the traditional humanitarian principles that have guided aid agencies for the past century. The ICRC's refusal to speak out against human rights abuses and to remain neutral in every conflict contrasts with the more political approach adopted by agencies like Oxfam, Action Aid and MsF. In fact it was the rigid neutrality of the ICRC that inspired the formation of MSF during the Biafra war in 1967, when many doctors working with the ICRC resigned and set up MSF because of the ICRC's silence about the atrocities that were occurring there (Ariyaratne, 2003, p. 84). When MSF won the Nobel peace prize in 1999, the eve of the 21st century, its co-founder Alain Woodrow explained it was because of the results of their move away from traditional humanitarian action, saying:

> MSF's two major contributions to the continuing debate on humanitarian matters are, first, the right and duty to speak out on controversial subjects (in contrast to the Red Cross), denouncing corruption and injustice wherever they exist: secondly, the right and duty to intervene in the affairs of sovereign states where human rights are violated (Woodrow as quoted in Fox, 2001, p. 281).

Because of the perceived failure of humanitarianism the case for its reform is compelling and many of the new values associated with the new humanitarian agenda such as bearing witness, promoting human rights, thinking in a sustainable manner and the use of aid to secure peace are all very noble and appear beyond criticism. However, some people aren't convinced that this is the direction that humanitarianism should be going in. Oxfam's Nick Stockton has spoken about the way the new goal-oriented humanitarianism undermines the principle of a universal right to relief and allows for the creation of 'deserving and undeserving victims' or put simply, a hierarchy of victims. It would be easy to identify populations associated with the crimes of their leaders such as Rwandan Hutus, Serbians and Iraqis and decide that they are undeserving of aid, but this would be a tragedy. As Stockton says:

> The concept of the 'undeserving victim' is therefore morally and ethically untenable, and practically counter-productive. It represents an outright rejection of the principles of humanity, impartiality and universalism, fundamental tenets of human rights and humanitarian principles (Stockton, 1998, p. 355).

Another obvious risk of a new more political humanitarian action is that warring sides will no longer accept the neutrality of aid workers in emergencies and that this will lead to loss of access to civilian populations and an increased threat to the workers themselves. The increased use of 'humanitarian protection' in conflict zones has seen the institutionalization of military and armed police support for humanitarian relief efforts. The creation of humanitarian aid corridors or the provision of armed protection for relief workers and their logistics networks is becoming more and more commonplace (Jacobs, 2007, p. 33). For example in Dadaab humanitarian workers cannot move freely because of the threat of bandits and armed Islamists and thus must always be accompanied by armed police. The deliberate targeting of UN workers in Somalia, Afghanistan and Iraq would seem to indicate that humanitarian workers are no longer considered neutral nowadays in any case (Eyffinger, 2003). New humanitarians accept that speaking out carries a further threat to them and the risk of losing access to those in need but they insist this is a price worth paying for drawing international attention to human rights abuses.

1.7 Humanitarianism and State Sovereignty

In 1648, the treaty of Westphalia brought an end to the Thirty Year War that had raged in Europe. It is also an extremely important development in terms of International Relations because for the first time ever the existence of separate sovereignties in one international society was formally recognized. In essence it gave birth to the modern states system (McGrew, 2005, p. 29 – 30). The key principles of the treaty were that the sovereignty of states and the fundamental right of political self-determination was recognized as was the legal equality between states. As well as these, the principle of non-intervention of one state in the internal affairs of another state was also recognized (Jackson and Owens, 2005, p. 53 - 55). Today, 'the Westphalian System' of independent states continues to dominate the way the worlds peoples are organized with the seeds of state sovereignty and non-intervention that were sown in 1648 eventually evolving and finding their way into the charter of the United Nations, the Geneva Conventions and other contemporary bodies of international law. However, in terms of humanitarianism, the adherence to (or the excuse of) the principle of

non-interference in the internal matters of states by the international community has resulted in genocide and horrendous crimes against humanity, as was the case in Rwanda and Cambodia and has led to considerable discourse between humanitarianism and state sovereignty. In recent times this has become further politicised the with the advent of armed humanitarian interventions and evolution of the 'Responsibity to Protect' which asserts that sovereignty should no longer be conceived as undisputed control over territory, but rather as a conditional right dependent upon respect for a minimum standard of human rights. In the words of the International Commission on Intervention and State Sovereignty (ICISS), the entity which outlined the concept:

> It is acknowledged that sovereignty implies a dual responsibility: externally to respect the sovereignty of other states, and internally, to respect the dignity and basic rights of all the people within the state. In international human rights covenants, in UN practice, and in state practice itself, sovereignty is now understood as embracing this dual responsibility. Sovereignty as responsibility has become the minimum content of good international citizenship (International Commission on Intervention and State Sovereignty, 2001, p. 8).

The very notion of humanitarian intervention seems like a contradiction in terms, begging the question of how the use of force or the loss of life could be reconciled with humanitarianism, the doctrine that man's duty is to strive to promote the welfare of mankind. However, with the apparent success of the Chapter VII military intervention, invoked as part of the Responsibility to Protect to safeguard civilians in Libya, it may be something that will be deployed with increasing frequency in the future. These concepts will be further explored in relation to the Dadaab context in chapter seven.

1.8 Humanitarianism: The Dilemmas

Because of its nature humanitarianism often presents itself as constantly battling the forces of evil and indifference, but often, it is the opposite that is true. Adolf Hitler would not be too many people's example of a humanitarian; however that is exactly the political card he played when he manipulated humanitarianism to justify his annexation of the Sudetenland, a part of Czechoslovakia in 1938. In a letter to Prime Minister Neville Chamberlain, Hitler wrote that:

> Ethnic Germans and various nationalities . . . have been maltreated in the unworthiest manner, tortured, economically destroyed and, above all, prevented from realizing for themselves also the right of nations to self-determination (Wheeler, 2002, p. 30).

Hitler claimed that in protecting ethnic Germans he was acting in conformity with the minority rights provisions of the League of Nation and despite most states believing these claims were bogus he was allowed to proceed by Britain and France in order to avoid war, thus manipulating humanitarianism for his own malicious aims.

Despite humanitarianism being concerned about the welfare of all mankind it is often the case that states and their prioritization of sovereignty temper humanitarianism. States want to protect national interests while humanitarianism refers to transcendental values and the international community's interests. States defend their citizens and have a territorial imperative, while humanitarianism involves the attempt to reduce human suffering regardless of geographical, political or cultural boundaries. Politics' concerns activities between states, whereas humanitarian action strives to be apolitical and distinct from politics. As humanitarian organizations have become better established and more deeply involved in politics, they have become more deeply political (Barnett and Barnett, 2009, p. 85 - 86). As they have become more politicized, humanitarian organizations are increasingly being accused of becoming bureaucratized, acting like an industry, becoming overly pragmatic and forgetting their principles, protecting their own interests and sacrificing their humanitarian ideals. They are becoming increasingly and disturbingly disconnected from those in whose name they act. One such critic David Rieff author of *A Bed for the Night: Humanitarianism in Crisis* observes humanitarianism is by definition an emblem of failure, not success. The disaster has already happened; the famine has started; the cholera is raging; or the refugees are already on the move' (Rieff, 2003, p. 21). Rieff asserts that humanitarianism is not a selfless panacea for all the suffering in the world and that it is not 'the fairy tale of innocent victims, oppressive gunmen and caring outsiders that the humanitarian narrative often presents' (Rieff, 2003, p. 54). He rejects what he terms the 'the false morality play' that, in any given conflict, there are victimizers and innocent victims, and that it is always clear who is who.

An example of this perplexity is the Rwandan genocide where from April to July 1994, Hutu extremists massacred more than 800,000 Tutsis and moderate Hutus until the Tutsi-led rebel militia, the Rwandan Patriotic Front (RPF) led by Paul Kagame (the present

President of Rwanda) seized power in Kigali and ended the genocide. The result of this was that about two million (mainly Hutu) Rwandan refugees poured over the border to refugee camps hastily set up by UNHCR in eastern Congo to avoid persecution from the new Tutsi government (Autesserre, 2010, p. 47). Many of these refugees were the murderers responsible for the massacres and in the aftermath UNHCR held a number of meetings to exclude the thousands of armed Hutu killers from the camps but because of lack of capacity and support, decided it was impossible to do so. This led to further violence erupting in October 1996 when refugee camps on the banks of Lake Kivu in Eastern Zaire were attacked by Zairean rebels backed by the Rwandan army (now very much controlled by the RPF). Refugees were rounded up and either taken away and shot or macheted where they stood—men, women, and children (Terry, 2002, p. 2 - 4). In addition to this the RPF- led government, armed and supervised various Congolese rebel groups and local militias to fight the Hutu rebels and with the support of Ugandan, Angolan, and Burundian governments as well as South Sudanese rebel forces eventually formed an anti-Mobutu[7] rebel movement, the Alliance of Democratic Forces for the Liberation of the Congo-Zaire (Alliance des Forces Démocratiques pour la 1ibération du Congo-Zaire, AFDL). Between September and November 1996, the rebellion progressively evolved into a full-scale national and regional conflict, now known as the First Congo war (Autesserre, 2010, p. 48). The example of the Rwandan refugee camps graphically illustrates the paradox of humanitarianism: During the genocide the world looked on, including the UN and the humanitarian community shocked but nevertheless unwilling to intervene. This apathy is captured very accurately by retired General Roméo Dallaire[8] who says:

> In just one hundred days over 800,000 innocent Rwandan men, women and children were brutally murdered while the developed world, impassive and apparently unperturbed sat back and watched the unfolding apocalypse or simply changed channels. Almost fifty years to the day that my father and father-in-law helped to liberate Europe —when the extermination camps were uncovered and when in one voice, humanity said, 'Never again'— we once again sat back and permitted this unspeakable horror to occur (Dallaire and Beardsley, 2005).

[7]Sese Seko Mobutu was the dictator of Zaire (today the Democratic Republic of Congo) from 1965 to 1997. He fled the country in May 1997 when rebel forces led by Laurent Kabila won control. He died later that year in Morocco.

[8]Dallaire served as Force Commander ofthe ill-fated United Nations Assistance Mission for Rwanda (UNAMIR) between 1993 and 1994 and is credited as saving many lives and petitioning the UN to try to stop the genocide.

When they did act, relief agencies rushed to avert immediate disaster among the refugees pouring into Zaire, but inadvertently set the scene for the eventual disaster that would unfold in the whole region. Former leaders manipulated the aid system to entrench their control over the refugees and diverted resources to finance their own activities. In short, humanitarian aid, intended for the victims, strengthened the power of the very people who had caused the genocide, leading eventually to the victims of the genocide taking their own destructive action, with devastating consequences. Despite the philosophy of humanitarianism being that man's duty is to strive to promote the welfare of mankind, it is clear that despite best intentions, it is often not as clear cut as it seems; political interests can prevent assistance, perpetrators can also be victims, victims can also become perpetrators and humanitarians can become responsible for further conflict, suffering and death.

Another dilemma when it comes to humanitarianism is that the assumption that all humanitarian workers are self-sacrificing saints, gallantly rushing from crisis to crises, helping those in need. Yes, there are many who would fit into this category, but not all. There have been many occasions in the past where humanitarians have abused their positions of trust leading to further suffering of the vulnerable. In February 2002, the United Nations High Commissioner for Refugees (UNHCR) and Save the Children UK released a report entitled 'Sexual Violence and Exploitation: The Experience of Refugee Children in Liberia, Guinea, and Sierra Leone'. This report found that not only was sexual exploitation widespread, it was also perpetrated by aid workers, peacekeepers, and community leaders. Some of the findings were that

- Humanitarian workers traded food and relief items for sexual favours, with refugee women in Guinea saying 'in this community no one can access CSB (corn-soy blend, a fortified soya based nutrient), without having sex first. They say ...a kilo for sex'
- Teachers in schools in the camps exploited children in exchange for passing grades.
- Medical care and medicines were given in return for sex.
- Some forty-two agencies and sixty-seven individuals were implicated in this behaviour.
- Because of the desperation and vulnerability of many refugees, some parents were even pressuring their children to enter sexually exploitative relationships with peacekeepers and agency workers in order to secure relief items for the family.

(UNHCR and Save the Children-UK, 2002, p. 4)

Most disturbingly though, the report also alleges that security personnel and peacekeepers within and around the camps reportedly sexually exploited girls with peacekeepers reportedly among the highest paying customers for sex with children, paying from US $5 to $300. (UNHCR and Save the Children-UK, 2002, p. 6). Although this report led to increased awareness, better training for peacekeepers and International Non-Government Organizations (INGOs) workers in terms of sexual abuse and a revamped code of conducts for all humanitarian workers a further report in 2008 by Save the Children entitled 'No One to Turn To: The under-reporting of child sexual exploitation and abuse by aid workers and peacekeepers found 'that significant levels of abuse of boys and girls continue in emergencies, with much of it going unreported. These victims include orphans, children separated from their parents and families, and children in families dependent on humanitarian assistance' (Csáky, 2008, p. 1).

The sexual abuse of refugees and other vulnerable groups in emergencies is something that the international community has tried hard to tackle, however it still continues and in chapter four the issues of sexual abuse and sexual violence within the Dadaab refugee camps will be examined.

1.9 Humanitarianism: A Force for Good

Throughout history humanitarianism has been responsible mobilization of many people for the purpose of alleviating suffering and saving lives. It has been responsible for bringing out the best attributes of humanity, where people like Henry Dunant, founder of the Red Cross movement, did not stand idly by, but leaped into action when they saw the suffering of others. In contemporary times, despite its faults, a global humanitarian system has evolved where a safety net can now be provided anywhere in the world in a very short period of time. Take for example, the Turkish genocide against the Armenians. During World War I, the authorities of the Turkish Ottoman Empire carried out one of the largest genocides in world history, deporting and murdering an estimated two million of its minority Armenian population[9] (Dadrian, 2004). The lack of response by the international community was duly

[9]That genocide followed decades of persecution, punctuated by two similar but smaller rounds or massacres in the 1894-96 and 1909 periods that claimed two hundred thousand Armenian deaths. In all, over one million Armenians were pinto death during World War I. Adding to this figure are the several hundred thousand Armenians who perished in the course of the Turkish attempt to extend the genocide to Russian Armenia in the Transcausus in the Spring and Summer or 1918 and then again in the Fall of 1920 when Ankara's fledgling government ordered the army to "physically annihilate Armenia". To this day Turkey still denies the genocide despite the fact that in 1986 the U.N. Commission on Human Rights took note of the Armenian Genocide and in

noted by Adolf Hitler, who after achieving total power in Germany decided to conquer Poland. In 1939 before the invasion he told his generals:

> Thus for the time being I have sent to the East only my 'Death's Head Units' with the orders to kill without pity or mercy all men, women, and children of Polish race or language. Only in such a way will we win the vital space that we need. Who still talks nowadays about the Armenians? (Housden, 2007, p. 18).

Now move forward to the 21st century: between 2003 and 2008, a similar pattern of violence in Darfur drove hundreds of thousands from their homes but the majority of them not to their deaths, because they were met by a massive international humanitarian safety net which kept them alive even if it did not stop the violence or end their displacement. For example, the World Food Programme (WFP) has prevented at least two major famines in Darfur since the conflict began, and their ability to get huge amounts of food into such a difficult area relatively fast is an unsung success story (Walker, 2008). As Dr Alex De Waal of Harvard University asserts:

> When we look at the tragedy of Darfur we must not overlook some of the successes. One of the successes is that the humanitarian operation in Darfur, despite its constraints, has achieved two extraordinary successes. One is for the majority of the population that has been reached, and the general population that has been measured, the mortality and nutrition rates are normal, and have been at normal levels for more than a year now, in some places for longer, and that is extraordinary. The second point is that most humanitarian operations on this scale end up becoming part of a war effort. That hasn't happened, there has been banditry, et cetera, but this operation has stayed very neutral, and that is also very impressive. Or course, this is not a solution. No one would call this a solution. But keeping people alive is quite creditable (Hearing before the United States House of Representatives Committee on Foreign Affairs, 2007).

At the time of the Armenian genocide this global capacity to provide such a safety net was simply not there, the capacity to coordinate such a huge humanitarian operation wasn't there and the resources weren't there.

1987, the European Parliament declared the Turkish massacres of Armenians during World War I to be a crime of genocide under the U.N. Convention on Genocide,' and stipulated that Turkey, among other conditions, must recognize the genocide before the Parliament would favorably consider Turkey's application for membership (Dadrian, 2004)

Also in terms of mobilizing people and public opinion, humanitarianism has led to greater advocacy and campaigning on behalf of three billion people on this planet which live on less than $2.50 a day, the one billion children who live in poverty, the 640 million who live without adequate shelter, the 400 million who have no access to safe water, and the 270 million who have no access to health services (Shah, 2011). As interest in development and humanitarianism grew in the 1970s and 1980s, NGOs adopted these concerns and promoted policies of popular appeal with one of the high points of NGO humanitarianism being the Live Aid campaign in 1984-5 which raised over £150 million for famine relief in Ethiopia (Hudson and Rowlands, 2007, p. 45). Carried out in the face of governmental indifference to the war, famine and extreme suffering of Ethiopians, live aid shocked people into actions such as fundraising, advocacy and lobbying with public opinion forcing governments to react to the death and misery that they were watching live on their televisions every night. Bob Geldof's brand of humanitarian aid had few political conditions attached, avoided association with western foreign or defence objectives and saved many lives.

As well as this, UN agencies are now becoming more professional and are better funded, better organized and better coordinated through initiatives such as Sphere Standards, the cluster system and more defined and professional Civil Military Coordination. They are now boldly pushing the boundaries of state sovereignty in order to bring relief and protection to people regardless of their geographic circumstances. One such example is Haiti and its devastation by an earthquake in 2010 and the chaos that followed. The UN led response tasked the United States military to take over Haitian airspace because of the 'dangerous aviation free-for-all in the disaster's immediate aftermath, with aid planes jostling for space on a single runway' (Phillips, 2010), in order to restore order and ensure the humanitarian supply chain operated effectively. In a surprise show of solidarity with humanitarian principles, Cuba, decade's old adversary of the US opened also up its airspace to them cutting flight times for medical evacuees from Guantanamo bay to Miami by 90 minutes (Barnes, 2010).

There have also been some excellent and ground breaking innovations in the area of humanitarianism which have helped to save many lives and that did not simply exist 50 years ago. Some of these tools include Oral Rehydration Therapy (ORT)[10], the Expanded

[10]Oral rehydration therapy (ORT) is a simple treatment for dehydration associated with diarrhoea, particularly gastroenteritis, such as that caused by cholera or rotavirus. ORT consists of a solution of salts and sugars which is taken by mouth. It is used around the world, but is most important in the developing world, where it saves millions of children a year from death due to diarrhoea - the second leading cause of death in children under five, the first being pneumonia

Programme on Immunization (EPI)[11], emergency reproductive health packs, emergency feeding and nutrition advances such as micronutrients, high energy biscuits, plumpy'nut (a peanut-based food for use in famine relief) fortified foods such as Corn Soya Blend (CSB) and plumpy nut as well as the high-tech advanced supply chain, cold chain and logistical capability mechanisms to deliver them to affected areas and populations nowadays more rapidly than ever before. Other advances have been made in terms of Emergency WASH (Water, Sanitation and Hygiene) programs,[12] maternal health and advances in epidemiology. Also there has been much improvement to emergency shelter strategies. One of the first things that people need after being forced to flee their homes, whether they be refugees or internally displaced, is some kind of a roof over their head. To that end for example, UNHCR stockpiles tents for 250,000 people - 50,000 tents at three centres established in Dubai, Copenhagen and Durban, South Africa to ensure that adequate tents are available when the need suddenly appears. Their strategy also includes distributing materials such as plastic sheeting and matting which can be used to make simple shelters and in longer term protracted situations; they fund the rehabilitation of communal shelters or construction of new homes. In some cases, UNHCR also provides the uprooted with the materials to build homes themselves under self-help schemes (UNHCR, 2011e). There have also been significant advancements in terms of aid standards, preparedness, cooperation, coordination, accountability and transparency.

1.10 Humanitarianism: A Contested Concept

Humanitarianism is a hugely complex and contested concept, with it meaning many things to many people, and as the world became more complex and diverse over the years, so too did

---

UNICEF (2007). *The State of the World's Children 2008: Child Survival*, UNICEF.

[11]Expanded Programme on Immunization (EPI) is a humanitarian initiative which was launched by the World Health Organization in 1974 when less than five per cent of the world's children were immunized during their first year of life. As a result of it, today, about 80% of children receive the basic package of six life-saving vaccinations (polio, diphtheria, tuberculosis, whooping cough, measles and tetanus), saving about 3 million lives a year.
Barder, O. (2011). *Should We Pay Less for Vaccines?* [Online]. Washington: Center For Global Development. Available: http://blogs.cgdev.org/globalhealth/category/global-health [Accessed 29/06/2011].

[12]Unless adequate water and sanitation services are quickly provided to emergency-affected children and their families, disease and death will follow. And unless good hygiene is consistently practiced by affected people, the danger of diarrhoea, cholera and other disease outbreaks will persist. Response programmes range from rapid and limited interventions in acute emergencies – such as the distribution of water purification tablets and family water kits during floods and earthquakes – to comprehensive long-term interventions such as drilling boreholes and building pit latrines in complex emergencies.

humanitarianism. Today, in the twenty first century, debates over neutrality, complex emergencies, deserving victims, do no harm, the limits of state sovereignty; the appropriateness of humanitarian intervention, the responsibility to protect, the justness of pre-emptive war and how to deal with terrorism dominate discussions on the direction humanitarianism is taking in these times.

Despite all the advances and the good that has been achieved in the area of humanitarianism the contemporary world clearly needs a new type of humanitarianism. The traditional principles forged throughout the last century need to be adapted to new wars, collapsed states, powerful non-state actors, protracted refugee situations, globalization and an international human rights culture where Western leaders wage 'humanitarian wars'. Complex emergencies are individualized complex systems, with no two being the same. This new type of humanitarianism needs to understand and address all elements of such systems and include every strategy from conflict resolution to community education and empowerment in a culturally diverse twenty first century setting. Classic humanitarianism may be getting slightly obsolete in the 21st century, but it is uncertain however whether or not the new humanitarianism which politicizes aid and creates what Nick Stockton terms 'undeserving victims' is the answer. The thought of withholding humanitarian aid to those in need for political reasons sits uncomfortably with many people. Maybe a mix of the old and the new is something worth exploring. Fiona Fox believes that one principle worth reviving is universalism; the right of everyone to receive humanitarian relief in times of crisis (Fox, 2001). Maybe that is one line that could be drawn in the sand: that in a world where bilateral aid is increasingly restricted to those countries prepared to follow Western strictures on the economy, human rights and good governance, there is a need to keep one arena of aid free of politics. That arena is that if people are dying without food, water and medicines they should receive unconditional humanitarian aid no matter whom they are or where they come from..

As well as this humanitarianism can never be as pure as it should be because of the realities of the world in which it operates. It can never be practiced as preached because we live in an 'imperfect word that imposes tough, and sometimes heart breaking choices on humanitarians'(Barnett, 2011, p. 6). Humanitarians must get their hands dirty; they must make difficult choices and compromises, they must sometimes pander to the priorities of donors, they must negotiate with mass murderers and they must sometimes even 'profit' from the misery of others because people donate only when they are gripped by repulsive images of starving babies. Unfortunately in today's world, these compromises are inevitable and are

part of the price of doing business, even when that business is saving lives and alleviating suffering. As well as this humanitarians themselves cannot be as virtuous and perfect as ideals would dictate. Many of the INGOs nowadays have become large bureaucracies, often with administrators who have never lived in the field making decisions from a head office in a nice western city such as Geneva or London which can affect thousands of people's lives. Many more are only concerned with job promotion and an easy life, often hiding within large cumbersome bureaucracies such as the UN. As Barnett observes

> Whereas once we likened humanitarian agencies to white knights on muscled steeds charging to rescue the powerless and weak, we are more aware that these knights also are interested in mundane activities such as career advancement, protecting the agency's reputation and cultivating the largess of patrons, and are likely to use political and pragmatic considerations to navigate the moral dilemmas that populate complex emergencies (Barnett and Barnett, 2009, p. 102).

Humanitarianism despite all its failings and limitations however, does represent what is decent in an indecent world. Its core assumptions, solidarity, a fundamental sympathy for victims, and an antipathy for oppressors and exploiters, represent those rare moments of dignity and decency when humanity is at its best. It is important that this be remembered! It is very easy to look at the state of the world, the war, the extreme poverty, the suffering and become disillusioned. As David Rieff quite correctly observes 'So many people, including relief workers, now speak of 'mere' charity, 'mere' humanitarianism - as if coping with a dishonorable world justly, and a cruel world with kindness, were not honor enough' (Rieff, 2002). Humanitarianism is a noble concept, however it is also right and proper to question and assess humanitarianism and not confine it to an ivory tower because only through constant consideration, evaluation and improvement can we actually 'strive to promote the welfare of mankind'.

1.11 Humanitarianism and its Three Main Pillars

It is clear from chapter one that humanitarianism has had a long history and involves a large range of diverse dimensions such as security and protection, development, humanitarian response and assistance, international law, humanitarian intervention and the Responsibility to Protect. All of these dimensions fall in one way or another, under the three main pillars (table 1.1) associated with humanitarianism: humanitarian assistance, international law and

humanitarian intervention/Responsibility to Protect (R2P). These three pillars are utilized in this thesis in chapters five, six and seven, to frame the analysis of Dadaab.

Humanitarianism		
Pillar 1 **Humanitarian Aid/Response**	**Pillar 2** **International Law**	**Pillar 3** **Humanitarian Intervention / Responsibility to Protect**
Identification of Emergency Type - Natural - Manmade - Complex Aid Effectiveness Humanitarian Funding - Central Emergency Response Fund - Consolidated Appeals Process (CAP) - Good Humanitarian Donorship, - Bilateral Funding - Private Sector Funding Security (including Community Policing) Appropriate Response Humanitarian Reform - Cluster System - Civil Military Coordination, Do no Harm Principle Humanitarian Standards (Sphere) Humanitarian Accountability Development in Humanitarian Contexts - Education - Health - Community Empowerment - Livelihoods - Youth - Food and Nutrition - Shelter - Gender - Environment	International Humanitarian Law - Geneva Conventions - Hague Conventions International Human Rights Law - 1945 - UN Charter - 1948 - Universal Declaration of Human Rights (UDHR) - 1948 - Conventions on Genocide - 1966 - The International Covenant on Civil and Political Rights - 1966 - The International Covenant and Economic, Social and Cultural Rights - 1965 - Convention on Racial Discrimination - 1979 - Convention against the Discrimination against Women - 1984 - Convention against Torture - 1989 - Convention on the Rights of the Child (1989). - 1998 - The Rome Statute of the International Criminal Court (ICC) - 2005 - UN General Assembly Summit's endorsement of the Responsibility to Protect. - Regional Human Rights Instruments International Refugee Law - 1951 Refugee Convention and the 1967 Protocols - Regional Instruments	UN Security Council Tools For Humanitarian Intervention - Diplomacy - Conflict Resolution - Sanctions - Peacekeeping - Peace Enforcement - Enforcement Responsibility to Protect - The Responsibility to Prevent - The Responsibility to React - The Responsibility to Rebuild

Table 1.1 The Three Pillars of Humanitarianism

Chapter 2

The Somalia-Kenya Refugee Crisis

Since the early 1990s Kenya has suffered from a major refugee crisis resulting from influx of refugees from conflict and instability in mainly in Somalia, but to a lesser degree and Ethiopia and Sudan. This chapter focuses on the origin and background of this crisis, exploring the instability in Somalia, the depth of this crisis and the Government of Kenya (GoK) response.

2.1 Somalia: A Recent History

The assassination of President Abdirashid All Shermarke by one of his bodyguards on 15th October 1969 marked the end of any form of democratic government in Somalia and the in the early hours of 21st October, General Mohamed Siad Barre and the army intervened. Prime Minister Mohammed Haji Ibrahim Egal and his cabinet were arrested, Somalia's constitution was suspended, the country's eighty-six political parties were banned, and, promising an end to corruption, Siad Barre declared himself chairman of a twenty-five- member Supreme Revolutionary Council (SRC). Initially, Siad Barre received widespread support from the Somali people because he was decisive, a quality missing from the democratic governments that had preceded him (Rotberg, 2003).

The SRC pursued a course of 'scientific socialism' that reflected both ideological and economic dependence on the Soviet Union (Fitzgerald, 2002). However, it wasn't too long before this support began to diminish with many of Barre's actions being oppressive and exploitative. All these steps were designed to break down the traditional clan structure and strengthen the personal control of Siad Barre, as well as to weaken the role of religious leaders (Fitzgerald, 2002, p.24). Under Barre, the state was used by some political leaders to dominate others, monopolize state resources, and appropriate valuable land and other assets. As a result, reconciliation and power-sharing discussions in Somalia are complicated by high levels of distrust and selfishness. The leadership also skilfully manipulated and politicized clan identity over two decades of divide-and-rule politics, leaving a legacy of deep clan divisions and grievances, which continues to fuel conflict in contemporary Somalia even today.

In May 1990 a group of Mogadishu civic and business leaders who called themselves the 'Manifesto Groups' published a manifesto, calling for the formation of a provisional government and political reconciliation with the various insurgent groups. Among them were Somalia's first president Aden Abdullah Osman, and a Mogadishu hotelier, Mohamed Au Mahdi, who became a principal political leader of the United Somali Congress (USC)(Durch, 1996, p.314). Siad Barre had most of the signatories arrested but this was a major miscalculation on his part as firstly, foreign outrage and protests forced him to release them and secondly, it made the various opposition groups realise that they needed to hold talks amongst themselves to coordinate strategy (Fitzgerald, 2002, p.25). Thus in October 1990, the main opposition groups, although from different clans and suspicious of one another, agreed on the common objective of defeating Siad Barre (Durch, 1996, p.314).

By 1991 Barre's troops were fighting a multi front war against a growing number of clan-based liberation movements: Issaq clan's Somali National Movement (SNM) in the northwest, the Majerteyn clan's Somali Salvation Democratic Movement (SSDM)) in the northeast, the Hawiye clan's USC in the centre, and the Ogadeni clan's Somali Patriotic Movement (SPM) in the south (Fitzgerald, 2002, p.25). An Africa Watch report at the time reported that 50,000 unarmed civilians were killed in the course of Siad Barre's various reprisals against the Majerteyn, Issaq, and Hawiye. Thousands more died of starvation resulting from the poisoning of water wells and the slaughtering of cattle by Barre's troops using 'scorched earth' tactics, with many more seeking refuge outside the country (Fitzgerald, 2002, p.25).

Siad Barre's twenty-one year military and personal dictatorship came to an end as armed opposition factions united and drove him from power, resulting in the complete collapse of the central government. His departure resulted in a new and vicious jostling for individual and interclan power which was exacerbated by ethnic violence and revenge-seeking particularly against the Marehan and other Darod communities perceived to be the supporters of Siad Barre. An orgy of looting (partly by Barre's fleeing troops) of public and private property erupted, which culminated in anarchy and chaos in most major urban centres (Lyons et al., 1995, p.21). In May 1992 Barre was finally defeated by a coalition of rival factions led by General Mohamed Farah Aideed[13], fleeing to Kenya and later to Nigeria (Brown and Rosecrance, 1999), where he died in 1995 of a heart attack..

[13]General Mohamed Farah Aideed was leader of the USC and later one of two Warlords that controlled much of Mogadishu. He actively hindered international U.N. peacekeeping forces in 1992 culminating with an attack on Pakistani peace keeping forces which resulted in 24 dead. As a result, the US put a $25,000 bounty on his head

By January 1991, the civil war had taken more than 50,000 civilian lives and had left the capital, Mogadishu, in shambles (Fitzgerald, 2002, p.56). Many other cities and towns were also in ruins, and hundreds of thousands of Somalis had fled to neighbouring countries as refugees, including Kenya, which with the assistance of UNHCR set up the Dadaab refugee camps. Although the major clans had been united in their opposition to Siad Barre, their leaders had no common political vision of Somalia's future (Fitzgerald, 2002, p.56). In February 1991, the Manifesto group in Mogadishu appointed the leader of the civilian wing of the USC Mohamed All Mahdi interim president. This was done however, without the consultation of the USCs coalition partners or Mahdi's military counterpart, General Mohamed Farah Aideed who rejected this as did the leaders of other clan factions throughout the country. This leadership dispute caused major damage to the fragile alliance of the USC Hawiye sub clans and gradually this led to hostilities between the respective sub clans of both Mahdi and Aideed (Mohamoud, 2006).The split of the USC alliance resulted in the formation of the Somalia National Alliance (SNA) by General Aideed. Although he claimed national office, All Mahdi actually controlled little more than northern Mogadishu, with Aideed controlling the south which included key strategic facilities such as the airport and the seaport (Mohamoud, 2006, p.136). Within weeks, Mahdi's and Aideed's factions began fighting in Mogadishu with both sides importing young fighters from the bush, giving them food and kat (a herbal amphetamine plant) and equipping them with ad hoc urban fighting vehicles armed with anti-aircraft cannon or recoilless rifles (Durch, 1996, p.315). From roughly mid-November 1991 onward, these fighters turned Mogadishu into a living hell with more than 25000 civilian casualties, 600,000 cross-border refugees, and several hundred thousand internal refugees (Brown and Rosecrance, 1999, p.80). Many of these refugees made their way to Dadaab refugee camp in the Kenya's North-eastern territories (Eichstaedt, 2010, p.124).

After the fall of the Somali government, local regional, and clan rulers took over areas of the country. There was no central government to administer food aid, distribute medical supplies, or maintain infrastructure (power, roads, and port facilities). Lack of electricity, fuel, and sanitation in turn led to idle industrial plants. Fields lay fallow in the countryside. Plant equipment, wiring, and other portable items were looted by contending clans and militia, thus destroying the little industry and infrastructure that had existed before the civil war began (Brown and Rosecrance, 1999, p.80).

---

and attempted to arrest and try him for war crimes. He died in a 1996 as a result of a gun battle with former allies.

1991 was the last time Somalia has seen anything resembling a central Government, weak and corrupt as it was, with warlords, pirates, jihadists, clans, subclans, Transfederal Government (TFG) militias, African Union peacekeepers, Kenyan and Ethiopian troops, and bandits all adding to the anarchy and chaos that exists today

2.1.1 Humanitarian Interventions in Somalia (1992 – 1995)

In January 1992 Andrew Natsios, the director of the U.S. government's international humanitarian assistance efforts, described the situation in Somalia as 'the greatest humanitarian emergency in the world'(Clark in Damrosch, 1993, p.212). Eventually the UN and the International Community took action with three separate military operations. The first UN Operation in Somalia (UNOSOM I) began in September 1992 with the arrival of 500 Pakistani soldiers, who were unable to deploy effectively. Another 2,500 soldiers never arrived because their actual presence was contingent on the consent of the warring parties. The US led Unified Task Force (UNITAF), which the Pentagon termed Operation Restore Hope (ORH), took over in December 1992. The 37,000 soldiers (26,000 of whom were from the United States and the remainder from twenty-three other countries) remained until April 1993 with a United Nations Security Council (UNSC) mandate to use force to ensure the delivery of humanitarian relief. The second phase by the United Nations, UNOSOM II, took over in March 1993 and lasted until March 1995.

While the initial steps (UNISOM 1) taken by the United Nations were initially along the lines of a classical peacekeeping mission (that is, designed to provide humanitarian aid, to attempt to negotiate a cease-fire, and to impose a total arms embargo), the operation gradually developed into a peace enforcing intervention involving military actions. With the situation in Somalia continuing to deteriorate, the United Nations decided to expand the scope of the operation, so on 3rd December 1992 the Security Council adopted Resolution 794 which went farther than any preceding UN mission as it authorized 'the Secretary-General and Member States to use all necessary means to establish as soon as possible a secure environment for humanitarian relief operations'(Berman, 2004, p.140). To achieve this it authorised the deployment of a US led United Task Force (UNITAF, but codenamed Operation Restore Hope) to Somalia. The mission was sanctioned under Chapter VII of the UN Charter, meaning it was now a peace enforcement mission authorised to use force and military enforcement measures in order to consolidate, expand and maintain a secure environment throughout Somalia (Mohamoud, 2006, p.139). UNITAF's main tasks were to

secure seaports, airports and food distribution points, protect relief convoys and assist humanitarian organizations in providing aid to the population (Shultz and Dew, 2006, p.79). UNITAF achieved a significant measure of success by setting itself the modest goal of creating demilitarized zones around aid operations (as opposed to the more ambitious goal of disarming the warring factions). It then used overwhelming military superiority to scare off armed groups from its area of operations. By its own measure, UNITAF was a success; aid got to the starving, death rates dropped and the famine receded (Baylis et al., 2007, p.319 and Mohamoud, 2006, p.141). However the mission was more concerned with addressing the human costs of the failed state and the on-going conflict rather than disarming or dealing with the warring clans, sub clans and warlords that had caused it.

On 4th March 1993, under UN Security Council Resolution 814, UNITAF handed over the operation in Somalia to the second United Nations Operation in Somalia, UNOSOM II (Mohamoud, 2006, p.144). Although the presence and operations of UNITAF had created a positive impact on the security situation in Somalia and had ensured the effective delivery of humanitarian assistance, there was still no effective government, police, or national army with the result of serious security threats to U.N. personnel. To that end, the U.N. Security Council Resolution expanded the manpower of UNOSOM II to a multinational force of 28,000 soldiers and 3,000 civilians drawn from 33 different countries (Mohamoud, 2006, p.144). While the UNITAF mission had a limited and short term goal, UNOSOM II was unlimited and had a long-term agenda, with a significantly enhanced mission to include stabilising the country and disarming armed groups. It had the power to enforce peace, disarm and demobilize all the armed groups and bring all the fighting in the country to an end. This mandate put the peacekeepers on a direct path to conflict with the many militias in Somalia. Furthermore, the mission was also widened to include a broad mandate to reform the economy, political and civil institutions of Somalia (Mohamoud, 2006, p.144). In other words, the responsibility of the new mission was not only to ensure the delivery of humanitarian relief but also to help the recovery of the domestic economy, to promote peace and security, to broker reconciliation between the warring protagonists and to rebuild political institutions, a gigantic and near impossible task by any measure.

What is viewed by many as the beginning of the end for UNOSOM II was its own transformation from an impartial force to a participant in the conflict due to its mission objective of disarming the militias and stabilizing the country. This occurred as a result of the launching of a manhunt for General Aideed following the killing of twenty-three Pakistani

peacekeepers by his forces on June 5, 1993 (Mohamoud, 2006, p.145). 'Wanted' posters displaying his picture were posted and dropped all over south Mogadishu and a price of US $25,000 placed on his head (Peterson, 2001, p.93). On October 3 1993, U.S. Rangers raided the Olympic Hotel in Mogadishu, where they captured twenty-four militants from Aideed's forces, but on leaving the hotel with their prisoners, the Rangers were confronted by a contingent of Aideed's militia, who shot down two U.S. Black Hawk helicopters and surrounded the Rangers. For four hours, the U.S. Quick Reaction Force and UNOSOM II units engaged Aideed's troops in battle. UNOSOM II suffered its worst casualties in a single battle, including the death of eighteen Americans and one Malaysian and the wounding of seventy-eight Americans, nine Malaysians and three Pakistanis. Somali casualties were estimated at 312 dead and 814 wounded (Battersby and Siracusa, 2009, p.97). This event was later made infamous by the movie *Black Hawk Down.* Audiences throughout the world watched television footage of the dead body of a US soldier being dragged triumphfully by Somalis through the streets of Mogadishu, greatly angering the American public and placing huge US Congressional pressure to withdraw US troops (Osman and Souaré, 2007, p.162). Within days US President Clinton bowing to domestic pressure set March 31, 1994, as the deadline for American troops to withdraw from Somalia (Mohamoud, 2006, p.146).

The withdrawal of the United States along with many of its allies from UNOSOM II effectively rendered the mission unworkable. It remained in Somalia for another year, making the best of a bad situation. Although by then UNOSOM II had reverted to the more realistic goals of safeguarding shipments of humanitarian aid espoused by its predecessor UNITAF, it lacked the resources and the support necessary to fulfil even this limited mandate (Mockaitis, 1999). On 4th November 1994, the UN Security Council voted unanimously to withdraw entirely from Somalia by the end of March 1995 (Battersby and Siracusa, 2009, p.98). Somalia

2.1.2 Evolution of the Transfederal Government (TFG)

Since the fall of the Barre regime in 1991 there were five major peace conferences and 12 minor peace conferences held. All these conferences were organized outside of Somalia and all of them failed to achieve peace. Afyare Abdi Elmi asserts that the main reasons for the consistent failure of these efforts to end the Somali conflict were the lack of will and capacity on the part of Somalis and interference from foreign governments. He believes that many of the faction leaders that participated in these conferences were confident that they could win

the war through military victory and were therefore not interested in a negotiated settlement (Elmi, 2009, p. 21). He also believes that countries such as Ethiopia and Kenya had huge concerns of the Somali aspiration of a greater Somalia since they both control Somali regions. The instability in Somalia where they can control, use or manipulate the various factions or clans in their own interest is preferable to them rather than dealing with a strong united Somali state (Elmi, 2009, p. 23 - 24).

Of all the peace conferences, one of the most ambitious was the Arta Peace Conference, held in Djibouti in 2000 which concluded with the formation of the Transitional National Government (TNG)(Rotberg et al., 2005, p. 29). Although, the TNG achieved recognition by the UN in November 2001, having already been formally recognised by the OAU (Organisation of African Unity) in December 2000, it wasn't recognized by either the US or the European Union or its member states (Møller, 2008, p. 14). Despite initial promise, the TNG faced considerable opposition from both internal factions and neighbouring countries. The Arta process was not a comprehensive peace agreement because many key actors, including Puntland, Somaliland, and a number of militia leaders in the Mogadishu area were not brought into the talks. This ensured from the outset that a large collection of rejectionists existed. The TNG was dominated by Mogadishu-based clans and was opposed by a loose coalition of clans and factions called the Somali Reconciliation and Rehabilitation Council (SRRC). The SRRC coalition was backed by Ethiopia, fiercely anti-Islamist, dominated by some lineages of the Darood clan-family and based mainly in regions outside Mogadishu (Menkhaus, 2007, p.3). The coalition enjoyed significant support from the Arab world was staunchly anti-Ethiopian and included Islamists and was mainly dominated by the Hawiye clans (Menkhaus, 2007, p. 4). Both groupings tried to gain new allies and as a result fighting even intensified after the Arta process (Spilker, 2007, p. 5)

In recognition of the ineffectiveness and imminent demise of the TNG, the sub regional Intergovernmental Organisation on Development[14] (IGAD) began what became known as the 'Eldoret process' which commenced with a gathering of Somali political leaders in October 2002 in the Kenyan town of Eldoret (Møller, 2008, p. 15). This process sought to build upon the Djibouti process and was slightly more inclusive, in the sense that warlords were invited. However, since this process took nearly two years to complete, many observers believe that the Somali participants were mainly there because the conditions

[14] The Inter-Governmental Authority on Development (IGAD) is a regional arrangement of the seven countries — Djibouti. Eritrea, Ethiopia, Kenya. Somalia, Sudan and Uganda, in the Horn of Africa, with the declared aim of economic cooperation and integration.

(Hotels food, expenses etc) that they enjoyed in Kenya were much better than those back in Somalia. In fact, invitations to the conference in Eldoret were being sold on the black-market for up to US$ 100 (Grosse-Kettler, 2004, p. 12). Eventually, the delegates at these talks adopted a roadmap in May 2004 to install an interim parliament and a federal government during the second half of 2004. They accepted the selection of MPs according to a proportional scheme that granted slots to all clans and all warlords. This scheme would utilise what became known as the '4.5 formula' where 61 seats were allocated to each of the four major clan families and 31 for the minority groups collectively (Menkhaus et al., 2009, p. 59). Thus, 275 MPs were selected from the delegates and these then elected Abdullahi Yusuf Ahmed, the former leader of the semi-autonomous Puntland based in the northeast, President in October 2004 (Spilker, 2007, p. 5).

The Transfederal government (TFG) that emerged from the talks was very problematic. Although the TFG was the result of tortuous and complex negotiations that seemed all-inclusive, the warlords had more power and influence in the shape of it. Their crimes, many of which would qualify as crimes against humanity were rewarded with impunity, and thus instead of changing their old ways they continued business as usual in Mogadishu, trying to gain advantage over each other (Abdul-Raheem, 2010, p. 58). It was also dominated by a pro-Ethiopian coalition and still today remains very close to the Ethiopian government, resulting in many key actors including the Islamists, considering the government a tool of the Ethiopians and the west. As well as this, although spun as a government of national unity, its top positions remained in the hands of members of Yusuf's own clan (Majerteyn/Darood) or awarded to figures from other clans who are closely controlled by either Yusuf or the Ethiopians (Menkhaus, 2005, p. 30). Finally, the TFG included very few members of the former TNG, who were largely shut out of the process. Because the TNG was dominated by the powerful Hawiye clan, which included both some of the top businessmen in Mogadishu and some of the most prominent Islamist leaders, its virtual exclusion meant that there would be huge problems and conflict for it in the Somali capital (Menkhaus, 2005, p. 31). Despite the fact that the TFG enjoyed the diplomatic and political recognition of the AU and the UN, it didn't enjoy popular legitimacy within Somalia and was unable to impose its legal authority. In fact for, the first two years of its existence, the TFG remained a government in exile, first in Nairobi, and then in January 2006 moving to the Somali city of Baidoa (Bruton, 2010, p. 7), and finally to Mogadishu in December 2006 after Ethiopia invaded Somalia and installed it there (Bruton, 2010, p. 8). The TFG spent the next few years largely ineffective and confined to a few blocks in Mogadishu.

The Djibouti peace process, which begun in May 2008, was started following the failure of the Transitional Federal Government (TFG) to consolidate itself into an all-inclusive national government embraced by all Somalis. It also came in the midst of a deteriorating security and humanitarian situation following the forcible ouster of the Union of Islamic Courts[15] (UIC) by Ethiopia, who supported the TFG and feared an Islamist regime in control of Somalia. It was driven by the realization that the Somali crisis would not be resolved without a negotiated settlement involving the Islamist groups, who controlled most of Somalia outside the capital. The Djibouti process was the fifteenth attempt by the international community at re-establishing the Somali state (Kasaija, 2010, p. 277) and led to a peace accord signed between the Transitional Federal Government (TFG) and the Alliance for the Re-liberation of Somalia-Djibouti (ARS-Djibouti)[16] that was meant to pave the way for the cessation of all armed conflict across the country. The merger of the ARS-Djibouti with the all-but-defunct TFG on 26th January 2009 was hailed by the UN as the creation of a national unity government and crowds of Somalis demonstrated joyfully in the streets of Mogadishu. The international community had little choice but to swallow its misgivings about the nomination of a former UIC leader, Sheikh Sharif Sheikh Ahmed, to the presidency and to throw its support behind the revamped TFG (Bruton, 2010, p. 10). The agreement, helped by the withdrawal of Ethiopian troops, resulted in agreement on the formation of a new Transitional Federal Government (often referred to as TFG II) in early 2009, the expansion of the Parliament from 275 to 550 members, to bring in ARS parliamentarians, an expanded cabinet and eventually the election as President of Sharif Sheikh Ahmed and as Prime Minister of Omar Abdirashid Ali Sharmarke(Kasaija, 2010). However, despite efforts include all actors in the talks, the main Islamist militias Al Shabaab and Hizbul Islam refused to negotiate with the TFG and continued their attacks.

As violence and conflict continued throughout 2009 and 2010 the TFG was once again paralysed with a feud between President Sharif Sheikh Ahmed and Prime Minister Omar Abdirashid Ali Sharmarke. This feud led to a bitter power struggle between the divided executive institutions of both the presidency and the office of the prime minister. In

[15] The Union of Islamic Courts was a group of Sharia Courts who united themselves to form a rival administration to the TFG of Somalia

[16]Immediately after the invasion, UIC leaders Sheikh Sharif Sheikh Ahmed and Sheikh Hassan Dahir Aweys fled to Asmara, where they attempted to form a single political opposition party in exile, the Alliance for the Reliberation of Somalia (ARS). The party rapidly split over the question of rapprochement with the TFG. Sheikh Hassan established himself in Eritrea, and committed his wing of the party, the ARS-Asmara, to a violent insurgency against the Ethiopian-backed TFG regime. Sheikh Sharif adopted a more conciliatory posture, and it is his wing of the ARS, based in Djibouti, that eventually merged with the Transitional Federal Government.

September 2010, Sharmarke resigned, and in October Sharif appointed Mohamed Abdullahi Mohamed a Somali-American and a relative unknown in the Somali political scene as his new prime minister (Elmi, 2010). The appointing of people from outside Somalia seems to be strangely commonplace. For example, in September 2011, in what can only be described as a bizarre decision, a learning support teacher at a Catholic College in Britain, Mohamed Ibrahim, was plucked from obscurity and appointed deputy Prime Minister (Evans, 2011b). Political paralysis and ingrained corruption continues and even as recently as 13th December 2011, saw fresh political feuding which resulted in the ousting of Somalia's Speaker of Parliament Sharif Hassan Sheikh Aden when he was abroad (McConnell, 2011a).

2.1.3 The Rise of Islamists and Jihadists

In the power vacuum created by the Somali state's collapse and the failure of the United States and the United Nations to secure an agreement among warring clans end warlords, clan elders and ad hoc organizations tried to provide order and structure. Among these organizations were the Islamic courts, which sought to impose order and administer justice on the basis of a strict interpretation of Sharia law. After first appearing in the early 1990s, these courts slowly organized into the Union of Islamic Courts (UIC) and by 2006, it was a well-armed and supported organization which was competing with an increasingly irrelevant TFG, for control over the country (Burnell and Randall, 2008, p. 173). In response to this, in a notoriously ill-judged policy, the US government, concerned about Al Qaeda operatives in Somalia began supporting an alliance of warlords called the Alliance for the Restoration of Peace and Counterterrorism (ARPCT) with logistics and funds. The US believed them to be a bulwark against terrorist elements within the Union of Islamic Courts. These warlords were both feared and unpopular with most Somalis and had divided southern Somalia and Mogadishu into personal business fiefs as well as being responsible for road blocks, extortions and most of the violence against civilians (Ellis et al., 2009, p. 100). This development however lead to a further gathering tide of public opinion against the warlords, who were perceived as self-serving and corrupt with little regard for the interests of the average Mogadishu citizen. Support grew for the Union of Islamic Courts (UIC) which was an alliance of Islamic groups, Islamic courts and radical-Islamists opposed to the TFG. The UIC had a proven track record of restoring security and the provision of other social services and charitable works. It also enjoyed the support of the business community. Thus with the public and business community behind them, and a well-funded and well-motivated militia,

the Islamic Courts took a stand against the warlord Alliance (Barnes and Hassan, 2007, p. 154).

After fierce fighting the UIC defeated the ARPCT and took over power in Mogadishu in June 2006 after it chased out a coalition of clan-militia leaders and warlords from Mogadishu. For the first time in many years the UIC had achieved what none of the peace conferences, the TNG or the TFG could, it had reunited Mogadishu and established security and public order (Barnes and Hassan, 2007). Road blocks were removed, the airport and port was reopened, garbage was collected and many criminal gangs were taken off the streets. Support was widespread amongst Somalis who after many years of conflict and warlords saw a marked improvement in security and quality of living (Møller, 2008, p. 16). However, because the UIC's was made up of both harsh and mild followers of Islam, its ideology remained unclear with mixed messages being sent out which worried both the TFG and Ethiopia. Some members of the UIC tried to impose strict sharia based rule in some areas, which soon evoked resentment from the general population because traditionally Somalis practice a more relaxed form of Sufi Islam (Economist, 2006, p. 49) than many of the Islamists in the UIC, especially the foreign Jihadists.

The UIC control of Mogadishu as well as its subsequent control of much of Somalia was a cause of concern for many actors. Ethiopia's parliament described the Courts as posing a 'clear and present danger' to Ethiopia and gave Prime Minister Meles Zenawi the authority to use all necessary measures to defend the Transitional Federal Government and Ethiopia's sovereignty. As a result growing numbers of Ethiopian troops were reported on Somali soil, especially near Baidoa, where the TFG was based (Barnes and Hassan, 2007, p. 156). The US government was also convinced that non-Somali terror suspects from organizations such as Al Qaeda, were being sheltered in Mogadishu by elements connected to the Islamic Courts Union(Barnes and Hassan, 2007, p. 156). These concerns lead to Ethiopia invading Somalia in December 2006 with the tacit support of and operational help from the United States. Ethiopian forces quickly overwhelmed the UIC and took Mogadishu in a few days, relocating the TFG there (Bruton, 2010, p. 8). The increased fighting in Somalia in 2006, coupled with drought and food insecurity throughout the country lead to large amounts of people fleeing Mogadishu and Somalia. A significant percentage of these made their way to the Dadaab refugee camps in Kenya, placing huge pressure on the already bursting infrastructure and operation there. In October 2006, in one weekend alone, an estimated 2,000 refugees arrived in Kenya from Somalia via the Liboi border and UNHCR announced that it was expanding the camps for Somali refugees in response to the large number of

people fleeing the conflict (IRIN, 2006). Ethiopia's occupation was marred by substantial human rights abuses by the TFG, Ethiopian, and African Union forces (Bruton, 2010, p. 9). These abuses included rape, kidnapping, mortar fire on civilian hospitals and media houses, and indiscriminate shelling of civilian crowds in response to insurgent attacks (Amnesty Amnesty International, 2008). At the beginning of 2009, Ethiopia, declared its mission objectives achieved, and withdrew its troops. Ethiopian forces remained close by, however, and reports soon emerged of continued military operations just inside the Somali border which will surely continue for the foreseeable future (Reid, 2011, p. 244).

During the two years of Ethiopia's occupation, Mogadishu was reduced to a level of human suffering, violence, and disorder unknown since the civil war and this led to numerous armed groups springing up in opposition in 2007 and 2008. Collectively this collection of disparate militias is popularly known as the 'muqadwama' and by late 2008 they controlled nearly all of the territory of south-central Somalia from the southern border of Puntland to the Kenyan border (Mulaj, 2009, p. 363). Of these muqadwama militias Al Shabaab[17] emerged as the major player in the insurgency gaining popular backing as a resistance movement. As a result and foreign Islamists, including al-Qaeda, sensed an unprecedented opportunity to globalize Somalia's conflict and funnelled support to them. Several dozen foreign jihadists also entered Somalia, importing al-Qaeda tactics leading to remote-controlled detonations and suicide bombings becoming commonplace (Bruton, 2010, p. 9). During 2007 alone, intense fighting between the TFG and the insurgency caused the deaths of several thousand civilians, the displacement of up to 700,000 people from Mogadishu, and widespread destruction of the city (Menkhaus et al., 2009, p. 17). Many of these displaced again made their way to the Kenyan/Somali border to try claim refugee status in Dadaab but now with the added hardship of the Kenyan government having closed the border on 3rd January 2007, citing 'security concerns in relation to fleeing UIC fighters and possibly also Al-Qaeda operatives collaborating with them might enter Kenya and endanger Kenya's national security'(Amnesty International, 2007).

In early 2007 the African Union agreed to send a small contingent of peacekeepers to Somalia. The force known as the African Union Mission in Somalia (AMISOM) was deployed to Mogadishu in advance of a proposed UN peacekeeping operation to protect the Transitional Federal Institutions (TFIs). The AMISOM force, however, was deployed with a confusing and contradictory mandate and was ill-equipped to

[17] AI Shabaab: (also known as the Harakat Shabaab al-Mujahedeen, the Youth, Mujahedeen Youth Movement was formed as a militant wing of a federation of Islamic courts in Somalia in 2006.

intervene to any great extent in the conflict (Bruton, 2010, p. 10). The conflict intensified in 2008 and humanitarian organizations struggled to address the widening crisis, deepening needs and growing number of vulnerable populations in an environment of shrinking and deteriorating humanitarian space. Al Shabaab began targeting humanitarian actors and this led to thirty aid workers being killed and the kidnapping of a further ten (UNOCHA, 2009), including the head of the United Nations Development Programme (UNDP) in Somalia, Osman Ali Ahmed, killed by gunmen in Mogadishu in July 2008 (BBC, 2008). This in turn affected humanitarian access to parts of the South/Central region of Somalia, where the vast majority of humanitarian needs were found, due to conflict and the targeting and abduction of humanitarian workers. In addition, piracy threatened the supply chain of humanitarian assistance and required the deployment of military naval escorts. As well as this refugees continued to pour across the officially closed Kenyan border in 2008 with more than 65,000 seeking refuge in Dadaab (Simpson, 2009, p. 44).

However, violence continued as Al Shabaab and the newly formed Hizbul Islam[18] increased attacks, with the common objective of expelling the peacekeepers and unseating the TFG providing a powerful motive for cooperation between them, despite their ideological differences[19](Bruton, 2010, p. 10). The fragile government, supported by a weakened military and African Union (AU) forces, was unable to prevent the Islamist incursions that led to their establishment of control over large portions of the south. In May, the Islamist rebels launched a successful attack on Mogadishu, which put most of the city under their control and severely restricted government jurisdiction to just a small section of it (Falola and Oyebade, 2010, p. 144). Because of ideological differences between Al Shabaab and Hizbul Islam, fighting soon broke out between them with fierce battles taking place in Kismayo over control of the southern port city(Roggio, 2010). In December, Al Shabaab carried out a particularly brutal attack in Mogadishu when a suicide bomber disguised in women's clothing detonated his explosives during a graduation ceremony in the small area of Mogadishu that is held by Somalia's government, killing 22 people, including three Cabinet ministers and two journalists (Washington Times, 2009). The continued conflict in Somalia between the TFG and AMISOM fighting with Islamist groups, Islamists militias fighting with one another,

[18]Hizbul Islam (the Islamic Party)formed in early 2009 was comprised of four clan-based Islamic factions: the Asmara branch of the Alliance for the Reliberation of Somalia (ARS-Asmara), Jabhatul Islamiya (the Islamic Front), Muaskar Anole, and Mu'askar Ras Kamboni.

[19] Hizbul Islam were nationalists and strong advocates of the creation of a greater Somalia, which incorporates all the Somali-inhabited regions into one state. Al-Shabaab sees its agenda as much broader than the Somali-inhabited regions of the Horn of Africa. It aspires to creating a new global Islamic Caliphate, with undefined geographical boundaries.

warlords, suicide bombers and bandits as well as the violence perpetrated by Islamists in enforcing their extreme version of Sharia law meant that not only was there no let-up in the flight of people from Somalia, but numbers increased significantly, with 72,000 new refugees registered in Dadaab in 2009 (Reliefweb, 2010).

In February 2010, Al Shabaab issued a statement saying it was allying itself with al Qaeda to establish an Islamic state in Somalia and fight for Muslims across East Africa, offering a fresh test for the International community and African peacekeepers struggling to defend the weak TFG. In a statement the group said it was 'connecting the horn of Africa jihad to the one led by al Qaeda and its leader Sheikh Osama Bin Laden'(Childress, 2010). This was seen by many observers as a dangerous development because it signalled a tightening grip of the more extreme foreign fighters within Al Shabaab. This was borne out by the Al Shabaab bomb attacks in Kampala, Uganda in July which killed 74 people (Aljazeera, 2010), for the first time striking outside Somalia, in the name of global jihad. Sheik Ali Mohamud Rage an Al Shabaab spokesman in Mogadishu said in relation to the attacks that 'we will carry out attacks against our enemy wherever they are, no one will deter us from performing our Islamic duty' (Rice, 2010).

2.1.4 Somalia: Contemporary Events

In February 2011, African Union (AMISOM), TFG troops and their allies launched a coordinated offensive against Al-Shabaab on multiple fronts. AMISOM and the TFG attacked positions in Mogadishu, Ethiopian forces and the Ahlu Sunna Wal Jamaa (ASWJ) militia[20] aligned to the transitional government undertook a coordinated push against Al-Shabaab militias from Beled Weyne, in Central Somalia and in the town of Bulla Hawo close to the border with Kenya and Ethiopia (UNHCR, 2011b). This renewed conflict as well as the present famine in Somalia has caused the mass movement of hundreds of thousands of people. Many of the worst hit areas are under the control of Al Shabaab, and this coupled with continued offensives between them and the TFG Troops, AMISOM and the ASWJ militia has led to a weakening of the organization. As well as this their ban on aid from the UN and the West has led to a huge loss of support for them amongst Somalis and reports of a split have surfaced, with some fighters wanting to accept aid

[20] Formed originally in 1991 as a nonviolent group mainly comprised of Muslim Sufi clerics, the group's objective remains the defence of traditional Sufi values in the face of the more radical and militant interpretations of Islam being espoused by various Somali jihadist groups. Since early 2009, the efforts of jihadist groups to establish hard-line Islamist administrations in towns and regions across Somalia have been accompanied by a concerted campaign against Somali Sufis - whom they regard as apostates - which has seen the desecration of many sacred Sufi shrines, attacks on Sufi religious ceremonies, and the forceful suppression of Sufi customs. In turn, Ahlu Sunna has abandoned its non-violent stance, aligned itself with the TFG and mounted armed resistance against the jihadists.

while the more extreme factions were against it (Chothia, 2011). In August 2011, after a brutal and sustain campaign by the TFG and AMISOM, al Shabaab withdrew from Mogadishu and reverted back to guerrilla tactics. On 13th October 2011 two Spanish aid workers from Medicine Sans Frontiers were kidnapped in Dadaab (Kenya) and their driver shot in the neck in broad daylight within the camp. In September (2011) a Kenyan driver for the aid agency CARE was also kidnapped. All of these are now thought to be in Somalia (Ombati, 2011b). These kidnappings as well as the kidnappings of two other Europeans from holiday resorts in Kenya was seen as an considerable escalation of operations by Al Shabaab and an unacceptable security threat by the Kenyan government. As a result the Kenyan military invaded Somalia on the 16th October, seizing two towns, which were previously held by al-Shabaab militants, some 100 kilometres inside Somalia declaring that they will even advance as far as Kismayo in its operation to wipe out al Shabaab in the region (Pflanz, 2011). Al Shabaab has vowed revenge and already a string of gun, grenade and landmine attacks in Dadaab and Garissa have left a number of civilians and police officers dead and many more seriously injured (BBC News, 2011a). As well as this, if the July 2010 Al Shabaab attack in Kampala which killed 74 people and the 26th October Nairobi twin grenade attacks, injuring a total of 30 people are anything to go by, it's quite possible that Kenya could be looking at the possibility of a an extended and sustained suicide bombing campaign.

2.2 Kenya

Prior to 1991, Kenya hosted a tiny refugee population estimated to be fifteen thousand, mostly from Uganda, Ethiopia, southern Sudan, and the Great Lakes Region. They mainly lived in small camps in northern Kenya (Mandera, El Wak, and Walda) and in urban settings such as Thika, Nairobi and Mombasa (Burton Wagacha and Guiney, 2008, p. 91). However, this situation changed drastically in 1991 when the disintegration of Somalia and the fall of the Ethiopian government led to massive influxes of refugees. Twenty years later, the influx continues.

2.2.1 Refugees in Kenya: A Brief History

The advent of refugees in Kenya can be traced back to the period before independence; however after independence the government set up a refugee secretariat in the Ministry of Home affairs to handle refugees' documentation, registration and settlement programs (Department of Refugee Affairs, 2011). In the early 1990s Kenya experienced a sudden, enormous influx of refugees fleeing conflicts in the neighbouring countries of Sudan,

Ethiopia and Somalia. By 1992, there were 420,000 refugees (contrasted with about 15,000 in 1990), the majority being from Somalia with significant numbers also from Sudan and Ethiopia (Crisp, 2000a, p. 62).

Despite being a signatory to all the main international conventions on refugees,[21] Kenya at this stage had not developed an administrative or domestic legal framework and lacked the capacity to handle this massive influx. As a result the numbers overwhelmed the government's refugee protection capacity, resulting in its collapse and the eventual withdrawal of Kenyan authorities from all refugee affairs, surrendering their role to UNHCR (Campbell, 2005, p. 4 - 5). UNHCR then proceeded to set up a number of camps throughout the country with the Sudanese largely settled in Kakuma, a camp in the Turkana region of northern Kenya and the Ethiopians mainly settled in Mandera, which is on the border between Kenya, Somalia and Ethiopia. The Somali were initially spread over a number of camps: those who came by boat from Kismayo, Brava and other seaports in Somalia, arrived in Mombasa and were settled in Utange, Marafa and other refugee camps close to Mombasa (Horst, 2007, p. 19). These were, in general, the more affluent of Somalis (as they could afford to pay for sea passage), as were the Somalis who made their way straight to the capital, Nairobi. Many settled there while others registered in Thika, a reception centre that had been set up by the government before 1991. The majority of less well-off Somali refugees came into the country by road, on foot, by donkey or packed into any type of vehicle able to make the journey. These were mainly from the south of Somalia and many of them spent time in Liboi (between the border and Dadaab) and Mandera (Northern tip of Kenyan/Somali border), before being moved to the Dadaab camps (Horst, 2007, p.20).

Before 1991 there was a considerable 'laissez faire' policy towards refugees by the Kenyan Government and this had resulted in the local integration of the refugees including the right of employment, education and freedom of movement.[22] For example, those who had relatives in Kenya, such as in Garissa, the administrative capital of the North Eastern territories, were at times able to settle with them, and are still there fully integrated to this day. When UNHCR took over however, none of these positive aspects were preserved and in camps such as Dadaab refugees there were required to stay in the camps 'until a

[21]The Geneva Convention Relating to the Status of Refugees of 1951, the Protocol Relating to the Status of Refugees of 1967, and the OAU Convention Governing the Specific Aspects of Refugee Protection in Africa of 1969.

[22]The refugees had these rights, however, the overall high levels of poverty in Kenya was a complicating factor

durable solution was found' (Verdirame, 1999, p. 57). Unfortunately for the majority of them, 20 years later they are still waiting for this solution.

As time went on, the government of Kenya became increasingly concerned with the dispersal of huge amounts refugees across a large number of sites throughout the country. Much of the Kenyan government security concerns came from the Somali irredentist ideology for a greater Somalia that would extend to all areas occupied by Somali speaking communities in Kenya, Djibouti and Ethiopia, which was and still is embraced by many Kenyan Somalis, The Kenyan government feared (and still fears) that since Somalis' first loyalty was to the Somali state, they posed a security risk to the nation-state of Kenya. As well as this, Kenya accused Somali refugees of smuggling firearms and escalating crime and insecurity, and viewed them as a social, economic and environmental liability largely because most of them were poor and without skills to offer (Juma and Suhrke, 2002, p. 101). In December 1992, President Moi threatened to forcibly send back Somali refugees and in January 1993, he went as far as requesting that UNHCR repatriate all Somali, Ethiopian and Sudanese refugees (Juma and Suhrke, 2002, p. 101). In Mombasa and Thika, tensions between the refugees and the local population began to rise, because although many of the refugees had been forced to live in the camps, these camps were not far from urban areas and soon, large numbers of refugees were being found in Mombasa. Many had started businesses and were highly visible in the local market causing tension with the host community, who asserted that they were taking jobs and that there was unfair competition due to tax evasion by refugees (Verdirame, 1999, p. 67 - 68).

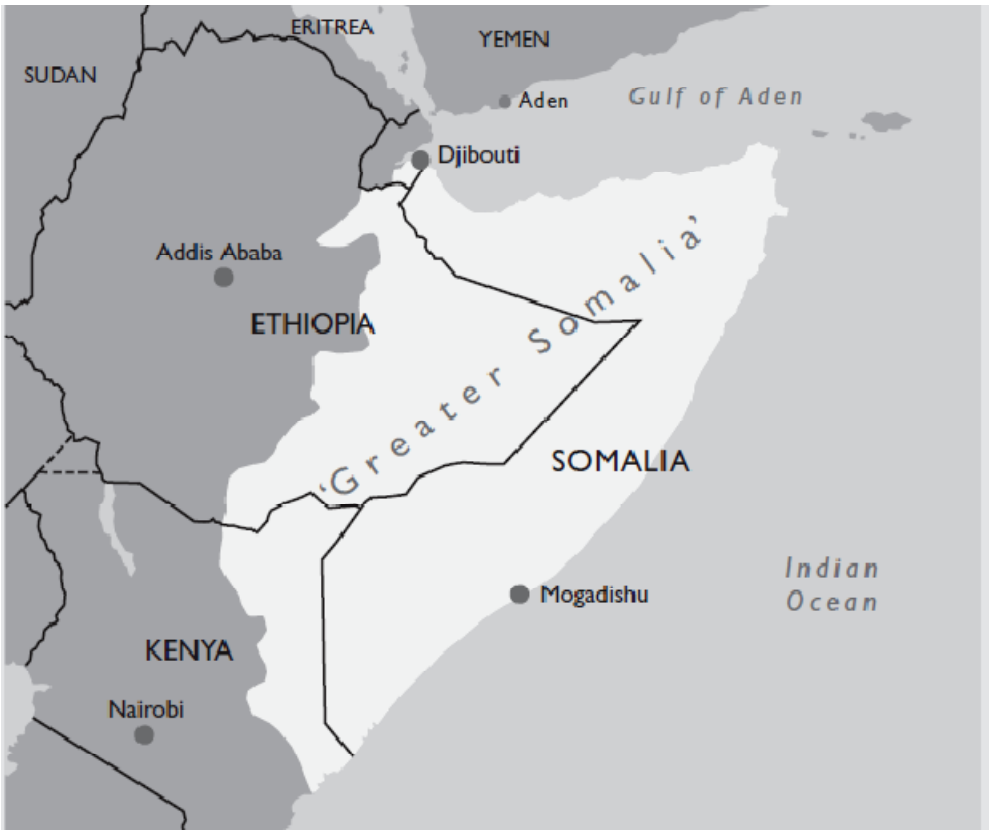
As a result of these fears, and the fact that it was not efficient for UNHCR to be operating a large number of smaller refugee camps throughout the country, between 1994 and 1997, the government closed the majority of the camps in Kenya, with UNHCR responding by relocating all refugees to Dadaab and Kakuma, the two camps in Kenya's most remote and harsh areas (Horst, 2007, p. 20). These camps still exist.

2.2.2 Dadaab: A Kenyan/Somali Transnational Crisis

Kenya and Somalia's relationship since their independence has been a significantly tense one with north-eastern Kenya being a particular source of conflict because of Somalia's traditional claims on the territory as well as the presence there of a large ethnic Somali population, which has further added to the instability. Somalia's irredentist claims on this region led to the 'Shifta war' with Kenya (1963-1968), in which the Somali government

supported the Northern Frontier Districts Liberation Army (NFDLA), a Somali militia in a violent a campaign against the Kenyan police and army in its struggle for autonomy for the region (Møller, 2008).Further friction between the two was revived in 1977 after Kenya supported Ethiopia in the Ogaden war. From 1977–78 Somali forces intervened in support of

Greater Somalia



Map 2.1 (Møller, 2008, p.9)

Somali rebel fighters in a bid to liberate the Somali-inhabited region of the Ogaden from Ethiopia. Somalia lost the war and suffered approximately 25,000 casualties (Samatar, 1988, p.137), after Ethiopia secured Soviet support and the airlifting in of thousands of well-trained Cuban troops from Angola to assist them (Bennis and Moushabeck, 1993, p.354). Despite these tensions however, since the collapse of the Somali government in 1991, Somali refugees have continuously poured into Kenya creating enormous PRS. As Kenyan-Somali relations have been historically problematic, this exacerbates what would be a major refugee problem for Kenya anyway and shapes the increasingly aggressive GoK response to the situation.

Refugee Population of Kenya 1990 -2011

Year	Refugee Population
1990	14,249
1991	120,163
1992	402,194
1993	301,595
1994	252,423
1995	234,665
1996	223,640
1997	232,097
1998	238,187
1999	223,696
2000	206,106
2001	239,221
2002	233,671
2003	237,512
2004	239,835
2005	251,271
2006	272,531
2007	265,729
2008	320,609
2009	377,885
2010	430,871
2011	601,576

Table 2.1 Compiled from Information from the World Bank and UNHCR

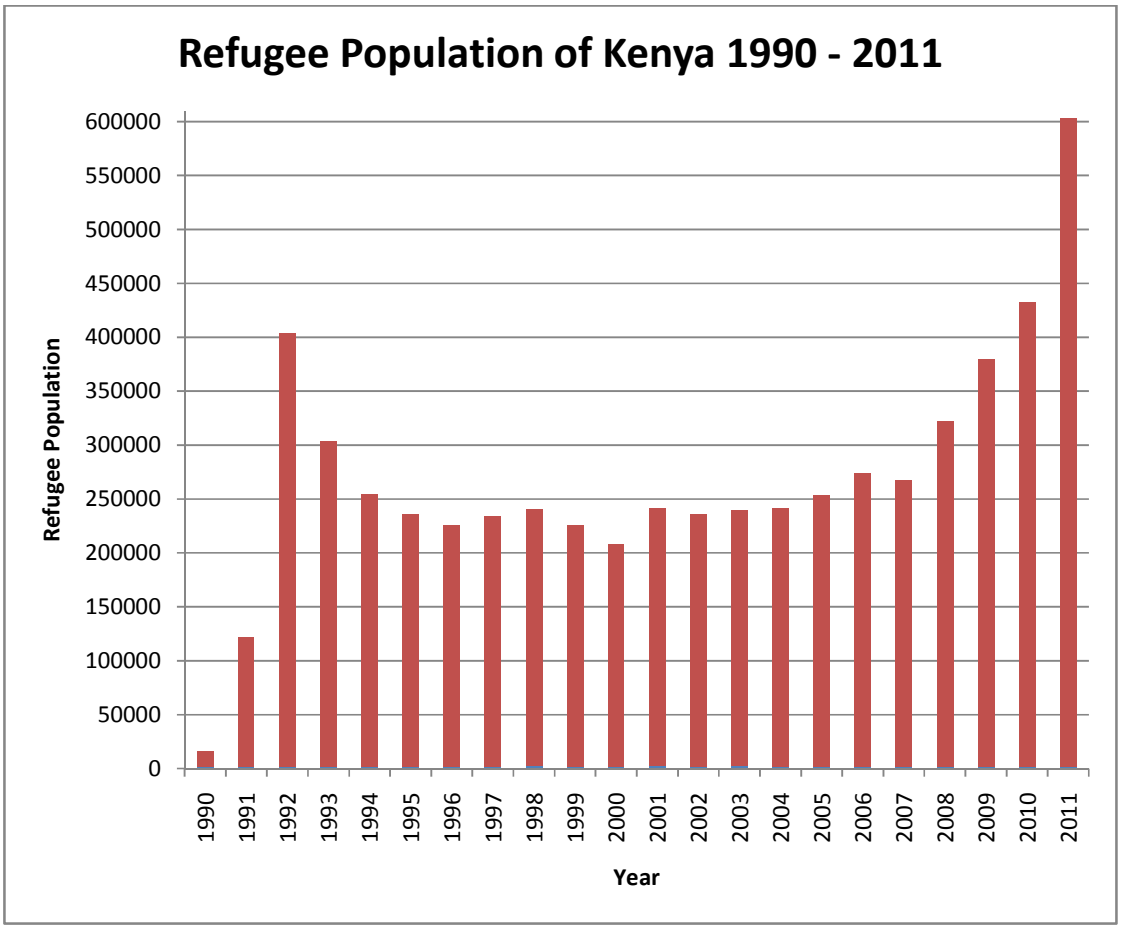


Chart 2.2 Compiled from Information from the World Bank and UNHCR

The refugee situation in the Dadaab refugee complex can be described as a cross-border Somalia-Kenya crisis because internal Somali conflicts spill-over into Dadaab in the form of increased refugee flows and influxes into Dadaab, as well as interclan conflict and al Shabaab activities. As we can see from the chart the collapse of the Somali government in 1991 saw corresponding influxes in Kenya, during the UN humanitarian intervention of the 1990s a significant drop in refugee numbers in Kenya was recorded as Somalis hopeful of a safer country, returned home as well as the voluntary repatriations organized by UNHCR. The next decade sees the refugee numbers remain static roughly around the 230,000 mark, until further influxes in 2006, 2007, 2008, 2009 and 2010 all correspond with escalated conflict: the UIC takeover and subsequent Ethiopian invasion of 2006, the brutal Ethiopian occupation subsequent Islamist guerrilla campaign of 2007 and 2008 and conflict between the weak TFG and AMISOM fighting with al Shabaab and Hizbul Islam in 2009 and 2010. As well as this, these years also saw Islamists militias fighting with one another, warlords, suicide bombers and bandits as well as the violence perpetrated by Islamists in enforcing their extreme version

of Sharia law adding to the flight of refugees from Somalia. Extreme famine and a vicious AMISOM/TFG/ASWJ militia offensive against al Shabaab on a number of fronts saw the worst influx to Dadaab since 1991 with over 150,000 Somalis arriving at the camps (UNHCR, 2011d) overwhelming the agencies there. As well as this conflict also spread across the border with the kidnappings of aid workers in the camps in September and October, leading to the Kenya military incursion into Somalia, resulting in further attacks by al Shabaab on police, civilians and humanitarian in Dadaab, Garissa and Wajir, underlying the truly transnational nature of the emergency. The continuing Kenyan intervention in Somalia will be discussed in detail in Chapter seven, while the insecurity in Dadaab will be discussed in Chapter four.

2.2.3 Refugee Situation in Kenya as of Early 2012

With the persistent conflict in Somali and tensions in South Sudan and some parts of Ethiopia, refugees have continuously flocked to Kenya over the past twenty years. The refugee population has swelled from about 15,000 in 1990 to over 601,000 as of January 2012, with the vast majority being Somali. Consequent years of drought, shrinking humanitarian space and lack of access by humanitarian agencies to the affected populations in Somalia, especially in declared famine areas controlled by Al Shabaab, have in recent times led to a worsening of food security conditions there and triggered another massive population influx to Kenya with over 176,000 registered alone in 2011 (UNHCR, 2011f). As of January 2012, there are three main refugee populations in Kenya; the smallest at 53,434 are the urban refugees in Nairobi, followed by 84,635 at Kakuma refugee camp, towards the Sudanese border and by far the largest, with 463,507 refugees, Dadaab (see table below).

Refugee Population in Kenya (as of 30 November 2011)	
Dadaab	463,507
Kakuma	84,635
Nairobi	53,434
Total Kenya	**601,576**

Table 2.3 (compiled from Statistics from UNHCR, 2011f)

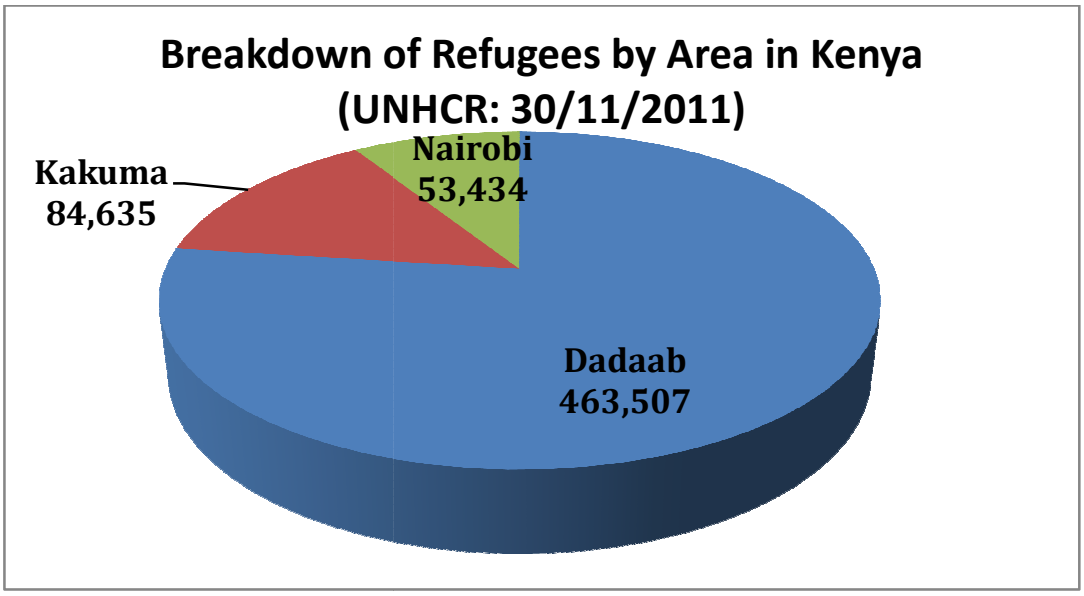


Chart 2.4

2.2.4 Geography Matters

Two key problems with the locations of both Kakuma and Dadaab are the proximity to the borders of both Sudan and Somalia, making the locations dangerous for many refugees and the very harsh hot arid environment, which has caused physical and mental health problems for many refugees and precluded any kind of sustainable farming. Such conditions may be endured for short periods of time, but refugees have been living in these hostile regions for years on end (Burton Wagacha and Guiney, 2008, p. 93). As well as this, the Kenyan Government implements an encampment policy which dictates that all refugees in Kenya live within the limited confines of these camps, and are not allowed to work. Thus, a majority of the refugees are primarily dependent on UNHCR and its Implementing/Operational partners for food rations and other assistance. This encampment policy dictates that refugees are required to stay within the perimeters of the camps unless given explicit permission by the Kenyan authorities in the form of a travel document called a movement pass, which can be applied for, only in very specific situations such as medical emergencies, medical referrals or education reasons such as attending college. This lack of lack of mobility and employment opportunities limits refugee's ability to accomplish any commercial growth or independent enterprise and more shockingly, effectively imprisons refugees in these camps with little or no hope for the future. In fact after 20 years in existence, there are now over 6000 grandchildren of the original 1991 refugee influx, who were born in Dadaab. These, like many of their parents have never seen Somalia and are virtual prisoners, 'warehoused' and

aid dependent within the overcrowded camps (Bukovac, 2010). Refugees in Kenya outside the camps mainly reside illegally in Nairobi and are referred to as 'urban refugees'. Many arrive in Nairobi directly from their own countries, where they faced persecution or violent conflict. Others leave Kenya's refugee camps and come to Nairobi due to inadequate humanitarian aid, general insecurity, insufficient educational services, medical care, or job opportunities and in some cases, to keep in touch with relatives and friends in diasporas or just to escape the monotonous and at times dangerous life of the camps, where there is little to do other than depend on humanitarian assistance (Burton Wagacha and Guiney, 2008, p. 94). They often live in squalid housing conditions, frequently without access to food, clean water, medical care, jobs, or education. Many women and children are subjected to sexual abuse, and all refugees are in danger of Kenyan Police harassment, violence, imprisonment and extortion and in some cases when there is no money for bribes, refoulement (Parker, 2002).

2.2.5 Government of Kenya 2006 Refugee Act and the Department of Refugee Affairs

In 2006, following a period of sustained advocacy by UNHCR and civil society organisations, the government of Kenya passed a Refugee Act implementing the 1951 United Nations Convention Related to the Status of Refugees, the 1967 Protocol and the 1969 OAU Convention. The enactment of the Refugee Act 2006 transformed the Refugee Secretariat into the Department of Refugee Affairs (DRA) in the Ministry of State for Immigration and Registration of Persons (MIRP). The DRA is responsible for the overall management for the Dadaab and Kakuma refugee camps and its Strategic Objectives are to

- Ensure that a system is in place for the registration and identification of asylum seekers and refugees
- To offer Refugees sufficient humanitarian assistance
- To ensure a National Refugee Policy exists
- To develop an Environmental Protection Program in the Refugee Hosting areas
- To promote the Economic Empowerment of the Host Communities in liaison with UNHCR and other partners
- The coordination of Humanitarian Programs for Refugees
- Refugee Status Determination and the Repatriation, Resettlement and Integration of Refugees

(Department of Refugee Affairs, 2011)

The DRA has responsibility for the administration, coordination and management of issues related to refugees. Its remit includes developing policies, promoting durable solutions, coordinating international assistance, receiving and processing applications for refugee status, registration, issuing identity cards and travel documents and managing the refugee camps. A Refugee Affairs Committee, also established under the Act, is responsible for advising the Commissioner for Refugees. It comprises a range of government officials, including provincial administrators, police officers and representatives of the MIRP, the Ministry of Foreign Affairs, the Ministry for Local Government, and the Office of the Attorney-General, the Ministry of Finance, the Immigration Service, the Ministry of Internal Security, the National Security Intelligence Service and the National Registration Bureau. The Act also states that it should include representation from the host community and civil society (Pavanello et al., 2010, p. 15).

The Act classifies refugees into two main groups, statutory refugees and 'prima facie'[23] refugees, and lays out the conditions for the exclusion and withdrawal of refugee status. The Act also determines the parameters for the Refugee Status Determination (RSD) process through which applications for refugee status are assessed. Upon entry into the country, asylum seekers have up to 30 days to report to reception centres set up by the DRA. Their details are subsequently recorded and they are issued with an Asylum Seekers Certificate which provides protection against arrest as an illegal migrant (Section 11 Government of Kenya, 2006b Refugee Act). Asylum seekers who are not prima facie are subsequently interviewed to ascertain why they are seeking refuge. If refugee status is granted, it allows refugees and their families (if present during the RSD process) to remain in Kenya until it is safe for them to return to their country of origin or move to a third country. If asylum-seekers are denied refugee status, they have recourse to an Appeals Board and, if unsuccessful, to the High Court (Section 10 Government of Kenya, 2006b Refugee Act). If these appeals are rejected they have 90 days to leave the country.

The Refugee Act however does not provide for an explicit right for refugees to naturalise as Kenyans, and in practice, they are not enabled to do so, nor are their children granted nationality, even if they are born in Kenya. As well as this, the GoK does not see Kenya as a destination country, but rather as a transit country temporarily hosting asylum-

[23] Primafacie determination is the acceptance on a group basis because of the obvious refugee character of the individuals concerned, without going into any formal, individual determinations
UNHCR. (2001b). *Protection of refugees in Mass Influx Situations: Overall Protection Framework* [Online]. UNHCR. Available: http://www.unhcr.org/3ae68f3c24.html [Accessed 06/04/2011].

seekers (Pavanello et al., 2010, p. 28) which has major repercussions for refugees in terms of rights, statehood and citizenship. Although the Refugee Act sets out the legal framework governing refugees and establishes the institutions and procedures to implement it, in practice there is inadequate capacity and will to ensure its effective implementation. The DRA has a limited number of staff, many of whom are just starting to gain operational experience in dealing with refugee issues (Pavanello et al., 2010, p. 15). However this is being somewhat addressed in a bilateral agreement between Kenya and Denmark in the form of a three and a half year capacity-building project, with USD3.8 million from the Danish government and USD1.1 million from the Kenyan government. Nevertheless further funding may be problematic because donors are nervous about the creation of an externally funded public refugee bureaucracy with fears of it being unsustainable and corrupt (Lindley and Haslie, 2011, p. 26). As well as the capacity problem, more broadly, there is no national refugee and asylum policy to assist with the implementation of the Refugee Act, and there is some confusion about the government's official position. For example, according to the 'encampment policy', the government expects refugees to stay in camps to facilitate their protection and assistance needs and to safeguard national security. However, while the Refugee Act implicitly accepts this policy by outlining the procedure for appointing Refugee Camp Officers, it does not state which categories of refugees should reside in camps, or which areas should be designated for such settlements (Pavanello et al., 2010, p. 15).

The 2006 Refugee Act sets out the legal framework governing refugees and establishes the institutions and procedures to govern refugee affairs and protection, in practice though there is inadequate capacity, resources and in many cases even the will, to ensure its effective implementation. Despite this however it is considered by many as a step in the right direction as it codifies domestically Kenya's international commitment to protect refugees.

2.2.6 Kenya and Refugee Status Determination (RSD)

Refugee Status Determination is the examination by a government authority or UNHCR of whether an individual who has submitted an asylum application or otherwise expressed his or her need for international protection is indeed a refugee. Upon entry into Kenya , asylum seekers have up to 30 days to report to reception centres set up by the DRA where their details are recorded They are then issued with an Asylum Seekers Certificate which is supposed to provide protection against arrest as an illegal migrant. Asylum-seekers are

subsequently interviewed to ascertain why they are seeking refuge, and if refugee status is granted, it allows refugees and their families (if present during the RSD process) to remain in Kenya until it is safe for them to return to their country of origin or move to a third country. If they are denied refugee status, they have recourse to an Appeals Board and, if unsuccessful, to the High Court, but if these appeals are rejected they then have 90 days to vacate the country. If granted asylum, refugees receive a Refugee Identification Pass, and can apply for a Convention Travel Document, which enables them to travel abroad without a passport. In terms of movement from the Dadaab and Kakuma camps: refugees considered by the DRA to have a legitimate reason to leave the refugee camps (such as medical referrals etc) can apply for a Movement Pass (compiled from Government of Kenya, 2006b Refugee Act). At present UNHCR is responsible for the RSD process, but due to the large numbers of people seeking asylum in Kenya and the lack of resources, asylum seekers are often waiting for between six and 24 months for a decision on their status. Initial steps are underway to enable the DRA to start taking over the RSD process, with the Danish government funding a capacity building program to assist build its institutional capacity (Pavanello et al., 2010, p. 15). Mass displacement such as been seen in Somalia, however, makes individual refugee status determination impracticable because systems geared to individual determinations are too unwieldy, costly and protracted in the face of large numbers of arrivals. For example interviewing of nine thousand new arrivals per month in Dadaab would be next to impossible and would impact negatively on the already overstretched operation there. Thus, in Kenya, RSD for persons seeking asylum from Central and Southern Somalia is granted on a prima facie status (UNHCR, 2008b). Asylum seekers from everywhere else are required to have an individual assessment of their asylum claims made.

2.3 Conclusions

Because of the 1991 disintegration of Somalia into a failed state and the on-going conflict there for the past two decades; hundreds of thousands of refugees have fled to Kenya, producing an enormous Protracted Refugee Situation (PRS) there. Before 1991, Kenya had a welcoming and humane attitude towards refugees, allowing them to integrate and all the rights afforded to Kenyan citizens. Things changed however when the mass influx occurred in 1991 which overwhelmed the authorities who had to call for international assistance and led to UNHCR taking over the management of refugee affairs. The Kenyan authorities, faced with such massive numbers of refugees spread throughout the country hardened their attitude

with somewhat genuine concerns about security, economic sustainability and the threat of a backlash from its own citizens who suspected that refugees were taking their jobs. Even today the contention that the presence of hundreds of thousands of Somali refugees in North-eastern province represents a security concern still has some validity. However, many refugees have escaped brutal repression and conflict only to be warehoused in the overcrowded, underserviced and insecure camps of Dadaab and Kakuma: not ideal but more secure and with access to food, water and health services. Others seek refuge in Nairobi, attracted by hopes of better services, jobs and security, but are confronted, with atrocious conditions, exploitation, abuse and acute protection threats stemming both from their precarious legal status as refugees and the widespread criminal violence that threatens Nairobi's inhabitants at large.

The 2006 Refugee Act did to some extent improve the legal regime for refugees in Kenya and after the passing of the new Kenyan Constitution in 2010, as part of the review of all state legislation a new Refugees Bill was recently drafted. In many ways it is similar to the 2006 act, and maintains much of the protections offered previously, its proposed modifications appear to focus on addressing security concerns by tightening bureaucratic control of the refugee population by the DRA by requiring immediate registration and increasing penalties for non-compliance, as well as elaborating offences relating to identification document fraud and specifying their penalties (Government of Kenya, 2011b). It remains to be seen when the final draft is enacted, the extent of protection that will be afforded to asylum seekers and refugees.

Kenya is itself a developing country with drought and extreme poverty prevalent in many parts of the country. In fact one fifth of its population lives below the World Bank absolute poverty line of less than $1.25 per day (UNDP International Human Development Indicators, 2011). But yet, despite this, they are still playing host to 600,000 refugees, while much of the developed world ring fence their own countries against the arrival of asylum seekers. The transnational nature of the refugee emergency, Kenya's ratification of International Refugee laws as well as the porous nature of the Kenyan/Somali border means that this is not a viable option for Kenya. It is clear that the Kenyan government and UNHCR and its implementing and operational partners lack the capacity to deal with these numbers in a sustainable, long term or effective manner as envisaged by the various refugee law instruments. However, its 2011 incursion in Somalia may indicate that it is now laying the groundwork for a longer term solution to the problem: the mass repatriation of refugees back

to Somalia in areas that the Kenyan military will deem 'safe'. This will be investigated further in chapter seven using the third pillar of humanitarianism, humanitarian intervention/R2P to frame the analysis. In the next chapter the Dadaab refugee complex will be examined, looking at its structure, demographics, geography, and environment and whether, in addition to being a PRS, it can also be classified as a complex emergency.

Chapter 3

Dadaab: Refugee Camp or Complex Emergency?

Since 1991, although figures vary it is believed that more than 1,500,000 Somalis have fled their homeland as a result of a brutal civil war which in-turn became a battle between various factional clan groups fighting for control of both land and resources which led to an influx of many Somalis to Ethiopia, Djibouti, Yemen and most notably Kenya's Dadaab refugee camp. If you were to ask anyone on the street where Dadaab is, the chances are that they will look at you with a blank look on their face and say where the hell is that? In fact that was my exact reaction when I was asked to deploy there by Irish Aid to work with UNHCR in 2010. Yet, here in the 21st century this overcrowded and insecure refugee camp exists, confined to the desert and unknown, even though it hosts the equivalent population of either, Cork County (including Cork City), Edinburgh or The Hague. This chapter explores the geography, structure, layout, UN operation, demographics (both refugee and host community) and environment in and around the camps as well as ascertaining whether, in addition to being a PRS, Dadaab is also a complex emergency in its own right.

3.1 The Dadaab Refugee Complex

Dadaab is a small outpost town, in the North Eastern Provence (NEP) of Kenya. The region was formerly known as the Northern Frontier District (NFD) and was a centre of dispute between Kenya and Somalia in the 1960s because of Somalia's claim that the district was part of its territory. This led to the 'Shifta War' between the two, which only ended in 1967 when Somalia formally renounced its claim on the area (Rawlence, 2009, p. 13). However tensions remained high and Kenya kept the NFD and its population under a permanent state of emergency[24] until 1992 (Abdi, 2005, p. 2). The NEP borders Somalia and is inhabited mostly by Somalis and other pastoralist communities with Garissa as its provincial capital.

[24] The emergency laws explicitly endorsed instances when the fundamental human rights of the person could be violated, including enhanced powers of search without warrant, arrest, and detention for up to 6 days without trial. As well as this it also allowed for the death sentence for the unlawful possession of firearms, the creation of special courts, as well as creating prohibited zones along the Kenyan/Somali border where unauthorized entry was punishable by a life sentence.
Rawlence, B. (2009). *"Bring the gun or you'll die": torture, rape, and other serious human rights violations by Kenyan security forces in the Mandera Triangle*, Human Rights Watch.

The main language spoken in the region by both Kenyan Somalis and Somali refugees is Somali while the main languages of Kenya are Swahili and English. The UNHCR operation there also operates through English, which can cause communication problems. As a result translators are used in a widespread manner in all aspects of the operation.

Kenya and Provinces



Map 3.1 (University of Texas Libraries, 2011)

The NEP suffers from high poverty, lack of resources, lack of infrastructure and lack of socioeconomic development due to many decades of underdevelopment and insecurity, partly resulting from the emergency regulations and the effective closing of the district for many years, but also due to low government investment, a very thin police presence and Islamist and bandit activities. As a result it is the least developed province in Kenya with a high unemployment rate; (35% compared with 24% in Nairobi), poor access to

water (22%), extremely low secondary gross enrolment (4.5% compared with 11.5% in Nairobi or a high of 37% in the central province), a low doctor/patient ratio (1:120,823 as opposed to 1:20,715 in Nairobi) and low life expectancy (52 years versus 64 years in Nairobi)(Kessy and Tostensen, 2008, p. 123 - 124). Dadaab is located about 70 miles east of Garissa and approximately 50 miles from Kenya-Somali border. Because of its proximity to the Somali Border and the insecurity of the NEP, the UN operation there operates under security restrictions (explained fully in chapter 4) such as curfew in a secure compound from 6:00pm to 6:00am and compulsory armed escorts for humanitarian workers in the camps.

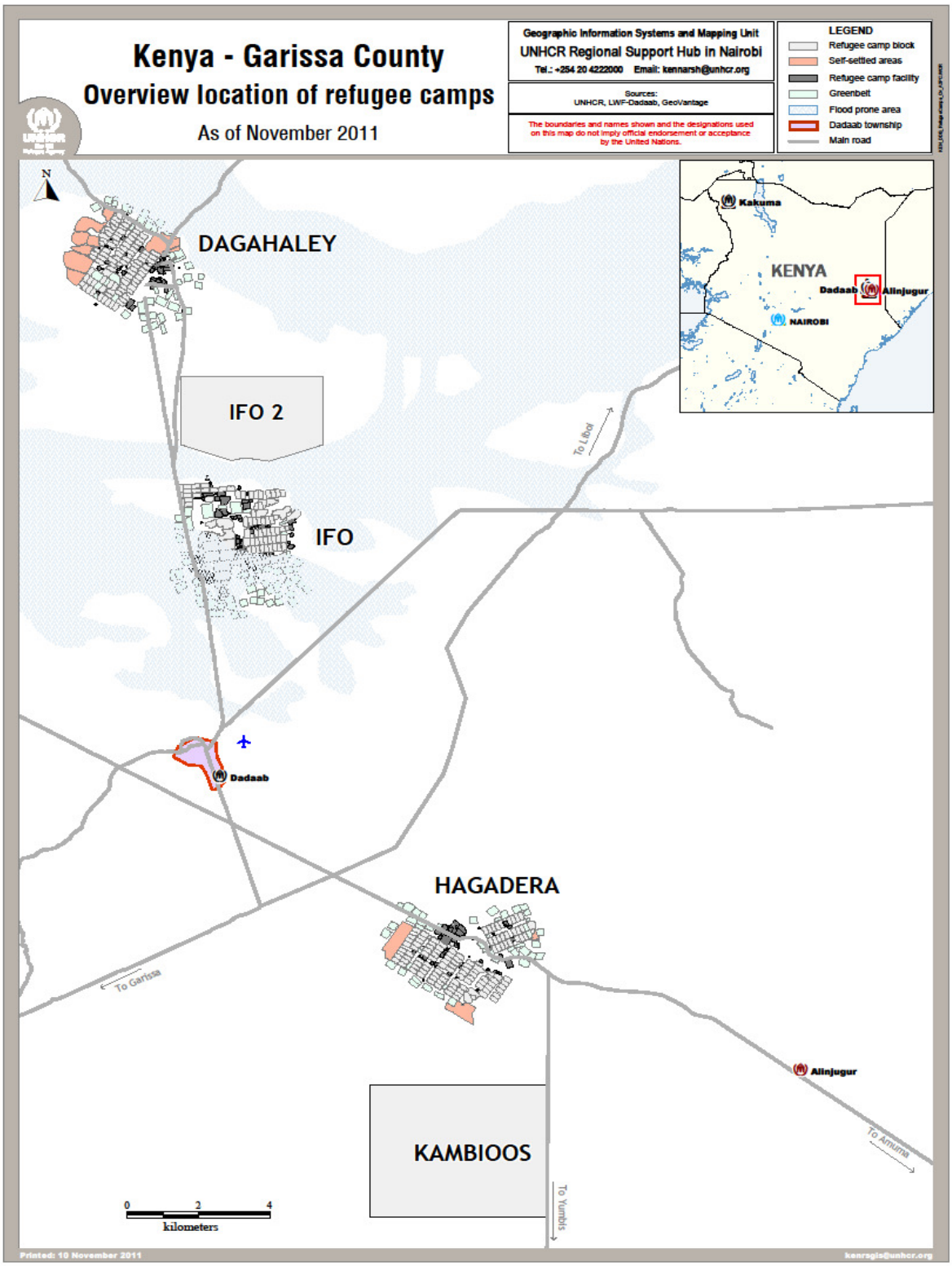
Location of Dadaab



Map 3.2

The Dadaab refugee complex consists of the 'older' Dagahaley, Hagadera and Ifo refugee camps, with three further sites; Ifo east and Ifo west (between Dagahaley and Ifo) and the Kambioos site (approximately seven kilometres past Hagadera) established in 2011 and as of January 2012, are in the urgent process of being developed to help cope with the massive influx as a consequence of famine and renewed conflict in Somalia in 2011.

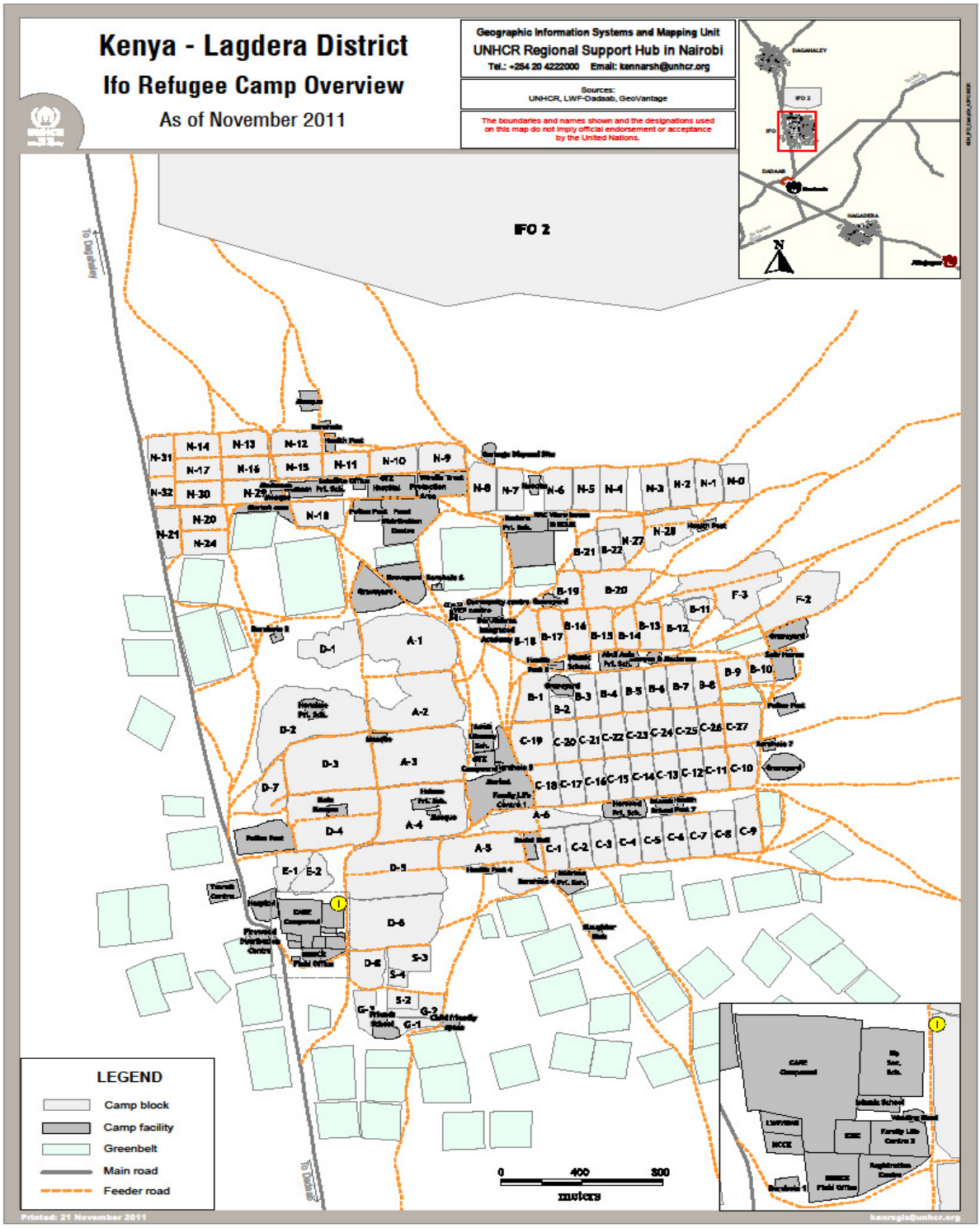
An Overview of Dadaab Refugee Camps



Map 3.3

Ifo the first camp in the region, consists of seventy-one blocks, which are divided over three main sections

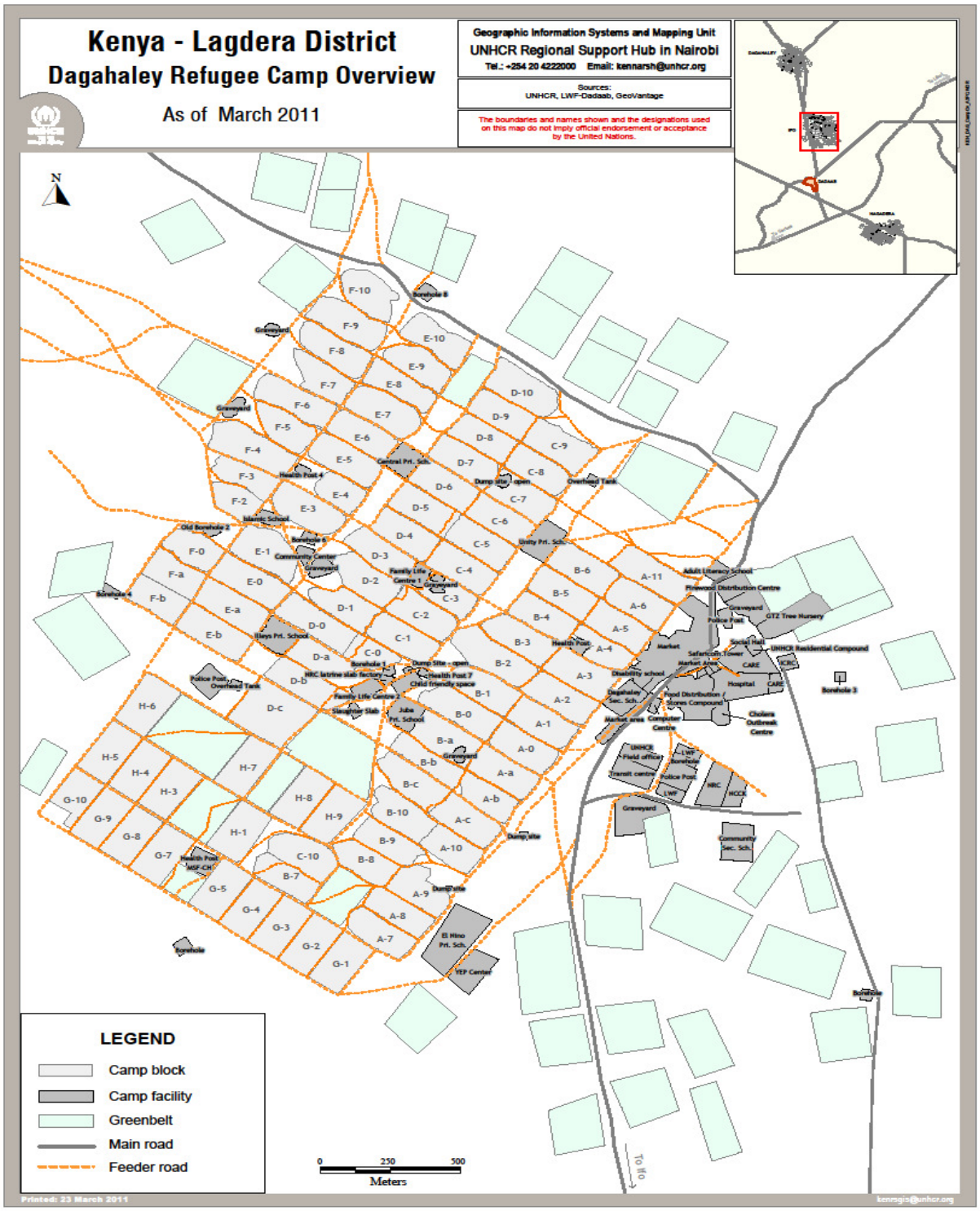
Overview of Ifo Camp



Map 3.4

Dagahaley camp is neatly cut into eight lines and three cross-cutting avenues.

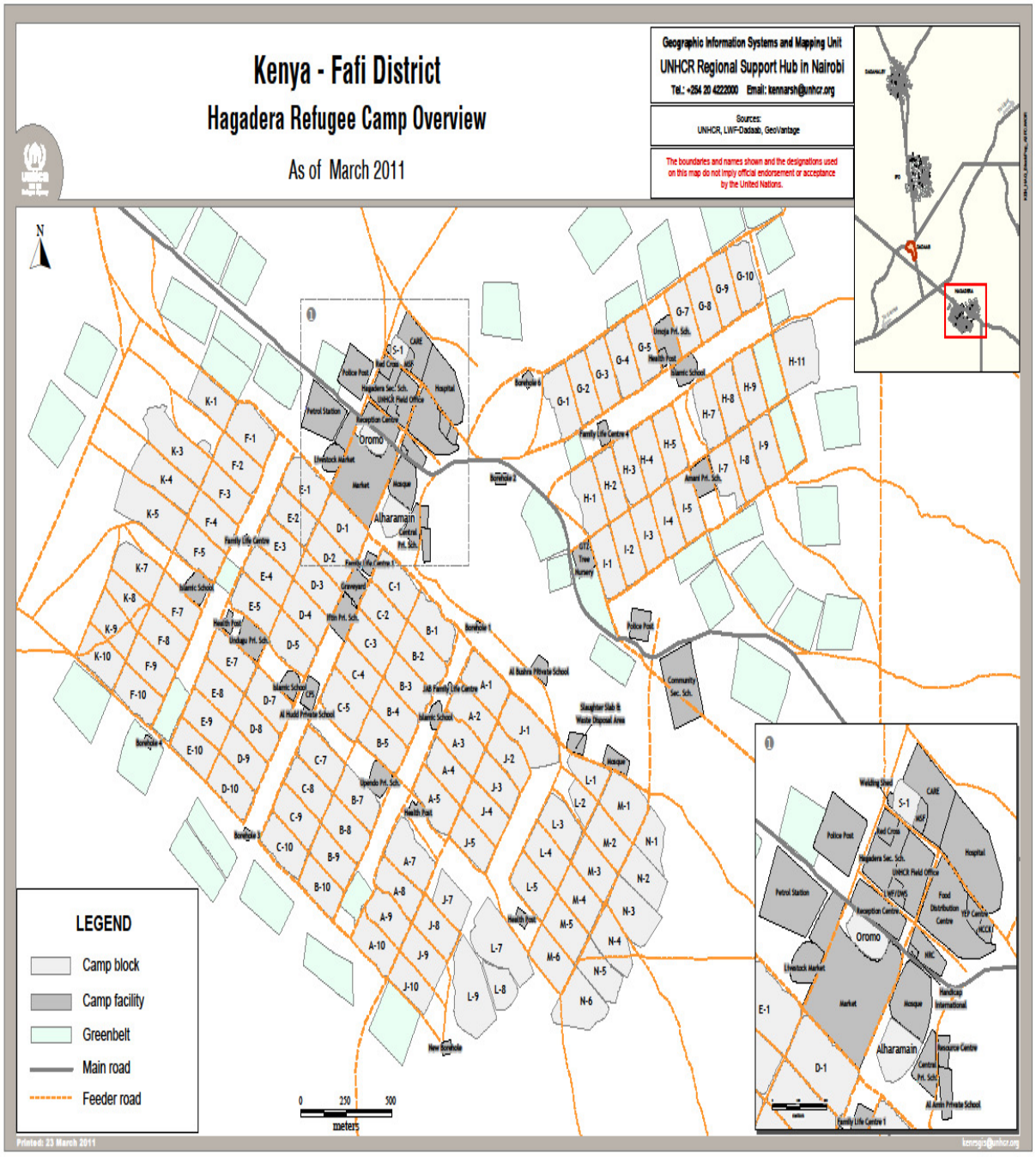
Overview of Dagahaley Camp



Map 3.5

Hagadera consists of two big compact groups. The first is divided into eight sections and three cross-cutting avenues and the second divided into three sections and one cross-cutting avenue

Overview of Hagadera Camp



Map 3.6

The Dadaab refugee complex was established in 1991 following the collapse of the Somali Government of Siad Barre, originally to accommodate 90,000 refugees. With a total population of 463,507[25], they as of January 2012, hold five times their intended capacity. In 2011 alone, due to three years of protracted drought conditions aggravated by escalated conflict, violence and insecurity, over 154,000 Somalis have arrived, many with little more than the clothes on their backs (UNHCR Sub Office Dadaab, 2011d, p. 1). Hagadera, south of Dadaab is presently the largest camp with a population of 140,778, with Dagahaley and Ifo following closely with 124,837 and 123,009 respectively. The newer camps are still being developed and although they are little more than tent cities with virtually no infrastructure or even security in place, they already hold 70,000 people between them (UNHCR Sub Office Dadaab, 30 November 2011).Although the Somali refugee population comprises mainly nomadic pastoralists, this population also includes farmers from areas along the Southern Juba River valley, former civil servants, and traders. In all, 75% of the Somalis come from the Juba River valley and the Gedo regions, while 10% originate from Kismayo, Mogadishu and Bardera (UNHCR Sub Office Dadaab, 2011d, p. 2)

Population per camp in Dadaab (as of 30 November 2011)

Camp	Population
Dagahaley	124,837
Hagadera	140,778
Ifo	123,009
Ifo East	27,504
Ifo West	37,166
Kambioos	10,213
Total	**463,507**

Table 3.1 (compiled by statistics supplied by UNHCR Sub Office Dadaab, 30 November 2011)

[25] Because of insecurity the registration of new arrivals was suspended in November 2011, so because refugees continue to arrive in the camps this figure is actually higher

3.2 Geography of Dadaab

The region where Dadaab is located is a remote, harsh, hostile, arid, desert area with temperatures of up to 48 degrees Celsius in the dry season, and suffers from extreme flooding in the rainy season, with roads, if you can call them that, washed away and under three feet of water. There were many occasions during my time there that the water level was up over the bonnet of the land cruiser as we tried to negotiate the roads in and around the camps. It is very surreal to be pushing vehicles out of sand banks one minute and driving through a river the next, after just a day or two's rain. This flooding creates further complications and suffering as it washes away shelters, turns roads into mud and interferes with transport, food deliveries and movement. Coupled with this children playing in dirty water contributes to a marked increase in water borne diseases such as cholera and diarrhoea, with a cholera outbreak occurring in the camps in November 2011 (Nebehay, 2011).

An example of roads within the camp turning to mud



Photo: Damien Mc Sweeney

This flooding is a recurring nightmare for many in Dadaab with 2006 being a particularly bad year because of an usually long and hard rainy season which caused havoc in Dadaabs three camps[26], where more than 100 000 residents were left without shelter due to the floods (Pflanz, 2006). One of the main objectives of what was called originally "the Ifo extension" (now Ifo East and Ifo West) was the decongestion of the flood plains within the camps, especially Ifo and some parts of Dagahaley. It was to be an example of a 'model camp' with resources, demarcation of plots and infrastructure such as schools, food distribution centers and hospitals in place for some 80,000 refugees[27] before opening up. The massive influx in 2011 led to a change of plans, with it needing to be urgently opened, unfinished, as an emergency measure. This means as well as all the other complexities, the problems of shelters flooding in the old camps still remains. However, even the new camps aren't immune to the problem, with over 5,000 refugees in the Ifo 2 East and West camps losing their homes to flood waters in November 2011 (UNHCR, 2011c).

A Family Evacuating their Flooded Home in Ifo in November 2011.



Photo: UNHCR/B.Bannon

[26] Ifo East, Ifo West and Kambioos were only established in 2011.

[27] 40,000 new arrivals and 40,000 to decongest the flood plains in the camps

Conversely, during the dry season, the region suffers from extreme heat, drought and water shortages, a fact highlighted in 2011 by presidential candidate Martha Karua who said:

> It is very unfortunate that very many years since our country got independence, this province continues to experience problems including drought and famine. What I know is that if the government was really serious with its work, then we would not be hearing of people and animals dying for lack of water (Astariko, 2011).

The area is a natural habitat to hyenas, scorpions, dangerous snakes such as spitting cobras as well as lions which are seen regularly along the Garissa – Dadaab road. In addition to this, there are often insect plagues as millions of eggs and larvae hatch, in particular, after the rainy season, when temperatures rise again. These factors contribute in a very real way, to the region and the camps being an extremely harsh and demanding place to exist.

3.3 Environment around Dadaab

The decision to locate the Dadaab refugee camps in this area and its subsequent expansion appears to have taken little account of the existing land use systems, very slow vegetation regeneration rate, and fragility of the environment and the relative importance of the areas for seasonal livestock grazing by both host communities and refugees (Ndibalema, 2008, p. 3). When the camps were built in 1991 to facilitate 90,000 refugees, nobody would have predicted that they would still be there 20 years later, hosting close to half a million people, thus the long term environmental impact of having such a massive amount of people transplanted into the area was not anticipated. It is clear that refugees place a considerable strain on the natural resources around the camps. In particular wood collection by refugees has reduced large area of land to scrub. The result has been rapid depletion of firewood, construction materials and live fencing from around the camps, and over-exploitation of grazing areas.

A number of environmental regeneration initiatives are operated by NGOs in the camps. For example GIZ[28] runs a number of different environmental projects in the areas of

[28]What was formerly known as „Gesellschaft für Technische Zusammenarbeit (GTZ) merged with two other German developmental entities in January 2011, creating the Gesellschaft für Internationale Zusammenarbeit (GIZ). GIZ is a federally-owned public-benefit enterprise and will continue to work for the German Government to carry out Germany's development cooperation on a global scale.

reforestation, improved energy efficiency stoves and firewood collection. One project, RESCUE (Rational, Energy, Conservation, Utilization, and Education) project was started in 1993 by UNHCR, with GTZ (now GIZ) as the implementing agency. It was stated that the project aimed at improving the living condition of the refugees and the local communities, and promoting collaboration between the two groups in conservation and rehabilitation or the environment in the refugee-settled areas. It is made up of several projects including firewood distribution and the establishment of Green Belt' zones[29] as well as tree nurseries (of which there are now four, one in each of the older camps and one in Dadaab town) in order to facilitation both regeneration and reforestation (Nunow, 2007, p. 7). In fact it is now nearly standard protocol that on any high profile visit to the camps that the VIP in question get the obligatory photo taken planting a tree from one of these projects, occurring on many occasions during my time there.

Tree Nursery in Dadaab 2009



Photo:FaIDA

Firewood is the principal source of cooking fuel in Dadaab. When the camps were built, firewood was harvested between 5 and10 km from the camps mainly by women

[29] A parcel of land enclosed by a live fence and protected from both human and livestock interactions, for the purpose of rehabilitation by either natural regeneration, artificial enrichment planning, or both

and children, which has since increased to 70 km at present, due to environmental degradation. Women fetching firewood are often raped by bandits thus making it difficult for them to go out to fetch firewood to cook the food provided by WFP. As a mitigation measure, UNHCR introduced a firewood project, implemented by GTZ, for refugees with the objective of:

- Reducing sexual based and gender violence (SBGV) on women and children
- Providing the firewood as humanitarian assistance to help cook the food given
- Sustainably managing the firewood harvesting to minimize adverse environmental impacts through a programme of managed harvesting zones, monitoring quality of the wood harvested.

(Gitau, 2011, p. 2)

The project contracts the local communities neighboring the refugee camps in gathering and transporting the firewood to the camps where it is stockpiled at a GIZ compound for distribution to the refugees. However, despite the positive aspects of this project, it is disliked by many host community members, who report that it benefits only a few leaders. In addition to this, the organized supply has only averaged 11% of estimated consumption in the camps and with a wood price 270% above current market rate in the camps paid to contractors, it is argued by many that the main justification for the programme appears to be that the programme facilitates collaborative arrangements between the humanitarian agencies and local politicians and leaders (Enghoff et al., 2010, p. 77). Also, although the reforestation programme through establishment of green belts and household tree planting has been beneficial to both refugees and host communities, the area rehabilitated to date amounts to over 806ha. However, this is a drop in the ocean compared to the amount of wood consumed and estimated annual degradation of 500ha during the existence of the camps (Ndibalema, 2008, p. 9)

The existence of the Dadaab camps and the sheer numbers of people within them continues to place a considerable strain on the natural resources of the surrounding area. As well as this, a number of environmental related issues have not received adequate attention. Particular areas of concern include the lack of any clear strategy for addressing construction needs, the lack of effective monitoring of firewood utilization at household level, inadequate promotion of energy saving techniques, the lack of data and knowledge of livestock related issues and the implications of any increase of population size (Ndibalema, 2008, p. 4). Large-

scale rehabilitation of the environment will only be possible if population pressure is alleviated and natural regeneration becomes a possibility. If not, Dadaab will exhibit increasingly urban-like characteristics and an expanding ring of resource degradation. Environmental degradation is an inevitable consequence of the government's decision to contain refugees in large camps in an area of low productivity, and there is a trade-off when hosting refugees in this concentrated way between costs and benefits, with the evidence pointing to significant economic benefits accruing to the hosting area at the expense of losses through environmental degradation (Enghoff et al., 2010, p. 80).

However, the environment in this region is hardy and resilient with the impacts of the camps in purely environmental terms being serious but spatially restricted in an area of inherently low resource value. If the camps were being looked at in the context of a small city or an urban sprawl with appropriate and adequately funded environmental programmes in place the impact on the region could be ameliorated. However, given the camps official status as being temporary, the huge recent emergency influx, the deterioration of the security situation and the worsening of conditions in the camps, immediate emergency needs continue to take priority for the foreseeable future rather than any major long term environmental strategy.

3.4 Dadaab: Complex Emergency?

There is no universally accepted definition of a complex emergency. The Center for Disease Control (CDC) for example, defines complex emergencies as:

> Situations affecting large civilian populations which usually involve a combination of factors, including war or civil strife, food shortages, and population displacement, resulting in significant excess mortality (Merson et al., 2005, p. 439).

Another example is the UN Office for the Coordination of Humanitarian Affairs (UNOCHA) which defines them as:

> A humanitarian crisis in a country, region or society where there is total or considerable breakdown of authority resulting from internal or external conflict and which requires an international response that goes beyond the mandate or capacity of any single agency and/or the on-going United Nations country program (Keen, 2008, p. 2).

As well as this, because of the significant political discourse at play within these emergencies, Goodhand and Hulme refer to them as 'complex political emergencies' and define them as:

> Conflicts that combine a number of features: they often occur within but also across state boundaries; they have political antecedents, often relating to competition for power and resources: they are protracted in duration: they are embedded in and are expressions of existing social, political, economic, and cultural structures and cleavages; and they are often characterized by predatory social formations (Goodhand and Hulme, 1999, p. 17 - 18).

Despite the lack of a universal definition however, it is recognized that in general, that associated with these complex emergencies are: the collapse of state institutions, the breakdown of law and order, banditry and chaos, shortages of food, water and other basic necessities and large amounts of the civilian population are displaced. As well as this humanitarian relief operations are constrained by lack of access and danger to aid workers.

UNOCHA attributes four main characteristics to complex emergencies. Firstly, that there is extensive violence and loss of life, massive displacements of people and widespread damage to society and the economy. Secondly, that there is need for large-scale, multi-faceted humanitarian assistance. Thirdly, that there is a hindrance or prevention of humanitarian assistance by political and military constraints and finally that there is the existence of significant security risks for humanitarian relief workers (Keen, 2008, p. 2). Using these criteria in the Dadaab context, firstly, in the camps extensive violence exists and they hold nearly half a million people who have been displaced causing widespread damage to their society and their economy. Secondly, the humanitarian intervention Dadaab is huge and multi-faceted with a mix of humanitarian assistance, developmental assistance and even host community assistance overseen by UNHCR and with over 30 Implementing and Operational partners involved in the response. Thirdly, there is a hindrance of humanitarian assistance by political and military constraints as bomb attacks on police and humanitarian convoys in November and December 2011, have left a number of police officers dead and resulted in the withdrawal of humanitarians from the camps and the curtailment of the humanitarian operation there. And finally as the kidnapping of the humanitarian workers in September and October 2011 proves there is the existence of significant security risks for humanitarian relief workers.

Dadaab meets all four criteria assigned to define complex emergencies by UNOCHA, therefore because of its extended and drawn out nature, it can be described is a protracted complex humanitarian emergency.

3.5 UN Operation Dadaab

UNHCR has the mandate for overall management in the Dadaab camps and is responsible for the humanitarian operation there, at the request of and in coordination with the Government of Kenya. Its key aims and objectives are to:

- Promote free access to the Kenyan territory for Somali asylum-seekers;
- Provide effective screening, registration and food ration documentation;
- Improve conditions and services in existing and newly constructed refugee camps;
- Maintain international standards of protection and material assistance for all people of concern;
- Improve refugee self-reliance through strengthening sustainable livelihoods projects;
- Support refugee women and youth through capacity building activities including skills training;
- Strengthen partnerships among stakeholders including the Government as well as implementing and operational partners, including UN agencies, national and international NGOs; and
- Provide access to services to the host community to support peaceful co-existence.

(UNHCR Sub Office Dadaab, 2009b, p. 3)

The operation is financed by both donors and agencies, mostly channelled through the WFP and UNHCR and its cost has grown from USD 44 million in 2007 to over USD 100 million in 2010 (Enghoff et al., 2010, p. 75). Due to the huge number of refugees in the camps, the recent large influx and the poor humanitarian condition of Somalis arriving in Dadaab, there are many stakeholders involved, including NGOs, donors and the GoK. In addition to the UN agencies and the 16 units of UNHCR involved in the operation, currently there are more than 30 NGOs working in Dadaab (International Federation of the Red Cross and Red Cresent Societies, 2011)

Up until very recently the UN Dadaab operation has had two defacto operations running side by side; the long term protracted refugee population on the one hand and the

emergency operation on the other. However, in 2009, tensions with the local indigenous population who held the view, that refugee's had better conditions and access to services than them, led to UNHCR beginning to support projects targeted specifically at the host community. Therefore, at present, the Dadaab refugee operation consists of three strategic components:

1. The long term protracted refugee caseload based in the three camps of Ifo, Hagadera and Dagahaley
2. The emergency operation targeting the influx of new arrivals to the outskirts of all three older camps and the relocation to one of the three new sites, Ifo East, Ifo West and Kambioos
3. The support projects to the host community.

The long-term protracted refugee population can be looked at as a developmental type intervention with the camps in need of updated and more permanent infrastructure in terms of improvement in water systems, provision of additional schools, hospitals, police posts etc. Services such as the education and health services were already in need of expansion prior to 2008, when the new increased influx of refugees from Somalia began. The second, emergency-based operation is focused on coping with the new arrivals and providing the most basic resources and services - food, shelter, non-food items (NFIs), protection, water and health to name but a few. Finally, the third component of the operation, supporting projects within the host community is focused on interventions in the areas health, water, education and the environment as well as support to local governance structures.

3.5.1 Dadaab Emergency Operation

The Dadaab emergency-based operation is mainly focused on coping with the new arrivals and providing the most basic resources and services. In situations of displacement, there is always loss of personal property. Very often people flee with little more than the clothes they are wearing. In addition to food and water people affected by disaster and conflict need basic lifesaving non-food items (NFIs) for their survival. UNHCR therefore struggles to provide items such as blankets, sleeping mats and plastic sheeting to safe-guard them from rain, sun, and other environmental conditions. As well as this, when resources allow, they provide kitchen sets including pans, plates and spoons which are essential items for every family, soap necessary to ensure personal hygiene, and jerry cans which are needed to collect

drinking water and to keep it safe from contamination. Clothes or material for making clothes and shoes may also be needed. In addition, women and girls need sanitary supplies. Children too have specific needs especially those who may have been orphaned and require baby food, clothes, diapers etc. Thus upon reception, refugees undergo health and nutrition screening; and receive counselling, information on refugee registration, and high energy biscuits. Refugees requiring health services are dealt with immediately, while children suffering from conditions such as extreme malnutrition are sent immediately to a stabilization unit at one of the three hospitals in Dadaab until they are healthy enough to go to their new home. As well as this women are counselled if they have experienced any type of Gender Based Sexual Violence (GBSV) during the course of their journey or in the past, with Post Exposure Prophylaxis[30] (PEP) kits administered for any woman found to have experienced sexual violence within a 72-hour period of the counselling.

New arrivals, especially coming from Somalia have very high acute malnutrition and mortality rates of more than 30% in some areas (UNHCR Sub Office Dadaab, 2011e, p. 8) and require lifesaving food assistance immediately. Thus on arrival each individual receives a 21-day food ration, with children under the age of five provided with nutritional support though the WFP's Blanket Supplementary Feeding Programme[31] (BSFP). Once registered, refugees then receive a ration card to enable their collection of a bi-monthly general food distribution and BSFP from WFP Distribution Centres in Ifo, Dagahaley or Hagadera, based on their location. Then the battle to find shelter begins.

3.5.1.1 Dadaab Camps Full

From 1991 up until 2008, refugee households coming to Dadaab were provided with a plot of land in which to organize a shelter and live. However, as the camps grew, land became a scarce resource and this has had negative consequences on the camps infrastructure and services, because, without land there is little capacity to provide for adequate, shelter, water and sanitation, health services or education. In 2008 UNHCR declared the Dadaab complex

[30]Post-exposure prophylaxis (PEP) is short-term antiretroviral treatment to reduce the likelihood of HIV infection after potential exposure, either occupationally or through sexual intercourse.

[31]Blanket Supplementary Feeding Programmes are aimed primarily to prevent deterioration in the nutritional status of a population, but also to reduce the prevalence of acute malnutrition in groups at high risk of becoming malnourished. These include children under 5 years, pregnant and lactating mothers and the elderly who are provided with a food/micronutrient supplement in addition to their food ration in order to reduce the mortality and morbidity risk.

full and tried to improve the situation by expanding the camp boundaries (Valk Mayerick, 2008). Emergency tents were set up as an emergency shelter programme in Section N, the far outskirts of Ifo camp and the last few available hectares of land to UNHCR. However, the construction of the tents was again halted due to the protests of the local community as threats were made to agency workers as they were adamant that the camps had spilled over the boundaries agreed upon when the camp was created and during subsequent expansions. However, the boundaries of the Dadaab camps remain disputed as there is no official written agreement in existence between the Government of Kenya and UNHCR on the physical perimeters of the camp. UNHCR agreed the expansions with the local authorities on an ad hoc basis over the years as the arrivals increased but there remains a dispute as to whether extensions of the camps were agreed to by all parties (Simpson, 2009, p. 31). In fact on a number of occasions during my deployment investigations were started in relation to the selling of land within the refugee camps by members of the host community and local politicians, an activity that is illegal by both international law and Kenyan law (Bukovac, 2010).

From 2008 up until mid-2011, UNHCR field officers were forced to advise about 160,000 new arrivals to seek shelter with relatives or friends already living inside the camps with some plots hosting often three or four families, straining not only the limited resources available but also causing protection problems as disagreements over resources and space ensued. A large proportion of these arrivals that were without family or clan support in the camps were forced to set up camp wherever they could, with many deciding to take their chances on the outskirts of the camps, in appalling conditions. In March 2011, in an interview, UNHCR Head of Sub Office in Dadaab, Richard Floyer-Acland asserted that:

> Plots ran out in August 2008. New arrivals now have to double up, with two or more families per plot, or seek land not officially cleared for settlement. More than 18,000 people have settled on the edges of the camps, he says, on land that technically belongs to local communities (Provost and Hamza, 2011).

By August 2011 this had risen to nearly 75,000 people: 25,000 on the outskirts of Ifo Camp, 30,000 on the outskirts of Dagahaley Camp and some 20,000 people in the outskirts of Hagadera camp (UNHCR Sub Office Dadaab, 2011e, p. 5). Because they are outside the camps, most of the people in these settlements live in extreme poverty, with little or no access to essential services such as food and water and infrastructure such as latrines, making open defecation the only option, and thus increasing the risk of the spread of disease.

These settlements are extremely insecure and open to attacks by the armed bandits known as 'shiftas'(dealt with extensively in Chapter four) operating freely in the area, with women and young girls who go to find firewood especially at risk, and many rapes and sexual assaults occurring. As well as this, while visiting settlements in Ifo (section N) refugees on a number of occasions informed me that wild animals such as hyenas had a history of attacking children there, due to the lack of security and even fencing and the isolated nature of these settlements (Bukovac, 2010).

3.5.1.2 Dadaab Reopened

The Government of Kenya (GoK) finally gave permission to UNHCR to open the Ifo Extension on 14 July 2011 and subsequently later in the year, the Kambioos site. These developments have helped in tackling these settlements with the recent opening of 'tent cities' in the three new sites, with 74,962 persons relocated as of 30th October 2011 (UNHCR Sub Office Dadaab, 2011d, p. 5).Currently, plots are being allocated to refugees who were registered from October 2010 onwards. However, those registered prior to then, may be provided a plot on exceptional grounds after proper consideration of their individual/family protection needs. Efforts are also made to ensure that families and communities who lived together in the outskirts and wished to settle together in the new plots are allowed to do so, in order to preserve some sense of community. Plots, which measure ten metres by twelve meters, are allocated as follows:

- Family size 4-7 members allocated one plot
- Family size 8-14 members allocated two plots
- Family size 15 upwards members allocated three plots
- Small-size families (1-3), single individuals with specific needs and other refugees are encouraged to regroup themselves to maintain the principle of family union and thereupon issued a plot
- Vulnerable families are also issued with a plot on a case-by-case basis.

(UNHCR Sub Office Dadaab, 2011d, p. 6)

These new camps will assist in the short term with the huge and sustained influx from Somalia due the famine and escalation in conflict there. However, it is unlikely due to the numbers continuing to arrive, that they will solve the problem of congestion in the old camps

or the decongestion of areas prone to flooding within the old Ifo camp, one of the original purposes of the Ifo extension.

3.5.2 Protracted Refugee Population

The protracted refugee population can be looked at as a developmental type intervention, with the camps in need of updated and more permanent infrastructure in terms of improvement in water systems, provision of additional schools, hospitals and police posts as well as programmes relating to the environment, livelihoods and youth. Because the GoK does not see Kenya as a destination country, but rather as a transit country temporarily hosting asylum seekers (Pavanello et al., 2010, p. 28), it does not recognize the permanent nature of the camps, even after 20 years. As well as this the continuous influxes of refugees' means that much donor and humanitarian focus is on the short term emergency operation, rather than the longer term developmental style operation. For these reasons, budget cycles are mainly short term based which impacts negatively on longer term developmental planning and interventions in the camps, for examples in the areas of education and livelihoods.

The 2011/2012 escalation of the fighting and violence in Somalia has led to another significant increase in the influx of refugees with 154,000 refugees arriving in 2011 alone (UNHCR Sub Office Dadaab, 2011d). This increase has led to additional congestion adding further pressure to already scarce resources, inadequate infrastructure and insufficient services while leading to a further deterioration of conditions in the camps. The congestion in the camps has impacted negatively upon the refugees in the form of competition for resources, increased conflict as a number of families have to share just one plot, increased domestic violence and sexual violence, encroachment, simultaneous plotting, insufficient education and health facilities and increased psychosocial problems. For example, women and children queue for hours in the extreme heat sun every day for water, but the quantity of water is limited with pumps often unable to handle the capacity needed every day, with this adding to the volatility in the camps and sometimes leading to conflict and violence at these stands as tempers flare. One refugee, Hassan Bashir Ahmed asserts that 'One tap used to be used by 200 families, now we have twice that number wanting water from one tap' (Valk Mayerick, 2008). Fire is also a very real danger because the out-dated and insufficient waste disposal systems inside the camps can no longer support the amount of waste created, resulting in families burning their garbage near their huts. Fires occur frequently and spread rapidly with the water shortages making them difficult to control. One such example occurred

on the 19th August 2011 when a fire broke out in Hagadera refugee camp in Section C, and moved quickly through the block due to high winds. The Hagadera Refugee Community helped the families to extinguish the fire with sand, water and blankets as there is no fire engine based in any of the three camps. By the time it was brought under control, ten families had lost all of their belongings and food rations in the blaze (Mohamed Bashir Sheik, 2011). This congestion also has knock on effects in all other fields within the operation including education, health, the environment and livelihoods.

3.5.3 The Host Community

The third component of the UN Dadaab operation relates to the support of projects focused on the host community. It may seem strange that an organization such as UNHCR whose mandate and sole purpose for existence is the protection of refugees would be utilizing its resources to fund projects and programmes for host communities, when the stakeholder with clear responsibility to this community is their own government. However, UNHCR believes that by doing so you are actually assisting in the protection of refugees as it minimizes conflict over resources and fosters good relations. Often, refugee-hosting communities live under worse conditions than refugees in camps with competition for such resources as water and firewood between the two groups often leading to conflict and violence. This is particularly true for the host community in the Dadaab region, which like the rest of the NEP, suffers from high poverty, lack of resources, lack of infrastructure and lack of socioeconomic development due to many decades of underdevelopment and insecurity. Therefore UNHCR believes that given the large and protracted nature of the refugee situation in Kenya, support for host communities is critical if healthy relations between the groups are to be fostered (UNHCR, 2011a).

The host population within 50 km of the Dadaab camps comprises at least 148.000 people, a tenfold increase since 1989, a population growth rate of 11.7%, well in excess of the average for the North Eastern Province and mainly driven by migration from other ethnic Somali areas of Kenya (Enghoff et al., 2010, p. 7). The host and refugee communities overlap closely with their identities being very much intertwined as they share a common language, culture and religion, and in many cases clan and sub-clan identities, together with a common-property approach to resource use across large swathes of land either side of the international border between Kenya and Somalia. Approximately 60% of the host community live in settlements and 40% are mobile pastoralists (Enghoff et al., 2010,

p. 67), but the vast majority of households are divided, with some members mobile and others settled, or at least having relatives in households that are mobile (if they are settled) or settled (if they are mobile). Combining settlement and mobility is a key livelihoods strategy for reducing risk and is used at various scales both within households and during seasonal and annual cycles. Although livelihoods in the host community are overwhelmingly pastoral, all households ensure that they also have access to food relief and/or refugee rations. Many households sell domestic products to the camps or to other local people, including livestock, milk, firewood and donkey cart transport services (Enghoff et al., 2010, p. 67 - 69).

When the camps were built originally the host community had a welcoming and helpful attitude towards refugees, however over the years this positive relationship has slowly deteriorated due to the large and sustained influxes which has placed huge pressure on local natural resources. In August 2011 for example the North Eastern Provincial Commissioner James Ole Serian asserted that 'There is need to relocate them [refugees] to other countries' and that 'Humanitarian agencies should drop food inside Somalia to stop refugees streaming into Kenya' (Bocha, 2011). However, these negative attitudes towards refugees by communities living around the camps are somewhat complex. While the host communities have suffered from environmental effects of hosting hundreds of thousands of refugees, they are also benefiting from the presence of refugees in certain aspects. Humanitarian aid efforts for refugees in Dadaab have also provided access to local communities to water, education and health services facilities within and outside the camps (Ndibalema, 2008, p. 3). As well as this, UNHCR, WFP and their implementing partners support the host community through direct employment, particular the recruitment of unskilled labour. In total it is estimated that 600-750 local persons have fixed employment related in some way to the refugee operation bringing wages to the local economy of around KSh 56 million (€475,000) annually. In addition, host community job creation related to trade activities[32] amounts to at least 500 jobs with an annual income of KSh 35 million (€296,000). In addition direct support for host community initiatives has risen from around USD 2 million in 2007 to USD 5.5 million in 2010, supporting initiatives in food security, conflict reduction, environmental management, education, health, water supply, and sanitation and business development. In 2010 the total economic benefits for the host community, due to the existence of the camps and the humanitarian was around USD 14 million (Enghoff et al., 2010, p. 74).

[32]Host community members that provide services to the camps, those with shops and businesses in the camps and local pastoralists selling meat and milk to refugees and NGOs.

It is also believed that at least 40,500 host community members within 50 km (27%) hold refugee ration cards and claim free food from the WFP as part of their livelihood strategy. Those holding ration cards include both people who are from the host area originally and others who have moved in from elsewhere in Kenya, primarily to seek a better livelihood (Enghoff et al., 2010, p. 8). Every few years the GoK and UNHCR try to address the issue of ration cards through a process called verification for the entire population of the camps, the most recent of which occurred in Ifo and Hagadera in 2009 and Dagahaley in 2010. This exercise is jointly conducted between the GoK and UNHCR and is basically 'verification' of refugee's information compared with the collected records of registration information on all refugees and asylum seekers living in Dadaab camps. This is done through fingerprinting, an interview and presentation of the appropriate documents. The exercise is advertised as aiming to enable the Government of Kenya Authorities and UNHCR to better identify needs and provide assistance to refugees. However, it also has the effect of identifying host community members registered as refugees, refugees who had registered multiple times as well as refugees who had died but whose families were still claiming rations for them. These cards are then deactivated, with those in question losing their food ration. Because of this, host community members have in the past turned violent, with one such example occurring during my time there in April 2010 when youths from the host community vandalized, destroyed structures, assaulted security guards and looted furniture at the verification centre, causing tens of thousands of dollars' worth of damage and leading verification to be postponed for a number of weeks (Bukovac, 2010).

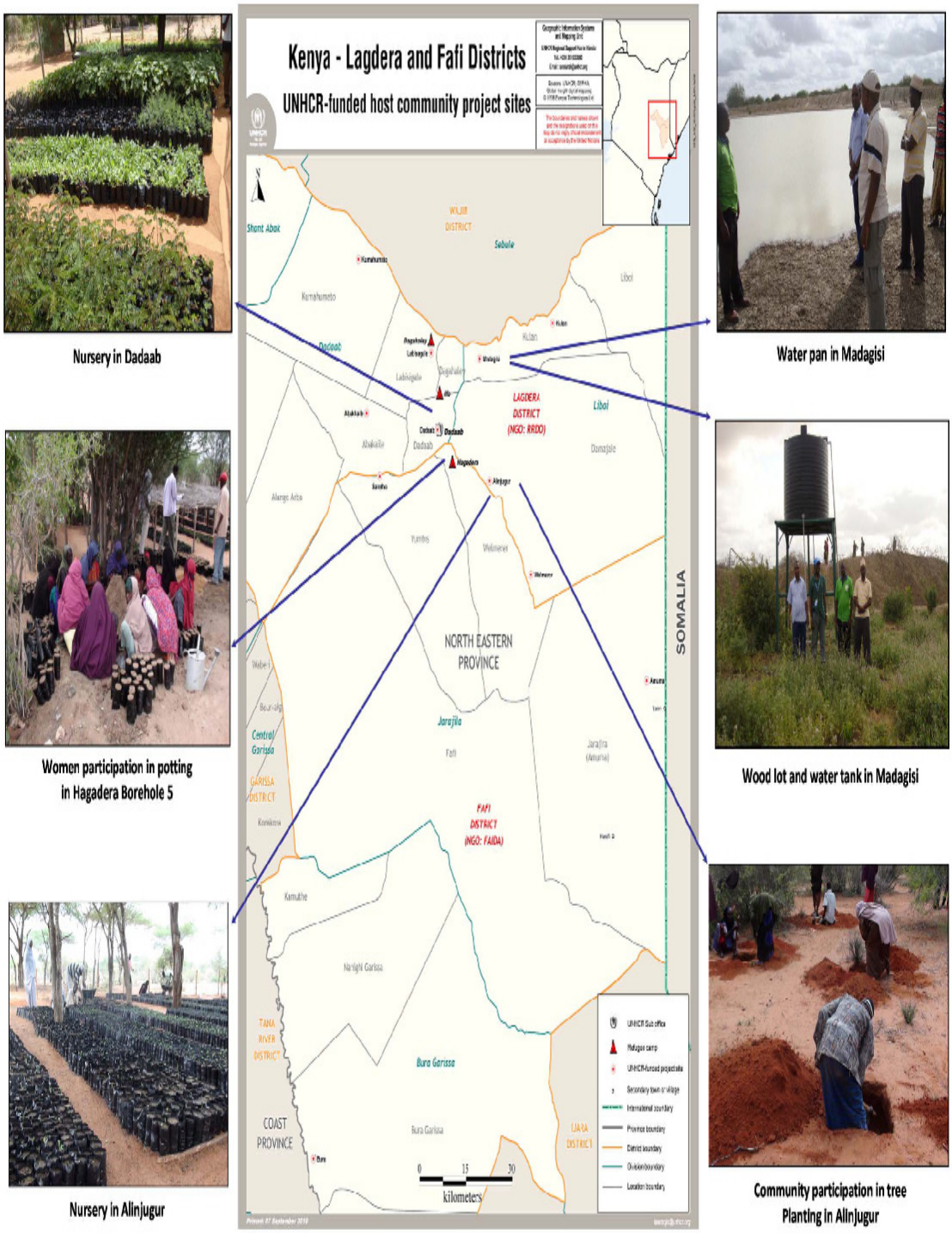
The hiring of local Kenyans for jobs with the agencies has also been a contentious issue between the host community and the humanitarian community. The host community feels that an increasing number of jobs should be filled by the population in Dadaab town and the surrounding areas; however there are obstacles to providing large numbers of jobs for the host community due to the limited education and skills. For instance you can't employ someone with no formal medical training as a nurse, or someone with no financial training as an administrator, however in order to try to address the concerns of the host community and the humanitarian community, a stakeholder retreat known as the 'Garissa Host Community Forum' was held in Garissa in May 2010, involving 55 people representing the host communities of Fafi and Lagadera, UNHCR and its partners as well as Government officials (Bukovac, 2010). At this forum a number of important issues were agreed upon. For example, if the host community strongly advocates for a local firm to be awarded a contract for work with UNHCR or its implementing partners, then they themselves must be responsible for

ensuring that the work is carried out in accordance with the terms of the contract, and is of the required quality. Also, a set of policies and procedures for the recruitment and employment of staff to work for the agencies based in Dadaab, was agreed upon in order to treat the host community fairly by giving them as many employment opportunities as possible, while at the same time ensuring standards of performance and complying with agency human resource management regulations (which vary from agency to agency).A mechanism for handling complaints and disputes was agreed in principle by all parties at the Garissa retreat, which envisaged a series of mediation levels in an attempt to settle any dispute or complaint quickly and at the lowest practical level, with either party allowed to bring cases to the attention of the mediation bodies in accordance with agreed procedures. As well as this a 'Stakeholder Steering Group' was set up to monitor the implementation of agreements made at Garissa, acting as the final level of the dispute resolution mechanism and would meet on a monthly basis to share information and draw up joint plans for matters of interest to both the humanitarians and the host community, such as celebratory events and emergency plans for floods or disease (Bukovac, 2010).

However, despite the disagreements and disputes, in a comprehensive 2010 report, the vast majority of people in the host communities report improved access to education facilities, and to water for people and livestock since the establishment of the camps. Health services catering for host communities have been improved by agencies working in Dadaab and the agency-equipped hospitals in the camps and Dadaab town may be accessed free of charge by local people. The presence of the camps has dramatically improved the frequency and reach of transport services available to the host community. The overall availability of social services is high compared to other areas of pastoral settlement in Kenya, especially close to the camps, even if the considerable increase in host population is factored in (Enghoff et al., 2010, p. 9). As well as this the host community despite their problems with refugees, do also feel genuine empathy with them and their plight. This is best summed up by local resident Osman Bathe who describes himself as torn between his loyalties to his people, the Kenyan Somalis, and sympathy for tens of thousands of famine-stricken Somalis. He says that:

> The refugees have caused us a lot of trouble in terms of security and environment, yet we can't rise up against the new arrivals because doing that will be inhuman. We share religion, language and culture. They're our Somali brothers, and they're fleeing from hunger and wars (Muhumed, 2011).

UNHCR-supported Host Community Projects



Map 3.7 (UNHCR Sub Office Dadaab 2010)

3.6 Developments Affecting Dadaab in 2011

2011 saw the worst mass movement of Somalis in over 20 years. In February 2011, African Union (AMISOM), TFG troops and their allies launched a coordinated offensive against Al-Shabaab on multiple fronts. AMISOM and the TFG attacked positions in Mogadishu, Ethiopian forces and the Ahlu Sunna Wal Jamaa (ASWJ) militia aligned to the transitional government undertook a coordinated push against Al-Shabaab militias from Beled Weyne, in Central Somalia and in the town of Bulla Hawo close to the border with Kenya and Ethiopia (UNHCR, 2011b). In August 2011, after a brutal and sustained campaign by the TFG and AMISOM, al Shabaab withdrew from Mogadishu and reverted back to guerrilla tactics (Chothia, 2011), such as the suicide car bombing on October 4thin Mogadishu which killed over 100 students receiving scholarships from the Turkish government and the October17th suicide bombing which killed 15 people near the old foreign ministry building, also in the Somali capital (Roggio, 2011). This continued and fierce fighting as well as the constantly shifting frontlines has led to the displacement of many thousands of people.

As well as this, many thousands more were forced to flee because of the worst drought in over 50 years, with estimates in September 2011, of four million people being in need of emergency aid (Menkhaus, 2011, p. 1). These factors generated population movements from many areas of Somalia to Kenya with Richard Floyer Acland, the UNHCR head of Sub Office in Dadaab, in March 2011, estimating arrivals in the camp at about 9,000 per month (Provost and Hamza, 2011). This rose to a staggering 29,000 per month in August and September with over 154,000 refugees making their way to Dadaab in 2011 (UNHCR, 2011d, p. 5), overwhelming the operation there.

The fact that Dadaab's population exploded to close to half a million people in 2011 generated a huge amount of fear in Kenya, with many believing that Dadaab presented a huge threat to Kenyan security. Subsequently on 13th October 2011 two Spanish aid workers from Medicine Sans Frontiers were kidnapped from Ifo and their driver shot in the neck in broad daylight. A month previous to this a Kenyan driver for the aid agency CARE was also kidnapped, with intelligence pointing to them all having been moved to Somalia (Ombati, 2011b). These kidnappings as well as the kidnappings of two other Europeans from holiday resorts in Kenya was seen as an considerable escalation of operations by Al Shabaab and thus an unacceptable security threat by the Kenyan government. As a result the Kenyan military invaded Somalia on the 16thOctober, seizing a number of towns, which were previously held by al-Shabaab militants, some 100 kilometres inside Somalia declaring that they will advance as far as Kismayo in its operation to wipe out al Shabaab in the region (McGregor, 2011).

Al Shabaab predictably vowed revenge and launched a number of sustained and deadly bomb attacks in Nairobi, Garissa, Dadaab and Mandera leaving both civilians and security personnel dead and many more injured. For example in Hagadera camp on 20th December a landmine killed a police officer and seriously injured two more when they were escorting a humanitarian convoy (BBC News, 2011a). These attacks coupled with the kidnappings in October, have led to a lockdown of the camps, with UNHCR suspending all non-critical operations, moving to the provision of only the most essential of services such as food and water. Many of the aid agencies have also been forced to scale back operations and moving staff out of Dadaab further negatively impacting the provision of aid and services there. As well as this, in November, the GoK suspended the registration operation meaning that there isn't even accurate information in relation to the population of camps, the rate of new arrivals or even the identity of the new arrivals. Before these developments, Dadaab was already insecure with protection services inadequate and overwhelmed, however, after these events; both the security and protection of the refugees in the camps deteriorated to the extent their safety or the safety of humanitarian workers could not now be guaranteed, impacting negatively on the population and adding further suffering and hardship to their lives. The next chapter will investigate in great detail the many security and protection issues and threats in Dadaab as well as examining the effectiveness of the various security actors there.

Chapter 4

Dadaab Refugee Camps: Protection and Security Concerns for the Refugee Population

Because of its proximity to Somalia, the existence of the Dadaab refugee camps, the 2011 mass influx of refugees, an inadequate police force and the presence of bandits and Islamist militias such as Al Shabaab the North Eastern province of Kenya is an extremely insecure area. Even when the Kenyan government closed the border with Somalia in January 2007 citing security concerns, this insecurity continued because the porous nature of the border meant that the movement of people and weapons as well as criminal activities such as smuggling and banditry is next to impossible to stop. The security situation in Dadaab deteriorated rapidly in 2011 with the massive influx of 154,000 refugees, the kidnappings of humanitarian workers by al Shabaab, the October 2011 incursion by the Kenyan military into Somalia to defeat al Shabaab, the escalation of gun and bomb attacks on police and humanitarian convoys by al Shabaab in the camps with the resulting curtailment of the humanitarian operation by UNHCR. This chapter is an analysis of the threat many and diverse threats and vulnerabilities faced by the population in Dadaab (as of February 2012) including how the deterioration in the security situation is exacerbating these concerns. This chapter thus sets the tone for the next three chapters' analysis using the three pillars of humanitarianism as the framework.

4.1 Closure of the Border and the Perilous Journey to Dadaab: Protection and Security Concerns for Asylum Seekers

On 3rd January 2007, the Kenyan government closed the border with Somalia, citing 'security concerns in relation to fleeing UIC fighters and possibly also Al-Qaeda operatives collaborating with them might enter Kenya and endanger Kenya's national security'(Amnesty International, 2007). This decision forced the UNHCR-administered refugee transit centre in Liboi, a town a few kilometres from Kenya-Somalia border to close. The closure of the transit centre at Liboi has had serious implications as UNHCR used to register asylum-seekers there, provide health screening to identify those in need of vaccinations and healthcare and transport refugees to the Dadaab camps. The shutdown also effectively denied Somali asylum seekers access to refuge, lack of security and protection and in many cases led

to violations of the principle of non-refoulement. As asylum seekers continued to pour across the border, they were no longer registered or put through security or health screening. For registration and screening, and an assessment of their protection needs, they first had to reach the camps, a dangerous journey of 80 kilometres from the border where they were at the mercy of the harsh conditions and climate, bandits, Islamists and corrupt police officers (Simpson, 2010, Amnesty International, 2010 & Human Rights Watch, 2011).

In April 2010 while part of a joint UNHCR/GoK security mission to assess the possibility of reopening of a refugee screening at the Somali border (to an area beyond Liboi in Kenya and in sight of Dobley) as part of a proposed the GoK/UNHCR Security Partnership Project (SPP), I saw for myself the vastness and isolation of the area. I also witnessed first-hand the insecurity of the area when amongst other things I was shown the bullet riddled police posts there. Baraza Sayia, the police superintendent from Dadaab who also accompanied the mission explained to me that police and army officers stationed in the area would dig four foot trenches inside their posts, in which they would then sleep to minimise the chances of being killed when Al Shabaab or armed bandits attacked them. It became clear to me that the reality of the ground there is that this long and porous border is practically impossible to close or police effectively. New arrival figures from Somalia to Dadaab would seem to bear this out with over 190,000 Somalis having being registered as refugees there in 2011, despite the border being closed (UNHCR Sub-Office Dadaab, 9th December 2011). The regular banditry, the availability of smuggled goods from Somalia in Dadaab markets and regular incursions inside Kenya by Al Shabaab to carry out attacks or kidnappings would also lend support to this. It also became very clear to me that if armed police were in that sort of danger in this area, that there was no security or protection for asylum seekers with their children trying to walk, ride or drive the 80 kilometres to Dadaab.

To try to address this, one of the main implementation components of the Security Partnership Project (SPP) signed by the GoK and UNHCR in April 2011 was to:

> To establish a reception and screening center for asylum seekers to enable a more systematic identification of persons needing protection vis-à-vis persons who may pose a threat to national security and thereby facilitate their separation and follow up by the Government (Government of Kenya and UNHCR, 2010, p. 5).

Because of the massive influx of 2011, the abduction of three aid workers and violent incidents in Dadaab such as shootings and bombings, this SPP had to be revised and the result was the ‘Kenya: Enhanced Security Partnership Project (SPP) 2011-2012’ which was

agreed by the GoK and UNHCR in November 2011 and is commonly referred to as the SPP Two. This again reiterated that one of the core aims was:

> To maintain the civilian and humanitarian character of the institution of asylum and refugee camps in Kenya by overseeing and managing cross-border movements of people and their property through the establishment of an operational Liboi Screening and Reception Centre at the Kenya-Somalia border (Government of Kenya and UNHCR, 2011, p. 3).

Despite these agreements and the fact the Kenyan government also informed UNHCR in writing in 2011 that it intended to reopen the reception center at Liboi (Human Rights Watch, 2011c, p. 45), as of February 2012, this had still not occurred

4.2 Insecurity and the UN Dadaab Operation

Nairobi and most of Kenya operates under a Phase One security restriction (UN security phases are explained in sub section 4.2.1), but the North Eastern province is different insofar that it is an extremely insecure area with special Kenyan government permission needed even before any travel is allowed to Dadaab. The presence of bandits and Islamist militias such as Al Shabaab in the area as well as the periodic outbreaks of interclan feuding means that the UN mission has had to operate under Phase Three security restrictions for many years. This means that Dadaab is a non-family duty station (no spouse or children allowed), that all humanitarian workers are confined by curfew to a secure compound from 6:00 pm to 6:00 am, that travel is by convoy and armed police escort and that there is no free movement of humanitarian workers in the camps without armed police. This insecurity and the subsequent restrictions has had a detrimental effect on the humanitarian operation there because of the insufficient time workers are allowed to spend in the field due to curfew with this then impacting negatively on services such as protection and field operations. It also impacts on trust and relationship building between humanitarians and refugees as the constant police presence is often intimidating for refugees. The recent escalation of attacks in Dadaab, Garissa and in and around the NEP by al Shabaab have led to an even steeperdeterioration in security in the camps and as a result UNHCR and its partners have had to significantly scale back their operations because the safety of humanitarian workers in the camps cannot be guaranteed. A clear indication of the extent of this deterioration was the December 2011 visit to Dadaab of the UN Secretary General Ban Ki Moon when he did not even venture to the

camps, instead remaining inside the secure UNHCR compound in Dadaab town (BBC News, 2011a). The withdrawal of many humanitarian workers from the camps has a negative impact on the security and protection of refugees in the camps because with a lack of personnel monitoring the situation and ensuring that people's rights are upheld, the chances of human rights abuses occurring are high. Already there have been reports of mass arrests and beatings of refugees as the Kenyan police go house to house in the camps looking for al Shabaab fighters responsible for the bomb attacks on humanitarian convoys which have killed a number of their officers. For example on the 20th December 2011, after a bomb attack in the market area of Ifo camp, residents said the police arrested dozens of refugees and beat up many others with officers breaking down doors to shops and houses in search of weapons and explosives (IRIN, 2011b). Without the presence of UNHCR and other humanitarians in the camp it is clear that the security and protection of the refugees in Dadaab has further deteriorated to a very dangerous level.

4.2.1 UN Security Phases Explained[33]

The United Nations employs five specific security phases to describe security measures to be implemented based on the prevailing security conditions in a given country or in parts of a country. These five phases are standard for all duty stations and must be included in all Security Plans. Following consultation with the Security Management Team the Designated Official may declare Phases One and Two at his/her own discretion and notify the United Nations Security Coordinator (UNSECOORD) accordingly. Phases Three and Four, normally, will be declared by the Designated Official only with the authorization of UNSECOORD; and Phase Five normally will be declared by the Designated Official only when the authorization of the Secretary-General has been obtained through UNSECOORD. Phases may be implemented in sequential order or as the situation dictates. Situations may occur where one part of the country is under a different phase than the remainder of the country. A return to normal may be implemented by the Designated Official with respect to Phases One and Two. An example of this is Kenya where the UN in Nairobi operates normally under a Phase One, but then in August 2010 during the Constitutional referendum it was upgraded to Phase Two because of the threats of political violence, but then shortly returned to Phase One again when this violence didn't materialize (Bukovac, 2010). If Phases

[33]Phase Information is summarized from the UN Field Security Handbook: System-wide Arrangements for the Protection of United Nations Personnel and Property in the Field (United Nations, 2006)

Three, Four or Five have been implemented, the decision to return to a lower phase can only be taken by UNSECOORD on the advice of the Designated Official. These security phases can be described as follows:

No Phase – No Threat, no restrictions

Phase One (Phase under which Nairobi operates) - Precautionary to warn staff members that the security situation in the country, or in a portion of it, is such that caution must be exercised, and they should take action as outlined for this phase, as well as be prepared to take action as outlined for subsequent phases.

Phase Two (Phase under which Timor-Leste Operates) - Restricted Movement will be declared to signify that the situation warrants a much higher level of awareness and preparedness than the precautionary phase and to impose major restrictions on the movement of staff members and their eligible dependants who may be directed to remain at home unless otherwise instructed.

Phase Three (Phase under which Dadaab Operates) – Relocation: The authorization by the Secretary-General for the declaration of Phase Three enables the Designated Official and Security Management Team to initiate the implementation of any or all of the following actions: Initially, the temporary relocation of all internationally recruited staff members and their families, (if present), to one or more secure concentration points inside the country. The temporary concentration and/or internal relocation of all nationally-recruited staff and their eligible dependants, if they wish to avail of this option. If the security situation warrants, the evacuation outside the country of all eligible dependants of internationally-recruited staff members and/or non-essential internationally-recruited staff members, together with their spouses and eligible dependants.

Phase Four (Phase under which Kandahar in Afghanistan operates) –The authorization by the Secretary-General to declare Phase Four enables the Designated Official to evacuate outside the country of additional internationally-recruited staff members. The purpose of Phase IV is to limit the numbers of international staff members at the duty station to those vital for emergency, humanitarian relief, security operations or any other operation deemed essential by the Secretary-General. All other internationally-recruited staff members who heretofore were involved in the maintenance of programme activities will be relocated at this time.

Phase Five (Phase under which Somalia operates) – The authorization by the Secretary-General for the declaration of Phase Five signifies that the situation has deteriorated to such a point that all remaining internationally-recruited staff members are required to leave, without exception.

4.3 Bandits (Shiftas)

Because of the insecurity and remoteness of Dadaab and the surrounding areas, armed bandits known locally as shiftas, operate more or less freely. These shiftas operate on the roads and near the camps where they are feared for stealing cattle and raping women who go out of the camps to collect firewood with many attacks even occurring inside the camps. According to agency staff, refugees and other local informants, the bandits who plague the Dadaab area are a mixture of local Kenyans, Somali refugees and, less frequently, Somalia-based militia members engaged in cross-border raids. They move on foot, in groups of between five and twenty-five, carrying firearms and knives and wearing masks to avoid identification and frequently engage in gang-rapes, using extreme violence to subjugate their victims (Crisp, 2000b, p. 606).

During my time in Dadaab there were numerous reports of incidents involving shiftas. For example in July 2010 seven Somali Asylum seekers travelling from Mogadishu comprising of one deaf child, four women and two male adults were attacked on the way to Dadaab, robbed and sexually assaulted. However, on this occasion in a rare development the Kenyan police at Bangale apprehended two suspects and charged them with robbery with violence, attempted rape and indecent assault. The asylum seekers were assisted by UNHCR and transported to Dadaab for registration, medical treatment, psychosocial counselling and support (Bukovac, 2010). In September, on the Dadaab/Liboi road, four shiftas ambushed a truck that was travelling to Liboi and robbed the driver and passengers of a substantial amount of money, while a taxi that was travelling between the camps refused to stop for shiftas was then machine gunned and a refugee mother killed (Bukovac, 2010).More recently, during an August 2011 visit to Dadaab by Jill Biden the wife of the US vice president; newly arrived Kadija Hassan Ali recounted the horror of her journey from Mogadishu with her six children. As they headed for Dadaab shiftas hijacked the vehicle they were travelling on with two dozen others. All their possessions were stolen and her two teenage daughters and a niece were raped. ‘I left Mogadishu when my husband and son were killed, we were looking for safety, I could not imagine such a thing would happen’ she said (McConnell, 2011b).Past

research by Cindy Horst and Awa Mohamed Abdi, as well as conversations I had with many refugees and aid workers while in the camps, indicates that refugees within them also live in fear of the Shifta, who also operate there with significant impunity.As Abdi says:

> During this fieldwork, such rapes occurred where the perpetrators went to specific houses, demanded jewellery, money, and even usurped the food, sugar, and flour that were in the house. There exist many other accounts where refugee women were forced to carry the rations that were donated that week, and subsequently raped, and at times, killed by the Shifta(Abdi, 2006, p. 240).

Horst when conducting interviews asked how the shifta knew that certain refugees had money. The respondent answered:

> They know, the bandits live in Dadaab and in the blocks, so they know which refugees are working and where everybody goes to and comes from. The bandits have associates standing near the bus station to be able to recognize exactly who is leaving and who is coming to Dadaab and what those coming to the camps are carrying. If a refugee comes with the bus from Garissa or Nairobi carrying something that might be of interest, he can generally expect visitors the same night. someone receives money from the Xawilaad, the bandits will soon be at his or her doorstep (Horst, 2007, p. 90).

The question must be asked of how these shiftas operate within and around the camps so freely. One widely held belief by refugees is that Kenyan police stationed in the camps responsible for keeping the peace and security in the area, fear these shiftas, and it is for this reason that the police never venture into the camps at night, and therefore do not provide protection to refugees (Abdi, 2006, p. 239). Moreover refugees allege that they are not only terrorized by shiftas, but also greatly mistrust and fear the Kenyan police because of them perpetrating rapes and violence against women refugees, and refugees in general (Simpson, 2010). As well as this Jeff Crisp also identifies a number of social and cultural factors why refugees are often unwilling to give evidence against suspected criminals. Firstly, bandits and other wrong- doers tend to be protected by other members of the same clan or community. Secondly the notion of 'Diya'[34]or 'blood money,' is a central feature of Somali culture, allowing individuals to buy exemption from criminal acts. And thirdly, the criminals

[34] Somali society, that is the clan-based system, relies on a combination of Islamic sharia law and customary law, known as Xeer. One of the principles of Xeer law is the collective payment of diya (or blood money), usually paid with camels and other livestock for death, physical harm, theft, rape and defamation.

and their clansmen often use violence and the threat of violence to intimidate potential witnesses. As a result of such intimidation, coupled with the absence of effective witness protection procedures, many refugees are reluctant even to enter a police station (Crisp, 2000b, p. 620).

4.4 Islamists/Militias

Islamists such as al Shabaab and Hizbul Islam have operated in Dadaab and the NEP for some years with rivalries between them often turning violent. Because of the rivalries between the two, gun battles have spread to Dadaab on a number of occasions. One such example was in September 2010 when significant fighting led to militiamen turning up at the MsF hospital in Dagahaley with gunshot injuries (Bukovac, 2010). These gun battles between the Islamists were very common in Dobley, the Kenyan border town of Liboi and the areas surrounding the camps, until the 19 December 2010, when al Shabaab having emerged as the main Islamist militia in the area (and Somalia) after Sheikh Hassan Dahir Aweys, the leader of Hizbul Islam, merged his forces with Al Shabaab (Roggio, 2010).

In February 2010, Al Shabaab allied itself with al Qaeda with the stated aim of establish an Islamic state in Somalia and fighting for Muslims across East Africa. In its statement the group said it was 'connecting the horn of Africa jihad to the one led by al Qaeda and its leader Sheikh Osama Bin Laden'(Childress, 2010). This was seen by many observers as a dangerous development because it signalled a tightening grip of the more extreme foreign fighters within Al Shabaab as was borne out by the Al Shabaab bomb attacks in Kampala, Uganda in July 2010 which killed 74 people (Aljazeera, 2010). This was of particular concern to the Kenyan government who had hundreds of thousands of Somali refugees in Dadaab and feared that it would be used as a staging post for large-scale attacks within Kenya. A recent opinion piece in one of Kenya's largest newspapers the Daily Nation went as far as comparing Dadaab with the refugee camps set up in Goma in the aftermath of the Rwandan genocide saying:

> In Goma, so-called refugees regrouped to organize their next offensive. In return, they got free food, medical care and shelter from the United Nations. Dadaab presents a huge threat to Kenyan security. Like Goma, the refugee camp is probably crawling with militia. What better way for al Shabaab to penetrate Kenya's borders than to become refugees within our borders (Warah, 2011).

Increased activities by al Shabaab led to the kidnapping from Ifo, in broad daylight on 13th October 2011, of two Spanish Medicine Sans Frontiers (MsF) workers Blanca Thiebaut and Montserrat Serra and the shooting of their driver in the neck. A month previous to this a Kenyan driver for the aid agency CARE was also kidnapped (Ombati, 2011b). In January 2012, it was reported that al Shabaab sold the MsF workers to pirates for $100,000 each and they are now being held in the pirate town of Harardhere on the coast of Somalia (McConnell, 2012). These kidnappings as well as the kidnappings of two other Europeans from holiday resorts in Kenya was seen as an considerable escalation of operations by Al Shabaab and thus an unacceptable security threat by the Kenyan government. As a result the Kenyan military invaded Somalia on the 16th October, seizing a number of towns, which were previously held by al-Shabaab militants, some 100 kilometers inside Somalia declaring that they will advance as far as Kismayo in its operation to wipe out al Shabaab in the region (McGregor, 2011). Al Shabaab has predictably vowed revenge, and has in the past shown its capability of striking foreign targets such as Kampala. Already in Nairobi, on 26th October there were two grenade attacks, one an attack on a bar and the other at a bus stop, both which injured a total of 30 people (Pflanz, 2011). In Dadaab the security situation has deteriorated massively as Al Shabaab attacks have intensified and become more sophisticated and lethal. Some of these attacks on civilians, police and humanitarian convoys include:

- On 28th October four police officers from the specialized General Service Unit (GSU) were injured when unidentified gunmen blew up a Kenyan security vehicle on the Garissa –Dadaab road (BNO News, 2011).
- On November 5th a UN convoy struck a bomb buried in the camp, but it did not explode, however, a few miles away, on the same day, two people were killed in a grenade attack on a church in Garissa (Aljazeera, 2011).
- On 15th November a remote-controlled bomb blew up a police vehicle escorting a U.N. humanitarian convoy just outside Hagadera, wounding two private security guards and two police officers (Yussuf and Ali, 2011).
- On the 5th December a police officer was killed and three others seriously injured in an explosion within Ifo Camp while escorting United Nations officials to the camp (Ombati, 2011a).
- In Hagadera on 20th December a landmine killed yet another police officer and seriously injured two more (BBC News, 2011a).

- In Garissa on New Year's Eve a gun and grenade attacks at New Year revellers in two bars, killed five people and injured over 28 (ABC News, 2012).

As well as these attacks, al Shabaab has also moved to strengthen its position in the camps, break down security cooperation structures, isolate refugees further and strike fear into the population by targeting refugee leaders involved in community policing and peace activities. Ahmed Mahmoud Mohamed, Community Peace and Security team (CPST)[35]chairperson for the Hagadera camp, was shot dead on 29th December, 2011 near his house as he returned home in the evening, while the CPST Chairperson for Ifo camp was shot and killed on 1st January 2012 (XINHUA, 2012). The ability of Al Shabaab to operate within the camps and the surrounding areas such as Garissa seems to confirm the fears of many Kenyans who believed that Dadaab was being used as a base for militants. The truth however is more complicated. While it's true that al Shabaab operate in the camps they are not supported by many of the refugees. In fact after the kidnapping of the MsF aid workers there were anti al Shabaab demonstrations held in the camps because of the subsequent curtailment of aid by UNHCR due to the insecurity. It's much more likely that out of a population of 463,000 there are a small number of trained fighters operating in and around the camps supported by a minority of refugees and protected through clan allegiances while the rest of the population live in fear of them due to the serious lack of security there. Nevertheless, these fighters and their supporters have caused considerable damage, suffering, fear and chaos as well as proving to be ruthless and a serious threat to security in Dadaab.

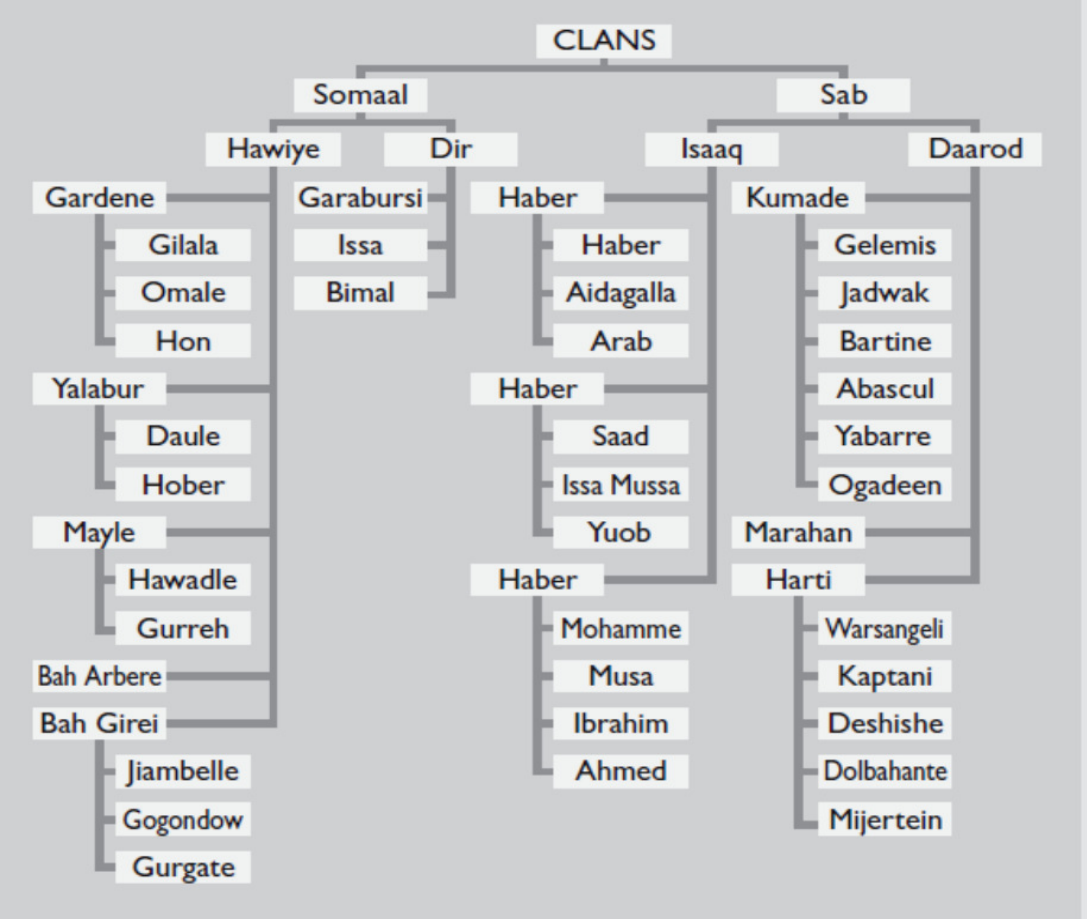
4.5 Interclan Violence

The clan system is an integral part in Somali society permeating through all aspects of religious, social and cultural traditions as well as influencing all aspects of Somali life. John Drysdale a former colonial British officer who served as a UN political advisor in 1993 noted that:

> The Somali clan system cannot be eradicated because it's the one and only safety net for those who lack financial independence. Without a clan there is a frightening insecurity. A clan is similar to a large club of like-minded trustworthy members; each of whom collectively offers other members; inter alla, insurance cover against

[35] The CPST is an LWF community policing initiative supported by UNHCR and the Kenyan police but organized by the refugees themselves to try keeping the camps safe .The teams patrol the camps day and night, and are called in to solve various problems ranging from queue jumping to attempted rape, from theft to encroachment on allocated plots.

hard times and without a premium. There is no age limit and no selection process. It is the birth right of those who see themselves as an elitist group of people each having a distinctive pedigree. No wonder boys and girls, at a tender age, have to recite without hesitation their genealogy along the male line to a distant patriarch, some twenty even thirty generations back. Membership is secure for life (even in death the clan or subclan buries them) and in return for solidarity, loyalty to the point of sacrifice is expected and is freely given (Drysdale as quoted in Janzen et al., 2001, p. 30)



The Somali Clan Structure (Møller, 2008, p. 11)

The Somali clan system is a double-edged sword as it can be a force to do both good and cause destruction. In Dadaab new arrivals with nothing but the clothes on their backs have been taken in, fed and looked after by strangers who were from the same clan,

even after land ran out in the camps in 2008. On the other hand, however, arguments between two women from two subclans at water points have in past turned into full scale riots as clan members across the camps become involved. Fitzgerald asserts that the Somali clan organization 'is an unstable, fragile system, characterized at all levels by shifting allegiances' (Fitzgerald, 2002, p. 47). This segmentation can even go down as far as the household level with the children of a man's different wives sometimes turning on one another on the basis of maternal lines. Power is exercised through temporary coalitions and ephemeral alliances between lineages and these given alliance fragments into competitive units as soon as the situation that necessitated it ceases to exist. The meaning of this segmentation or shifting alliances of Somali clan is captured in the Bedouin saying:

> My full brother and I against my half-brother, my brother and I against my father, my father's household against my uncle's household, our two households (my uncle's and mine) against the rest of the immediate kin, the immediate kin against non-immediate members of my clan, my clan against other clans, and, finally, my nation and I against the world (Fitzgerald, 2002, p. 47).

In Dadaab the main clans that are prominent in the camps are the Darod clan and its numerous sub-clans including the Marahan, Majerteyn, Ogaden, Dolbahante and Warsengeli (UNHCR Sub Office Dadaab, 2011d, p. 2). Shifting allegiances as well as inter clan rivalries can often explode and turn violent. For example, in 1999, a dispute over grazing rights between the Sheikal and the Auliyan, both of them sub-clans of the Darod clan, led to six Auliyan, four men and two boys aged 15 and 17, being tied to trees and shot just outside Hagadera camp. The killings triggered off a series of violent incidents between the subclans which left 25 people seriously injured and 91 homes burnt (Ngunjiri, 1999). More recently, in October 2010, a clash between members of the Abdiwak and Abdalla clan in Garissa left four people dead, many more injured with the violence becoming so serious that parts of Garissa was put under curfew and police reinforcements from the General Service Unit police unit drafted in (Bukovac, 2010).

With 444,000 Somali refugees in Dadaab (UNHCR, 2011f, p. 2) all of who have clan or subclan allegiances, interclan conflict and violence remains a serious security and protection concern.

4.6 Ethnic Violence

While many refugees are afraid of conditions in the camps because of generalized insecurity, some individuals and groups fear the camps because their ethnicity or their previous political or religious affiliations make them targets for on-going persecution. Refugees often bring the prejudices and conflict plaguing their home countries with them to refugee camps and the resulting violence and discrimination can sometimes make life in the camps unbearable for at-risk or minority groups (Parker, 2002, p. 129). Although 96% (444,033) of the refugee population of Dadaab is Somali, the other 4% (19,474) is made up from a number of other ethnic groups: Ethiopian, Sudanese, Congolese, Rwandan, Eritrean, Burundian and Ugandan refugees, with the Ethiopians being the largest ethnic group out of these with a population of 18,123 (UNHCR, 2011f). In general there is little interaction on a regular basis between the groups as they live in noticeably separate blocks where they practice their separate traditions. However, some inter-ethnic encounters do take place as people interact in the market, at the water points, at the food distribution centers, UNHCR field offices and at the hospitals and health posts. Some of these encounters, such as in the areas of trade and commerce are generally positive, but some of them can be negative and indeed on occasion lead to conflict and violence. For example some Ethiopian refugees, the great majority of whom are young men who arrive in Dadaab alone sometimes find wives among the Somalis. These women, although rejected by their own kind (Somalis) are often then the source of conflict as Somali gangs on occasion enter the Ethiopian quarter to take back women from their ethnic group by force, leaving the children to be raised by the husband as they are seen as illegitimate since they are not Somali by patrilineal affiliation (Agier, 2011, p. 144).

A particularly violent example of ethnic conflict occurred during my time in Dadaab when a Somali boy Abdullahi Mahmud Osman aged 13 was stabbed to death in Hagadera camp on 13th July and his body dumped at a Block occupied by the Sudanese population. A rumour quickly spread amongst the Somalis that his liver and kidneys had been removed by the Sudanese for the purpose of witchcraft (a fact the post mortem proved to be untrue). A mob of a few thousand Somalis surrounded the Sudanese block and proceeded to attack the inhabitants and burn their shelters as well as attacking the police and UNHCR when they tried to intervene. The police were forced to use tear gas and live rounds with UNHCR having to evacuate the entire Sudanese population of 227 refugees with only the clothes that they were wearing to the transit centre, adjacent to Ifo camp, for their safety, as the Somalis were looking for revenge in Hagadera camp. 31 injured Sudanese refugees were

treated in Ifo hospital after arrival in the transit centre with a number of Somalis treated in Hagadera hospital, some for gunshot wounds. Because of the rioting humanitarian activities in Hagadera had to be curtailed for three days as UNHCR, the police, refugee and host community leaders tried to calm the situation. As calm was restored it became clear that the burnt out Sudanese block was after been looted and Somali refugees were already starting to move in to the plots within them in an effort to claim them. This set off alarm bells for the authorities because of the fear of this happening in the other camps as a form of ethnic cleansing or a land grab strategy, and as a result on 19th July the UNHCR Representative in Kenya Ms Liz Ahua and the Commissioner for Refugees from the Department of Refugee Affairs Mr. Peter Kusimba came to Dadaab together to survey the damage in Hagadera and to meet all the refugee leaders from all the ethnic groups to ensure that peace was restored (Bukovac, 2010).

Because of the tension and boredom that continuously exists in the camps, bubbling below the surface, incidents with ethnic undertones have the potential to turn violent, and if not resolved quickly, have the potential to turn into full scale rioting. Thus ethnic conflict and violence remains a serious security and protection concern.

4.7 Youth in Dadaab Camps

> If we can't get a secondary education and can't get a job, where will we go? Al-Shabaab has people recruiting here. They are offering money. Some boys who haven't been able to continue their education have already left the camp to go back to Mogadishu and fight

Young male refugee, Dadaab (Education For All: Global Monitoring Report, 2011p, 163)

Because of the complex emergency that is on-going in Somalia, and the protracted nature of the humanitarian operation in Dadaab, a whole generation of children have now grown up in the camps with 58% (267,027) of the population presently under the age of eighteen (UNICEF, 2011, p. 3). For the majority of the youth in Dadaab, life is harsh, as unemployment, aid dependence and lack of opportunity leads to frustration and boredom. As well as this, many of these young men and women have been traumatized by conflict, loss and abuse, especially some of the new arrivals who have witnessed terrible atrocities in Somalia. This boredom, coupled with frustration and lack of hope leads to a tension in the camps which is a very dangerous thing. With tens of thousands of young people 'hanging

around' with nothing to do, all it takes is a minor spark to set off an explosion of violence. For example, during my time there, on 2nd April 2010, refugees rioted during food distribution and later looted the CARE warehouses as a result of an alleged assault on a youth by a policeman. Rumours spread throughout the camp that the youth was after being beaten to death and a riot was sparked. A police vehicle was burnt with six police officers and about 40 refugees injured many after being shot by police. Also, thousands of dollars' worth of damage was done and food distribution had to be suspended for two days for safety reasons (leading to families going hungry), until calm was restored with the assistance of the camp elders, religious leaders and community activists(Bukovac, 2010).

Police keeping watch at the Food Distribution Site in Ifo camp shortly after the riots in Dagahaley in April 2010



Photo: Damien Mc Sweeney

Another example occurred in July 2011, when rioting broke out in Dagahaley, after police sought to disperse a crowd that was protesting against an attempt to demolish illegal structures, causing obstruction around a food distribution point. The police and officials had to retreat to the Dagahaley police post and call for reinforcements from the other camps when the rioters threatened to invade the post. Teargas and later live rounds were used leading to the deaths of two refugees and the injury of a dozen more (United Nations News Center, 2011).

This boredom and anger can also sometimes result in young men engaging in banditry in and beyond the camps, dangerous and anti-social behaviour, abuse of drugs such as Miraa (a mild amphetamine), and even returning to Somalia to find employment with cross-border traffickers or warlords. As well as this there have been reports by Human Rights Watch of active recruitment by the Islamist group Al Shabaab and the TFG in the camps with reports of recruiters to the TFG promising an initial payment of $400-$600 for the training itself, to be followed with a generous monthly salary on deployment to Somalia. For a young man with no job and no money, trapped in a refugee camp with very little to do, this would be both a fortune and an opportunity for escape (Human Rights Watch, 2009). These reports have generated significant concern amongst the international community with US Deputy Assistant Secretary Reuben Brigety, the top official in the U.S. State Department's Bureau of Population, Refugees and Migration (BPRM), while on mission to Dadaab in March 2010 announcing that the Obama administration was very concerned about reports that Dadaab was being used to recruit combatants for Somalia's warring groups (Bukovac, 2010).

As earlier mentioned, the Kenyan government maintains and enforces a strict encampment policy towards refugees, effectively imprisoning people in the Dadaab camps as they are not allowed to integrate with the local community, leave or work outside the camps. The youth in the camps, many of them born in Kenya but not recognized as citizens, are the most affected: stateless, feeling trapped, disillusioned and frustrated resulting in some of them taking their chances and leaving to travel to Nairobi to escape the monotonous and at times dangerous life of the camps, where there is little to do other than depend on humanitarian assistance. They go there to try to find job opportunities and in some cases, to keep in touch with relatives and friends in diasporas. However, they are there illegally, often living in squalid housing conditions, frequently without access to food, clean water, medical care, jobs, or education. Many women and children are subjected to sexual abuse, and all refugees are in danger of Kenyan Police harassment, violence, imprisonment and extortion

and in some cases when there is no money for bribes, refoulement (Burton Wagacha and Guiney, 2008)

Dagahaley Youth Leaders after presentation of tee shirts and footballs for their Youth League in September 2010



Photo: Damien Mc Sweeney

However, despite the bleak picture for the youth of Dadaab, not everything is disheartening. For example, the youth have organized themselves into over 100 groups, registered under youth umbrellas in each camp and are engaged in various sporting and livelihood activities, as a means of empowerment and to ensure that they representation and inputs into the decisions that affect their everyday lives. Because I built up an excellent working relationship with many of the youth leaders, on a number of occasions they contacted me in relation to people under threat or with protection issues in the camps. For example, in September 2010, one youth leader requested that I meet him at his house in the camps. When I arrived, he was hiding a 15 year old boy who was after suffering the public amputation of his right hand by Al Shabaab in Somalia and was now on the run from them. On my inspection it was clear that he was in need of immediate assistance as the stump was not after healing properly and he was suffering from obvious Post Traumatic Stress Disorder.

Medical attention was organized and UNHCR protection unit intervened (as he was still a child) to ensured his safety and wellbeing. This sort of relationship building, cooperation and coordination on a personal, professional and localized level quite possibly saved this youth from further harm and is extremely important in humanitarian emergencies. However, unfortunately in many situations these key relationships are overlooked as 'humanitarians' prioritize other activities, often without even consulting with the very people that they profess to be assisting. These youth activists are educated, proud and passionate and will hopefully in the future play a significant role in the rebuilding of their country.

Despite this however, the massive influx of 2011 has brought many more youth into the camp, the majority traumatized and troubled because of the conflict they are fleeing and the fact that many have lost family members in terrible circumstances. These are used to violence and the rule of the gun, are unfamiliar with procedures in the camps and often have little respect for either the police or refugee leaders or elders. They will add to the already serious, security and protection concerns in relation to the youth in Dadaab.

4.8 Gender Based Sexual Violence (GBSV)

Gender Based Sexual Violence including rape, domestic violence, underage marriages, abductions and other forms of gender-prescribed discrimination is endemic within and around the Dadaab camps. Shiftas operating in and outside the camps frequently engage in gang-rapes, using extreme violence to subjugate their victims (Crisp, 2000b, p. 606), while similar tactics are used by rival clans who employ rape as a weapon of war and an act of aggression by one clan or sub-clan against another(Mogire, 2011, p. 68). Refugee Leaders and aid workers interviewed in Dadaab have spoken of rape victims being asked which clan they belonged to before being raped with women and girls from particular clans such as the Somali Bantu often singled out (Mogire, 2011, p. 68).As well as this there have been numerous reports by organizations such as Human Rights Watch and Amnesty International accusing the Kenyan security forces of the sexual assault, rape and robbery of refugees.[36]The

[36] See:
Amnesty International (2010). From Life without Peace to Peace without Life: The Treatment of Somali Refugees and Asylum-seekers in Kenya. Amnesty International
Simpson, G. (2009). *From horror to hopelessness: Kenya's forgotten Somali refugee crisis*, Human Rights Watch.
Simpson, G. J. (2010). "Welcome to Kenya": police abuse of Somali refugees. Human Rights Watch.
Human Rights Watch (2011c). "You Don't Know Who to Blame" War Crimes in Somalia. New York: Human Rights Watch.

degree of physical pain, suffering and psychological trauma inflicted by these rapes are also intensified by the type of genital mutilation practiced by the Somalis, which involves sewing up the genitalia, so rape survivors may literally have been cut open by their assailants, using daggers or bayonets (Crisp, 2000b, p. 606).

These incidents are very often not reported because of stigmatization and shame, and because women do not feel safe enough to report them. Many women have been threatened by their assailants and told that if they report or divulge information about the incident or the identity of the assailant, he will come after them again. The police are often seen as part of the problem, rather than the solution with inaction or complicity with bandits and rapists cited by many refugee women as a main reason for not wanting to report to the police (Horst, 2007, p. 88). As well as this, in the climate of insecurity and fear that exists in the camps justice for survivors of rape is seriously obstructed by an absence of effective arrangements for witness protection, the fear of revenge attacks, the shame experienced by women who have been raped and the reluctance of women to give evidence in court (Crisp, 2000b, p. 622). Sometimes if the identity of the rapist is known the woman's clan may invoke Somali traditional Xeer law, insisting on the payment of Diya (blood money) by the rapist's clan. However, this system of justice often actually adds to the insecurity experienced by members of the refugee population, especially women because the settlements reached under Somali customary law as interpreted by the refugee elders in Kenya seldom, if ever, benefit the survivor of sexual assault. She is usually coerced into a 'marriage' with the rapist, or if the men of her clan or family receive compensation, she is not permitted to access it (Crisp, 2000b, p. 605)

Young women within the camps face the burdens of domestic work, cooking, fetching water and firewood as well as looking after younger siblings. Many also face the additional hardship of being married off as young as 15 for bride dowries to support their families. Reports of older Somali men, living overseas, coming to the camps to find young Somali women 'untainted by western influences' to marry are commonplace, with the dowry paid to the family of the bride as much as 50,000 Kenyan Shillings, approximately €417 (Markham, 2011). To impoverished families that have lost everything, this is often enough for them to marry their daughters to strangers. They also face very early pregnancies with all the health associated issues, domestic violence and lack of education opportunities with the enrolment rate for girls being about 22% (UNHCR Sub Office Dadaab, 2011d, p. 10).

A number of initiatives have been established to try to reduce the incidence of GBSV such as the firewood project implemented by GIZ (formerly GTZ). As women fetching firewood for cooking are often raped by bandits this project contracts the local communities neighboring the refugee camps in the gathering and transporting of firewood to the camps where it is stockpiled at a GIZ compound for distribution to the refugees. It aims to reduce GBSV on women and children by providing firewood in a sustainable manner as humanitarian assistance to help cook the food distributed by the WFP (Gitau, 2011, p. 2). However, while it may have had a small effect on the problem the fact remains that even before the 2011 influx the organized supply had only averaged 11% of estimated consumption in the camps (Enghoff et al., 2010, p. 77), meaning that the vast majority of women continue to travel miles outside the camps risking rape to gather firewood.

As well as this project, other initiatives organized by UNHCR and its partners include information campaigns, gender-awareness activities, gender-sensitization workshops, anti-rape committees, gender mainstreaming activities, counseling, legal assistance (by UNHCR Protection Unit) and medical examinations. However, despite this, there continues to be widespread sexual violence against women. Verdirame is highly critical of the attitudes and inaction of the agencies in Dadaab towards GBSV asserting that they only 'paid only lip service to the right of women to physical safety' as well as exacerbating the situation in some cases, not only by ignoring the consequences of encampment, but also by establishing ineffective structures and reinforcing the position of the elders (Verdirame et al., 2005, p. 148), who condone many of the aspects of GBSV such as Female Genital Mutilation (FGM), child marriage and domestic violence. He also believes that the Dadaab camps:

> Like prisons, are institutions that generate certain types of violence, within an artificial community, characterized by unemployment, lack of future prospects, total dependence on insufficient food rations, and at times, by a preponderance of single and often young men, it is hardly surprising that rape becomes endemic (Verdirame et al., 2005).

In England estimates from research suggest that between 75 and 95 per cent of rape crimes are never reported to the police (Her Majesty's Crown Prosecution Service Inspectorate, 2007, p. 8). While not belittling the horrific nature of rape there, these percentages are without the additional concerns of the social stigma in Somali society, the fear of the police and revenge attacks by rival clan members or shiftas which is prevalent in Dadaab. This would suggest that the figures reported in Dadaab could be even worse. The

massive 2011 influx of 154,000 people has further exasperated the already dire problem of GBSV with refugees living in illegal settlements outside the camps and in the three new sites (Ifo West, Ifo East and Kambioos) even more at risk because of their remoteness and isolation, their lack of infrastructure and resources as well as their lack of security and police posts. In addition to this, the recent attacks in the camps by al Shabaab and the subsequent curtailment of the humanitarian operation have led to an even further deterioration of conditions and further insecurity. From the January to June 2011 alone, there was a 477% increase in the number of GBSV incidents reported with 358 in comparison with 75 reported during the same period in 2010 (UNHCR Sub Office Dadaab, 2011a). If the figures from the English Crown Prosecution Service are to believed, these 358 cases are only the tip of the iceberg, with thousands more, in a serious display of a lack of security and protection, going unreported.

4.9 Host Community Tensions

In Dadaab, the distinction between refugees and the host community is in many ways a fuzzy one, as most of the people living in and around the camps share a common language and culture, and belong to clans which straddle the border between Kenya and Somalia (Crisp, 2000a, p. 58). However, in spite of this shared ethnicity, relations between the two groups are nonetheless characterized by tension and sometimes violent conflict. Some of the causes of these tensions include the fierce competition over access, control and management of scarce natural resources, especially pasture, water and firewood, the issue of environment destruction by refugees, inter clan rivalries and resentment over the provision of aid by UNHCR and its partners to refugees but not to the host community (Mogire, 2011, p. 69 - 76).

As well as that, cultural differences and misunderstandings between the host community and ethnic minority refugee groups and the humanitarian agencies have also led to tension. While the majority Somali refugees share cultural affinities with the locals, the same cannot be said of the other refugee groups in the camps such as the Sudanese, Ethiopians and Ugandans. The locals hold that many of these refugees are responsible for incidents such as rape, HIV/AIDS and prostitution, the consumption of alcohol, the playing of loud music and the introduction of Christian churches. Furthermore, what they see as the ‘scanty’ clothing worn by female agency workers and non-Muslim refugee women is viewed by the predominantly Muslim local population as immoral (Mogire, 2011, p. 76). In addition

to this, the hiring of locals for jobs with the agencies and the awarding of contracts to local businesses has also been contentious issues and a source of tension between the host community and the humanitarian community, which has on occasion turned violent. An example of this occurred in October 2009, when the International Rescue Committee (IRC) the IP responsible for the hospital and health programmes in Hagadera had their activities disrupted and three staff members injured, resulting in the closure of their health posts in the camp for four days. This was due to harassment and intimidation of staff by members of the host community following the outcome of a selection process for nurses which was unable to award all vacancies to host community candidates due to lack of qualifications (UNHCR Sub Office Dadaab Situation Report, 23 - 29 October 2009).

Another more recent example occurred during my time in Dadaab when on 13thOctober 2010 an angry crowd gathered to protest the awarding of a contract to a Nairobi based company to provide fruit and vegetables to two of the NGOs working in the camps. These NGOs had previously dealt with a local Dadaab based business but the prices being charged were nearly double that of the Nairobi based one, and the owner of this business (a relation to a prominent local politician) would not negotiate cheaper prices. The resulting demonstration at the UNHCR compound turned violent when host community protestors set tyres ablaze, stoned NGO and UNHCR motor vehicles and prevented UN convoys going to and from the camps. Riot police had to be drafted in and intervened extremely violently making several arrests, including a former G4S security officer.

The tension between the host community and the other actors in Dadaab constantly bubbles below the surface and has the potential to explode into violent confrontation very quickly. It is another factor that contributes to the security and protection concerns there.

4.10 Security Actors in Dadaab

Kenya is a poor developing country and like most such countries its police, internal security and military forces are often poorly trained, underpaid, lack equipment and characterized by corruption and lack of respect for human rights. All these problems are then exacerbated by the situation in Dadaab where there are a number of actors involved in security and protection duties. These include three branches of the Kenyan police force: the Regular Kenya Police, the Administrative Police and the special paramilitary General Service Unit, G4S which is a

private security contractor and the Community Peace and Security Teams, a refugee based community policing initiative. In addition to this the Kenyan army is based in Liboi and along the Somali border and have in the past been deployed to the camps to support the police.

4.10.1 Kenyan Police

The Regular Kenya Police are the general duty police in charge of law enforcement and traffic control. Its mission statement is to 'provide a quality police service to meet the expectations of customers; by upholding the rule of law, creating and maintaining strong partnerships for a conducive social, economic and political development of Kenya' (Kenya Police, 2012b).

Regular Kenya Police in Dadaab September 2011



Photo: Damien Mc Sweeney

Its core functions include the maintenance of law and order, the preservation of peace, the protection of life and property, the prevention and detection of crime, the apprehension of offenders as well as the enforcement of all laws and regulations with which it has been charged (Kenya Police, 2012b).

4.10.2 Administration Police (AP)

The Administrative Police are mainly responsible for law and order in the rural areas where the Regular Police cannot reach. Administrative Police Officers are recruited from the communities in which they serve and work under a District Commissioner, who is accountable to a Provincial Commissioner. Its mission statement asserts that 'the Administration Police exists to contribute to National Development through provision of sustainable peace and tranquillity to all people in Kenya' (The Administration Police, 2012). Its core functions includes: the assistance of all Government officers in exercise of their lawful duties, the preservation of the public peace, the prevention of the commission of offences and the apprehension of offenders. As well as this the APs also acts as messengers in any matter connected with the Administration or public service and enforcement of any executive/ administrative decisions. Finally, in the event of a war or major emergency the APs can be called upon to supplement the military (The Administration Police, 2012).

Administration Police Officer on convoy Protection Duty on the main Garissa/Dadaab road which had washed away stranding the convoy for a number of hours in April 2010



Photo: Damien Mc Sweeney

There is a wide interface between the duties of the regular Kenya Police force and the Administration Police. Although the two agencies are established by different acts of Parliament, there is clearly an overlap of mandate as attested to by their mission statements,

in which they both claim to ‘maintain law and order, preserve peace, protect life and property, prevent and detect crime, apprehend offenders, and enforce the law’. However, the Administration Police have additional mandates to act as messengers in matters of public service and to defend Kenya in the event of war or emergency as well as two clear additional roles which are the patrol of borders and the security of government buildings (Mbuba and Mugambi, 2011, p. 5).

4.10.3 General Service Unit (GSU)

The General Service Unit (GSU) is a specialized mobile paramilitary police force that is separately organized from the rest of the Kenya Police and can be ‘deployed in troubled areas in emergency situations’ (Mbuba and Mugambi, 2011, p. 5). With units spread across the republic, GSU forces are self-contained, operate in the field and are provided with their personal equipment, transportation vehicles, and top-of the range communication systems.

GSU Officers on Patrol



Photo: Kabukuru 2011

GSU officers are experts in all manner of weapons, demolition, sabotage, evacuation, sniping, reconnaissance, surveillance, VIP Protection, bomb disposal, Counter terrorism, night combat, desert warfare, urban warfare, infiltration, mountain warfare, amphibious engagements and survival techniques in enemy territory (Kabukuru, 2011). It is used for the apprehension of dangerous, syndicated, or armed criminals or terrorists and its mission statement is to 'provide quality services to all and in particular render speedy, special support required by other police formations and units during operational emergencies' (Kenya Police, 2012a). Primarily, GSU was established as a reserve unit to deal with special operations and civil disorder. The Unit has however been charged with other responsibilities which include: security to the President of Kenya, security to vital installations and strategic points as well as security to foreign airlines, anti-poaching patrols, the escort of currencies, arms and ammunition as well as dealing with the most dangerous of criminals(Kenya Police, 2012a). They are based in Garissa, Liboi and along the border and are deployed in Dadaab at times when needed.

From conversations I had with Kenyans, aid workers and refugees from different communities in both Dadaab and Kakuma the GSU is especially feared because of the extreme often indiscriminate violence that they employ when deployed. Units are presently deployed with the Kenyan army along the border and in Somalia and have suffered casualties such as the four police officers that were serious injured when al Shabaab blew up their security vehicle on the Garissa/Dadaab road in October (BNO News, 2011)

4.10.4 G4S - Private Security Company

G4S is an international private security company contracted by UNHCR Kenya to provide security for all UNHCR compounds, field offices and sites throughout Kenya including Dadaab. This is carried out in collaboration with UNHCR and its implementing partners' security managers on site. In Dadaab a team of 450 G4S security personnel participate in access and registration control, patrol all compounds to ensure safety of the aid workers and property and check refugees before they gain access to UN compounds with about 90 per cent of these from the local community (G4S, 2011, p. 23). My observations and experiences with the G4S security personnel in Dadaab was not a positive one. As the vast majority of them are drawn from the host community, their first allegiance is to their local clan and local community leaders. For example in October 2010, when there was a host community riot at the UNHCR compound in Dadaab, a G4S security officer from this community, who was

working on the gates 'protecting' the humanitarian workers inside, tore off his uniform, threw it at the security manager, ran outside and proceeded to start rioting. On numerous occasions during my deployment unauthorised host community members gained access to the 'secure' compound and threatened humanitarian agency managers. As well as this, on numerous occasions I pointed out to the guards' unauthorised people wondering about the compound

G4S guard on the gates of UNHCR Field Office Ifo in 2011



Photo: LWF 2011

acting suspiciously (all visitors are vetted and given visitor tags, these people had none) with little or no action on the issue. In addition on a number of occasions during curfew at night I found many guards to be sleeping at their posts. These lapses of security could be exploited by al Shabaab to carry out a 'spectacular' attack on humanitarian workers in Dadaab, especially with all the recent insecurity, attacks, bombings and kidnappings in the area.

4.10.5 Community Peace and Security Teams (CPSTs)

The CPST is an LWF community policing initiative supported by UNHCR and the Kenyan police but organised by the refugees themselves to try keeping the camps safe. It is made up of volunteers drawn from the refugee community. Volunteers are put forward by camp

leaders and are then presented to a panel comprising of a refugee section leaders, the block leaders and the security chairperson for screening and agreement. In addition a proportion of at least 30% female volunteers must be adhered to as well as the inclusion of the other minority nationalities. Finally, the Kenya Police screens each member of the CPST teams to guarantee that individuals with known criminal records aren't selected. When accepted the volunteers undergo training in conflict resolution, communications first aid, fire safety, GBSV, the law and reporting procedures.

The CPSTs (in yellow visibility vests) on crowd control duty at the 2010 International Refugee day celebrations in Hagadera Camp



Photo: Damien Mc Sweeney

The CPST's mission is to:

> Enhance the peace, Safety and security in the camps in particular and the Dadaab Community in general, through the grass roots Community mobilization and participation; this shall be underpinned by the mainstreaming of gender and

vulnerable groups and sensitivity (Lutheran World Federation Community Peace and Security Team Manual, 2010, p. 1)

The work of the CPSTs is extremely diverse, grounded at a community level and have a positive impact on security the camps, especially in areas deep within the blocks which would never see a police patrol. According to it manual the roles and responsibilities of the CPSTs include the:

- The fostering of harmony and peaceful coexistence within the camp residents and the local community
- Community policing deep in the blocks, including amongst other things, the identification of strangers who may negatively impact on security.
- The facilitation of detailed, factual and timely reporting and documentation of GBSV and other crimes and incidents within the blocks
- The monitoring of new upcoming trends of crime
- The diffusion of conflicts at grass roots level before they escalate and spread
- The participation in all occasion/events for crowd control purposes
- The participation as a source of information dissemination to the community.
- Engage with community leaders and agency staff in handling insecurity issues and reporting the same to the police.

(Lutheran World Federation Community Peace and Security Team Manual, 2010)

During my time there I found the CPSTs to be very effective on a localized level as community mediators, in preventing or resolving conflict or especially in local hotspots such as water points and food distribution where the long hours of queuing in the hot sun often leads to tempers flaring. As they are community based they have their 'finger on the pulse' and patrol the camps day and night, solving various problems ranging from queue jumping to attempted rape and from theft to encroachment on allocated plots. In the case of serious crimes such as rape or assault they call in the Kenyan police and whom they then liaise with and assist in the crimes resolution. Because of their significant role in the security of the camps, especially at night-time when there is little or no presence by humanitarians or police in the camps, al Shabaab has begun targeting CPST leaders with Ahmed Mahmoud Mohamed, CPST chairperson for the Hagadera camp shot dead on 29th December, 2011 while the CPST Chairperson for Ifo camp was shot and killed on 1st January 2012 (XINHUA, 2012).

The CPST initiative is an important capacity building project which sees the members drawn from their own communities, with the respect of the community and the first hand, on the ground knowledge to act as mediators and as information disseminators for important issues. It also which builds community capacity, refugee policing capability and empowers refugees, especially female members of the teams who can deal effectively and sympathetically with victims of GBSV, albeit in a localized minor manner in enhancing the security and protection of refugees in the camps. The deliberate targeting and killings of two CPST leaders in December 2011 and January 2012 was an attempt to make the camps more insecure, especially at night in order to facilitate Al Shabaab operations and will obviously impact negatively on the work of the CPST's, thus further exasperating security and protection concerns there.

4.11 The Problems with the Security forces

The fact that there are two parallel police forces (Kenyan police and APs) and a mobile paramilitary force (the GSU) operating in and around the camps creates problems in terms of coordination and accountability. For example, the regular police are answerable to the Police Commissioner through a clearly laid down chain of command while the Administration Police officers are answerable to the Minister in charge of internal security through the provincial administration chain of command (Mbuba and Mugambi, 2011). This creates operational problems in Dadaab in terms of coordination as humanitarians deal with two entities and two command structures with different loyalties and priorities.

Added to this is the sheer shortage of police in Dadaab with (as of January 2012) only 349 police officers spread out throughout the camps for 463,507 refugees (Government of Kenya and UNHCR, 2011) as well as the decrepit nature of their accommodation and living conditions, lack of vehicles and equipment. In addition, there is a lack of experienced Kenyan police officers in Dadaab because very few volunteer to work in the camps because of the insecurity, remoteness and the fact that if they have family it's the choice of leaving the family behind or them living in a barracks with very little freedom of movement. As well as this there is a 'sense of punishment' in being sent there, thus because of the unpopularity of Dadaab, those policemen who are deployed in the camps are often young and inexperienced (Crisp, 2000b, p. 621). I witnessed many of these things myself while in Dadaab, including the old and rundown living conditions of the police posts, special escorts for missions being

unavailable due to a shortage of vehicles or break downs, and young inexperienced police officers violently over reacting when confronted problems.

There have been numerous reports[37] by organizations such as Human Rights Watch (HRW) and Amnesty International outlining the many abuses carried out by the police against refugees. One 2010 HRW report entitled 'Welcome to Kenya: Police Abuse of Somali Refugees' describes Kenya's police as 'notoriously corrupt and abusive' while outlining many examples of bribes, refoulement, robbery, violence, extortion, corruption, sexual assault and rape by police officers against refugees in Dadaab, Liboi and around the border area (Simpson, 2010). After the damning nature of this report the GoK set up an independent team to investigate who visited the camps when I was there in September 2010, but as of yet their findings have not been published. Further reports in 2011 suggest that nothing has changed however and the abuses continue. For example in January 2011 Human Rights Watch received allegations of Kenyan police raping a newly arrived asylum seeker. According to a journalist who interviewed the victim shortly after the incident, the victim was raped by three police officers from Dadaab police station. Police told Human Rights Watch they were aware of the case, but claimed that their investigations did not enable them to identify the perpetrators. No one was prosecuted for the crime; instead, the police response was to transfer the implicated police officers from Dadaab to other stations (Human Rights Watch, 2011c, p. 43).

During my deployment to Dadaab as I spent the vast majority of my time in the camps I interacted with both police forces on a daily basis. On many occasions I would be asked (unsuccessfully) for items by my police escorts such as cameras or IPods (never money as that would be too obvious). On other occasions they would ask visitors such as journalists or donors for items. It struck me that if police officers had no hesitation asking myself or high profile visitors for things, then refugees, especially the new arrivals had little chance of avoiding being asked for bribes. There is little doubt from my own observations and discussions with NGO workers and refugees that a significant amount of extortion and corruption occurs in relation to the police. However, this corruption is not isolated. Kenya, as

[37]See:
Amnesty International (2010). From Life without Peace to Peace without Life: The Treatment of Somali Refugees and Asylum-seekers in Kenya. Amnesty International
Simpson, G. (2009). *From horror to hopelessness: Kenya's forgotten Somali refugee crisis*, Human Rights Watch.
Simpson, G. J. (2010). "Welcome to Kenya": police abuse of Somali refugees. Human Rights Watch.
Human Rights Watch (2011c). "You Don't Know Who to Blame" War Crimes in Somalia. New York: Human Rights Watch.

a whole, rates in the top 20% of corrupt countries (154th out of 182) worldwide as per the 2011 Corruption Perception Index (Transparency International, 2011). As well as this, the Kenya Police has been ranked by Transparency International-Kenya as the most bribery prone institution in Kenya with the 2011 East African Bribery Index indicating that there was a 67% chance that you would be expected to pay a bribe every time you interacted with the police (Transparency International Kenya, 2011, p. 11). This corruption in the police force is partly fueled by the tiny wages paid them with a freshly trained police constable's starting monthly basic salary being KSh 18,155 (€163) (Zadock, 2011). Poor wages, endemic general corruption, lack of assets, poor equipment and a culture of bribes all contribute to the regular police extortion and theft from refugees in Dadaab, a phenomenon which is ignored and denied by the GoK. For example on the 22nd December 2011 spokesman for the Kenyan police in Nairobi, Eric Kiraithe stated that:

> In the past, allegations of extortion and rape were made against the police; we have learnt that this was meant to curtail our policing activities and allow those planning attacks to do so; that is why we are subjecting them to intensive policing. We want to weed out the criminal elements among them (IRIN, 2011b).

It must be said, despite the culture of corruption that exists, it would be unfair to paint all the police with the same brush. During my time there I did meet a number of police officers who were professional and interested in their job. After getting to know them I would then request these specific officers when I was organizing missions and events as I could count on the fact that they would be on time, would be in uniform (on more than one occasion some of the police escorts were wearing tracksuits), would not ask for bribes and would act professionally. Nevertheless, the fact remains the people tasked with the security and protection of the refugees in Dadaab, are sometimes the very people who cause these refugees harm.

4.12 Efforts to Enhance Security and Protection of Refugees: The Security Partnership Project

In order to enhance security and protection the GoK and UNHCR launched a joint initiative, the Security Partnership Project (SPP) to cover the refugee camps (and their extensions) in Dadaab and Kakuma, as well as reception and screening facilities, transit corridors and

surrounding refugee hosting areas, in 2010. Costed at US$18,869,057 for 2011 - 2012 the core aims of the SPP are:

1. To reinforce the security environment in the refugee camps and surrounding hosting areas with an enhanced police presence as well as through community policing;
2. To maintain the civilian and humanitarian character of the institution of asylum and refugee camps in Kenya by overseeing and managing cross-border movements of people and their property through the establishment of an operational Liboi Screening and Reception Centre at the Kenya-Somalia border;
3. To secure the humanitarian space, workers and assets for the effective delivery of essential services and material assistance to refugees.
   (Government of Kenya and UNHCR, 2011, p. 3)

The SPP initiative basically provides for the deployment of more police by the GoK while UNHCR s provides the material and financial resources necessary to support the SPP's implementation such as accommodation and office space for police staff, police vehicles as well as fuel and maintenance, communication equipment, the construction and equipping of the Liboi centre, as well as police training in refugee and humanitarian laws and an incentives scheme for the police personnel involved. It also provides extra funding for police officers on escort duties in the form of a per diem in accordance with GoK subsistence rates. It is hoped that this initiative will result in a larger, more disciplined, better equipped and funded police force more appropriate to the humanitarian context, better protection and security for asylum seekers with the presence of UNHCR at Liboi and the optimization inter-agency communication and coordination structures with the common goal of enhanced security in the region (Government of Kenya and UNHCR, 2011). The shootings, bombings and abduction of aid workers in Dadaab in 2011 led to further security challenges and as such an enhanced SPP was agreed upon with the GoK fast tracking police 92 extra police officers to Dadaab, bringing the total 349 (as of December 2011) with a further 108 due to arrive in 2012 bring the total to 457 police officers to secure Dadaab, the transit corridors and the area around the Liboi centre at the Kenya Somali border (Government of Kenya and UNHCR, 2011, p. 3).

Despite the aims of the SPP being noble and very badly needed, there are a number of problems with it. Firstly, work has still not begun (as of January 2012) on the Liboi screening centre agreed upon in 2010, one of the SPPs three main pillars. Secondly, the police to population ratio proposed, though a slight improvement is totally insufficient for the

camps. Presently (January 2012) there are 349 police officers for 463,507 refugees giving a police to population ratio of 1:1328 and when the remaining 108 officers come in 2012, this will bring the police total to 457 for 463,507 refugees, giving a police to population ratio of 1:1014. In addition, registration was suspended due to insecurity in November 2011 so the actual camp population figure, despite a slowdown in the rate of arrivals due to the Kenyan army presence on the border and inside Somalia, is higher than 463,507, resulting in even higher ratios. These are hugely short of the United Nations recommended police to population ratio of 1:450 (Nalla, 2010, p. 219). However, this figure of 457 police officers doesn't really paint a true picture of the situation on the ground in Dadaab because only half of these will be on duty at any one time as each shift needs to sleep. In addition they will be thinly spread throughout stations and police posts in the six camps and Dadaab town itself and of the police on duty, only a small percentage of them will be actually be patrolling the camps with the majority on guard duty, administrative duties, convoy duty or humanitarian escort duty meaning the impact on the security and protection situation, if any, will be very minimum.

4.13 Conclusion

There is little doubt that since its establishment Dadaab has been a dangerous place, with many issues contributing to the insecurity there. This is made more confusing and further exasperated by the fact that many of these factors are so intermingled. For example, shiftas and members of al Shabaab can be refugees or host community members as well as being members of clans or subclans who in turn are often defined by shifting allegiances. In addition a significant amount of violence, insecurity and protection concerns can be traced to the effects of the GoK encampment policy which basically imprisons refugees in the camps, the vast majority unemployed with a lack of future prospects and dependence on humanitarian aid. This leads to boredom, criminal activity, sexual violence, substance abuse, domestic violence and a tension that consistently simmers below the surface that can explode into a full scale riot with extreme speed. In addition to this the police who are tasked with the protection of refugees are sometimes the very people robbing, beating, raping and extorting them.

As well as this, the recent October 2011 incursion by the Kenyan army with the subsequent gun and bomb attacks by al Shabaab in the camps and the NEP has added a further dimension to the insecurity there. Coupled with this the scaling back of humanitarian

operations by UNHCR and its partners have left a shortage and significant gap of humanitarian workers on the ground to insure that infringements of IHRL and IRL isn't occurring, at a time when they were never more needed. Attempts to address the security and protection concerns of the refugees in the past have had little long term impact because of the lack of long term planning and strategies, the lack of international support, the lack of resources, the massive number of refugees involved and the insistence of the GoK on the short term nature of the camps.

The new enhanced SPP is a commendable initiative and will hopefully have some positive impact but with key pillars such as the re-establishment of the screening centre in Liboi not even been commenced, nearly two years after the SPP's inception, it will not be enough. As well as this, the SPP only addresses things on a material; resource based level and doesn't look at the bigger picture. Even when all the extra police and equipment arrive, the problems of police abuse and corruption will remain. The frustration and helplessness of refugees because of the lack of security and protection is aptly summed up by refugee elder Mama Nahwo Sirat who says:

> There is nowhere to run; on one side, we are threatened by the fear of the unknown Al-Shabaab, who are said to be in the camps, and on the other side we are being harassed by the police, I pray to God that we find a way out of this bad situation (IRIN, 2011b)

This chapter has investigated in great detail the many threats and vulnerabilities faced by the inhabitants of Dadaab which sets the tone for the security and protection analysis in the next three chapters using the three pillars of humanitarianism as a framework. The first pillar, humanitarian assistance/response, deals with the issues of aid, its appropriateness, timeliness, funding mechanisms, standards, accountability, impacts and reforms and will be utilized for analysis in the next chapter (five). The second pillar, international law deals with three separate but often related bodies of law: international humanitarian law, international human rights law and international refugee law and will be used to analyse security and protection concerns in chapter six, while the third pillar, humanitarian intervention/R2P will be employed for analysis in chapter seven.

Chapter 5

Dadaab and Humanitarian Response/Assistance

Because of its core mandate for the protection of refugees, UNHCR is the overall coordinating body amongst the stakeholders for the humanitarian response in Dadaab. As both a PRS and a complex emergency, the assistance that Dadaab receives is diverse, multi-faceted and a mixture of humanitarian aid and development aid. Due to the crisis's complexity, prolonged and indefinite duration as well as the fact that the GoK considers the camps as temporary and Kenya itself as only a transit country (Pavanello et al., 2010, p. 28), a smooth or automatic transition from humanitarian emergency to recovery and rebuilding to normal development is all but impossible. The needs and priorities of the population in Dadaab are diverse and numerous, with responses ranging from immediate lifesaving interventions, to the longer term support for infrastructure, health, education, livelihoods and services. Quite apart from issues concerning humanitarian principles, this raises difficult questions as to how the different aims and objectives of the many stakeholders should relate to each other at a technical and managerial level, especially when some agencies are concentrating on the immediate emergency needs and others are concentrating on the longer term developmental needs. This chapter will utilize the first pillar of humanitarianism (humanitarian response/assistance) to frame the analysis of security and protection of the vulnerable population in Dadaab.

5.1 Funding for the Dadaab Operation

One of the constraints faced by UNHCR is the limitations placed on its financial autonomy since its inception. Paragraph 20 of its Statute states that UNHCR is only to receive financial support from the United Nations budget to cover administrative expenditures relating to the functioning of the Office, and that 'all other expenditures relating to the activities of the High Commissioner shall be financed by voluntary contributions'(Loescher et al., 2008, p. 14).In this way, UNHCR is financially dependent on donor governments which impacts negatively on the organization's independence and ability to function. In fact a major 2006 UNHCR report *The state of the world's refugees 2006: human displacement in the new millennium* stated that UNHCR has continuously lacked sufficient core funding because nearly 85 per cent of the contributions to it have been earmarked, reducing the organization's flexibility, weakening its ability to balance financing between regions, countries and emergencies. This

has resulted in some refugee crises, mainly in Africa, receiving far less funding than was available for the crises in Afghanistan, the Balkans and Iraq, thus, UNHCR has found itself reacting to donor demand instead of assessed needs (UNHCR, 2006, p. 187).

The Dadaab operation suffers from this uncertainty and is financed by both donors and agencies, mostly channelled through UNHCR and its partners such as the World Food Programme[38] (WFP). Its cost has grown from USD 44 million in 2007 to over USD 100 million in 2010 (Enghoff et al., 2010, p. 75). Because of the huge influx and the development of the new sites, its cost in 2011 was significantly higher than this. In fact, UNHCR's total requirements for its operation in 2011 for the whole of Kenya (Dadaab, Nairobi, Kakuma and IDPs) amounted to USD 216.24 million with this requirement increasing in 2012, to USD 236.08 million (Government of Kenya and UNHCR, 2011, p. 5). Some of the problems with the operation being donor driven are shortfalls in funding, that the level of support often depends on how bad the emergency is, the amount of press coverage it receives, political concerns as well as the short term funding cycles that it creates.

IKEA Fact finding Mission to Dadaab in October 2010 which contributed to the IKEA Foundation agreeing to donate $62 million to Dadaab in August 2011



Photo: Damien Mc Sweeney

[38] In terms of funding the WFP is a UNHCR Operational Partner in Dadaab and as such, has its own funding stream

In August 2011, after much consultation and a mission to the camps in October 2010 by its CEO Mr. Per Heggenes, the IKEA Foundation agreed to donate $62 million over three years to UNHCR's Dadaab operation, enabling it to house and feed as many as 120,000 refugees (UNHCR, 2011a). It is the largest private donation that UNHCR has received in its 60 year history, and the first time a private body has chosen to support a major refugee complex directly. The donation will also ease some of the funding pressures for the Dadaab operation and introduce some certainty as it is based on a three year plan. Although private donations have been made in the past, the scale of this positive development may result in another significant funding stream for UNHCR and spur other large corporations to make other large corporate donations in line with the growing importance of Corporate Social Responsibility (CSR) in enhancing corporate reputations globally.

5.2 UNHCR and Partners: Coordination

Complex emergencies, including Dadaab, have a wide range of actors involving in providing assistance, including national government authorities, UN agencies and other formal international organisations and NGOs. Usually, there is no single mandate and nor any formal hierarchy. As a result, coordination is both necessary and a major challenge. Effective coordination is indispensable in the humanitarian field for the speedy and efficient relief and support for victims of conflicts and natural disasters. It is essential because it ensures the smooth running of the operation, avoids shortages and duplication as well as improving cooperation between stakeholders. The international community has recognized the importance of effective coordination with the advent of the Cluster system as part of the humanitarian response reform process.

The cluster approach is a reform which represents a substantial strengthening of the 'collaborative response' in emergencies which will have the additional benefits of predictable and accountable leads. These clusters are made up of humanitarian organisations, including UN agencies, non-governmental organisations (NGOs) and other civil society organisations, as well as government representatives in some cases. These stakeholders work together to address needs identified in a specific sector such as camp coordination, health or protection. The approach works by the cluster lead organization chosen because of its particular expertise (e.g. WHO lead for Health, UNHCR for Protection) convening and chairing a meeting of every single party involved in the Crisis (the Cluster) where a coordinated strategy for responding is formulated and then advanced, ensuring (hopefully) better coordination, communication and cooperation

Global Cluster Leads

Sector or Area of Activity	IDPs or Disaster Setting	Global Cluster Lead
Food Security		FAO/WFP
Camp Coordination/Management	IDPs from conflict	UNHCR
	Disaster situations	IOM
Early Recovery		UNDP
Education		UNICEF/Save the Children
Emergency Shelter:	IDPs from conflict	UNHCR
	Disaster situations	IFRC
Emergency Telecommunications		UNOCHA/UNICEF/WFP
Health		WHO
Logistics		WFP
Nutrition		UNICEF
Protection	IDPs from conflict	UNHCR
	Disasters/civilians affected by conflict (other than IDPs)	UNHCR
Water, Sanitation and Hygiene		UNICEF

Table 5.1 (International Council for Voluntary Agencies, 2010)

amongst all the stakeholders. In 2006 UNOCHA in consultation with the Inter Agency Standing Committee (IASC) agreed to establish cluster leads in eleven areas of humanitarian activity

where there was a need to reinforce the current response capacity. It was also agreed that all countries with Humanitarian Coordinators should use the cluster approach with it also to be used in major 'new' emergencies requiring a multi-sectorial response with participation of a wide range of international humanitarian actors (One Response, 2011). As well as being the agency with sole responsibility for the protection of refugees, UNHCR is also the Global Cluster Lead in the areas of camp coordination/management, emergency shelter and protection. However, in Dadaab due to the existence of other coordination mechanisms, in place for many years, the cluster approach has not been applied (International Federation of the Red Cross and Red Cresent Societies, 2011, p. 3). These coordination mechanisms include fortnightly Heads of Agency (HoA) meetings, a weekly Inter-Agency Security meeting, fortnightly operations meetings and other regular sectorial meetings. They also include a weekly 'Situation Report' (Sit Rep) compiled by the UNHCR external relations officer from inputs received from all the units and sectors, Operational Updates and Donor reports.

There are many stakeholders involved in the Dadaab operation including the GoK, UN agencies and the 16 units of UNHCR (the various components of UNHCR with responsibility for example for protection, supply, external relations, operations, community services, health etc) and over 30 partners (see table 5.2).A minority of these partners are Operational Partners (OPs) which operate in the camps but do not receive direct funding from UNHCR, but coordinate their activities with them. The majority of agencies operating in Dadaab are known as Implementing Partners who receive funding from UNHCR to carry out specific projects within the camps. The 2011 influx of 154,000 refugees, the insecurity in the camps, the growing humanitarian needs, and the proliferation of aid agencies has added further pressure on the coordination mechanisms. Even from a purely practical and human level, to remember the names of the Heads of Agencies, their assistants and the various sectoral managers and administrators is a mammoth task in itself, made even more difficult by the constant turnover of staff there. Thus the situation has become more complex and the current coordination structure is in need of strengthening and expansion. In recognition of this UNHCR is pursuing a set of internal reforms to strengthen its management and coordination structure as well as overall performance, by creating a senior head of operations position in Dadaab who will be the most senior UN official in the Dadaab area, as well as also serving as the UN Area Security Coordinator. The internal reforms will also focus on optimizing operations management and inter-agency coordination (Government of Kenya and UNHCR, 2011, p. 5). As well as this, to better serve the needs of the southern part of Dadaab, the UNHCR field office at Alinjugur will be upgraded to a sub-office in 2012, covering Hagadera and Kambioos camps. It remains to be seen whether these reforms will be effective or whether they

will just add another layer of bureaucracy to the operation, instead of streamlining it and making it more efficient.

UNHCR Partners and Activities in Dadaab in 2011

Partner Type	Agency	Services
GoK	Department of Refugee Affairs (DRA)	Registration, camp coordination and management
GoK	The National Bureau of Registration (NBR)	Registration and Verification.
Operational Partner	World Food Programme (WFP):	Food distribution, selective & school feeding, Food for training, Food for assets;
Operational Partner	UNICEF	Supplementary food Provision
Operational Partner	International Organization for Migration (IOM)	Resettlement and transport of refugees
Operational Partner	Medecins Sans Frontiers Swiss (MsF Swiss)	Health and Nutrition Services in Dagahaley
Operational Partner	Medecins Sans Frontiers Spain (MsF Swiss)	Health and Nutrition Services in Ifo East and Ifo West
Operational Partner	CESVI	Sanitation facility rehabilitation
Operational Partner	German Argo Action (GAA)	Water, Sanitation and Hygiene promotion
Operational & Implementing Partner	Save the Children UK (SC-UK)	Child Protection, Child Friendly Spaces in camps;
Implementing Partner	International Rescue Committee (IRC)	Health and Nutrition Services in Hagadera and Kambioos
Implementing Partner	German International Cooperation (GIZ)	Health and Nutrition Services in Ifo and support to Dadaab Health Centre, referrals to Nairobi
Implementing Partner	Norwegian Refugee Council (NRC)	Shelter and Latrine Construction and the Youth Education Projects (YEP);
Implementing Partner	CARE Kenya:	Primary education in Dagahaley, Food distribution (as implementing partner for the WFP), water supply in the three old camps, sanitation, community and gender development and counseling
Implementing Partner	Windle Trust Kenya (WTK)	Secondary Education in all camps and the DAFI scholarship[39] Programme
Implementing Partner	Lutheran World Federation (LWF):	Primary Education Hagadera Camp, Camp management/camp coordination, community policing

[39] The German Government funded 'Albert Einstein German Academic Refugee Initiative' (DAFI) is a scholarship which supports tertiary education for deserving refugees worldwide. The programme grants scholarships to refugees at universities, colleges and polytechnics in their host countries. Since it was launched in 1992 approximately 100 refugees have completed courses in Kenya under DAFI scholarships.
UNHCR. (2010). *Somali DAFI graduates return to school to teach other refugees in Kenya* [Online]. Geneva: UNHCR. Available: http://www.unhcr.org/4bcdc1009.html [Accessed 13/11/2011].

		and camp planning, transit centers and safe havens
Implementing Partner	Kenya Red Cross Society (KRCS)	Child tracing and family reunification, construction of classrooms in the schools within the host community
Implementing Partner	International Service Volunteers Association-Italy (AVSI)	School classroom rehabilitation and teacher training
Implementing Partner	Danish Refugee Council (DRC)	Shelter construction and infrastructure development
Implementing Partner	African Development Emergency Organization (ADEO)	Primary Education Ifo Camp and health service care
Implementing Partner	Oxfam (GB)	Water, sanitation and hygiene promotion in Ifo extension and Kambioos
Implementing Partner	Refugee Consortium of Kenya (RCK)	Legal advice and consultation in Camps, protection training and border monitoring
Implementing Partner	International Medical Corps	Health and Nutrition Services in Kambioos
Implementing Partner	Relief Reconstruction and Development Organization (RRDO)	Agro-forestry and environmental awareness creation in the host community for the Lagadera District
Implementing Partner	National Council of the Churches of Kenya (NCCK)	Sanitation, Peace Education, Reproductive Health & HIV/AIDS awareness
Implementing Partner	Film Aid	Mass Information, Awareness Raising, Capacity Building and HIV/AIDS awareness
Implementing Partner	Fafi Integrated Development Association (FAIDA)	Agro-forestry and environmental awareness creation in the host community for the Fafi District
Implementing Partner	Catholic Relief Services (CRS)	Water, Sanitation and Hygiene promotion in Kambioos, Hagadera and host community
Implementing Partner	Handicap International	Support to persons with disabilities in all camps and referral program to Garissa
Implementing Partner	Centre for Torture Victims	Mental health services for survivors of torture in Ifo camp
Implementing Partner	GOAL	Shelter construction and infrastructure development

Table 5.2 (Compiled from Briefing Notes, UNHCR Sub Office Dadaab)

5.3 Humanitarian Assistance in Dadaab

Humanitarian aid as distinct from development aid, foreign aid or military aid is a specific type of assistance utilized in humanitarian emergencies or disasters. In 2003, the Institute of International Law defined humanitarian aid as:

> All acts, activities and the human and material resources by the provision of goods and services of an exclusively humanitarian character, indispensable for the survival and the fulfilment of the essential needs of the victims of disasters(Heintze and Zwitter, 2010, p. 36).

In Dadaab, humanitarian aid come in the form of goods such as foodstuffs (including supplementary feeding materials), drinking water, medical supplies and equipment, tents, plastic sheeting, water containers, mosquito nets, clothing, blankets, cooking utensils, soap, sanitary materials for women and vehicles. Because of the Security Partnership Project (SPP), UNHCR also funds vehicles, communications equipment, tents and generators for the Kenyan police. In addition humanitarian aid also comes in the form of 'services' such as logistics, transportation, medical services, protection services, resettlement services, disability services and psychological assistance.

The Dadaab emergency-based operation is mainly focused on coping with the new arrivals and providing the most basic resources and services. Up until October 2011 when Humanitarian activities were curtailed due to the kidnapping of aid workers and the bomb attacks on police in the camps, the system employed was that upon reception, refugees would undergo health and nutrition screening; and receive counselling, information on refugee registration, and high energy biscuits. Refugees requiring health services are dealt with immediately, while children suffering from conditions such as extreme malnutrition were sent immediately to a stabilization unit at one of the three hospitals in Dadaab until they are healthy enough to go to their new home. As well as this women were counselled if they had experienced any type of gender based sexual violence (GBSV) during the course of their journey or in the past, with Post Exposure Prophylaxis[40] (PEP) kits administered for any woman found to have experienced sexual violence within a 72-hour period of the counselling. As well as this each individual received a 21-day food ration, with children under the age of five provided with nutritional support though the WFP's Blanket Supplementary Feeding Programme[41] (BSFP). Once

[40]Post-exposure prophylaxis (PEP) is short-term antiretroviral treatment to reduce the likelihood of HIV infection after potential exposure, either occupationally or through sexual intercourse.

[41]Blanket Supplementary Feeding Programmes are aimed primarily to prevent deterioration in the nutritional status of a population, but also to reduce the prevalence of acute malnutrition ingroups at high risk of becoming malnourished. These include children under 5 years, pregnant and lactating mothers and the elderly who are provided with a food/micronutrient supplement in addition to their food ration in order to reduce the mortality and morbidity risk.

registered, refugees then receive a ration card to enable their collection of a bi-monthly general food distribution.

5.3.1 Food and Nutrition

Food for the Dadaab refugee operation is procured and distributed by the WFP through its Implementing Partner CARE following a systematic and uniform approach based on the specific needs of the affected population. The WFP normally has a three month buffer stock to as part of its contingency planning, but in October 2011 after the huge influx, the WFP announced that this stock of food had been erased by overwhelming numbers of new refugees arriving, especially over the past four months. It is as of early 2012 trying to restock but the absence of a buffer stock is especially problematic since the roads to Dadaab are extensively degraded and are often impassable after the onset of the short rains. A food pipeline break would cause substantial food stress among the camps population, especially the newer arrivals that have no alternative food or income sources (Famine Early Warning Systems Network, 2011, p. 3).

An Incentive Worker Dispensing Wheat Flour rations to Refugees at the Food Distribution Centre at Dagahaley Camp in May 2010



Photo: Damien Mc Sweeney

There are WFP Distribution Centers in Ifo, Ifo 2, Dagahaley and Hagadera and refugees go with their ratio card to one of these to collect their general ration depending on their shelter location, twice a month, on allocated days based on their family size. The WFP food ration consists of wheat flour, corn soya blend (CSB), yellow peas, salt, sugar, and cooking oil, and is based on the Sphere Standard[42] for nutrition of 2100 kilocalories per person per day (Bukovac, 2010).As well as this, all children under the age of five years receive a ration of Super Cereal, a nutritious and fortified food supplement, along with their families' general rations, and in the camps health posts the WFP also distributes Plumpy' Sup, a nutrient fortified ready to eat paste to moderately malnourished children through a targeted supplementary feeding programme (World Food Programme, 2012)..

Many refugees that I spoke to in the camps complained that the ration was never enough and that it never lasted the full 15 days for which it was meant. As well as this on distribution days, markets spring up just outside the Food Distribution centers where many refugees are forced to sell or trade a portion of their food ration them in order to obtain items that they lack such as milk and sugar, as well as non-food items such as firewood, shelter and clothing. The food ration is therefore a significant part of the refugees livelihood strategy that enables them to subsist, but as Cindy Horst commented the rations 'are a necessary condition for survival in Dadaab, but they are certainly not a sufficient condition' (Horst, 2007, p. 83).

5.3.2 Water, Sanitation and Hygiene (WASH)

The sole reliance of the refugees on underground water, accessed through boreholes in each of the camps, has created a major challenge to meet household and individual water needs. It is estimated that about 9.3 million litres of water is needed daily to meet the minimum water needs with the recent influx further reducing water availability resulting in refugees receiving between seven to sixteen litres per person per day, which is below the Sphere Standards. It has also resulted in high congestion of up to 190 persons per usable tap stand against an initial standard of 80 (UNHCR Sub Office Dadaab, 2011d, p. 9). There are also concerns for the longer terms

[42]The Sphere Project is a voluntary initiative that brings a wide range of humanitarian agencies together around a common aim - to improve the quality of humanitarian assistance and the accountability of humanitarian actors to their constituents, donors and affected populations. Sphere is three things; a handbook, a broad process of collaboration and an expression of commitment to quality and accountability. It aims to improve the quality of assistance to people affected by disaster and to improve the accountability of states and humanitarian agencies to their constituents, donors and affected populations by setting universal minimum standards internationally (Sphere Standards) in humanitarian responses.

sustainability of the water supply to the camps. The boreholes that supply water for the refugee operation together with large portions of Garissa, Wajir and Isiolo, tap into the Merti aquifer. So far Static Water Levels in boreholes have only changed slightly, indicating good health of the aquifer, but total abstraction from this aquifer is estimated at 5.3 million m3 per year, with its recharge rate although difficult to quantify, estimated at around 4.5 million m3 per year (Enghoff et al., 2010, p. 77). The rate of water discharge from the aquifer is therefore in excess of the likely rate of recharge and extracting more water than is being replenished will inevitably lead to problems in the future and is a precarious course of action.

In terms of sanitation, a 2008 report estimated that refugees and their animals in Dadaab produce 126 tons of solid waste every day (Ndibalema, 2008, p. 12) and in 2009, it was calculated that over 36,000 latrines were needed to reach minimum standards (Simpson, 2009, p. 27). Between 2009 and early 2012,over 200,000 more refugees have arrived making the problem of waste disposal considerably worse as the outdated disposal system of incentive workers equipped with hand tools and wheel barrows are unable to cope with vast amounts amount of garbage generated. As a result garbage is burned outside refugee's houses, constituting the danger of fire, polluting the air and often making roads through the blocks impassable. Waste (solid and plastic) management in the camps has been greatly hampered as a result of congestion in the camps. Refugees settling in the outskirts have limited access to sufficient sanitation facilities, making it difficult to construct communal latrines and establish effective waste management systems. Sanitation in schools also remains a challenge to meet the needs for an increased number of students limiting space to construct additional latrines (UNHCR Sub Office Dadaab, 2011d, p. 9). As well as this, during the wet season, rainwater often flushes waste from outside latrines into houses constituting further public health risks. For example in November 2011, after heavy rains in it was reported by UNHCR that:

> Stagnant water around the tap stands, heaps of rubbish in some areas and dead carcasses are posing health risk in the camps" with "Vector control[43] now becoming an issue as soak away pits at latrines and water points have become a breeding ground for mosquitoes (UNHCR Sub Office Dadaab, 2011f, p. 2).

Hygiene is interlinked with water, sanitation and public health as good hygiene practices such as washing with soap after going to the toilet cuts down hugely on many of the

[43]Vector control is any method to limit or eradicate the mammals, birds or insects which transmit disease pathogens. The most frequent type of vector control is mosquito control using a variety of strategies, including treated mosquito nets, spraying and the draining of swamp areas.

waterborne diseases such as cholera and diarrhoea. There are a number of initiatives implemented in Dadaab by UNHCR, Oxfam and CARE, such as education campaigns in the schools, information campaigns within the camps utilizing refugee and religious leaders and free distribution of soap. As well as this once a year Dadaab takes part in a 'Global Hand washing Day' when the importance of hygiene is promoted, products such as soap and plastic dishes are distributed, a 'mass hand wash' takes place to raise awareness with these activities followed by a celebration.

Children from the Dadaab host community taking part in the Global Hand Washing Day in October 2010



Photo: Damien Mc Sweeney

5.3.3 Emergency Shelter

Within the camps there are a number of different types of shelter, from the traditional tukul type to makeshift types to the more permanent mud brick structure. In 2009 there was already a shortage of 40,000 shelters in the over congested camps (Williams, 2011) and by early 2012 over 200,000 more refugees had come. To attempt to deal with this influx, the GoK in July 2011 (albeit with much hesitation) released further land around Dadaab and UNHCR began to plan

Traditional Tukul Shelter 2010



Photo: Damien Mc Sweeney

UNHCR Emergency Tents 2011



Photo: John Ndiku/OCHA

Makeshift Shelter 2010



Photo: UNHCR

Mud Brick Shelter 2010



Photo: Damien Mc Sweeney

these new sites to accommodate the new arrivals – Ifo 2 East and West with a joint capacity of 120,000 and Kambioos with a capacity of 100,000 (UNHCR Sub Office Dadaab, 2011d, p. 9). Site planning involves bush clearing, surveying, demarcation of the section blocks and family plots, and pitching tents in preparation for the relocation of families. UNHCR received donations of all-weather tents from organizations like Shelter Box, the Japanese Government, and Disaster Aid International (DAI). The tents in the new sites provide accommodation for an average family

size of five and the number of plots and tents increase according to the family size The Lutheran World Federation (LWF) and International Organization for Migration (IOM) are responsible for implementing site planning activities and Norwegian Refugee Council (NRC), Danish Refugee Council (DRC), GOAL and the IOM are responsible for emergency shelter activities at the new sites which between them have (as of December 2011) seen 74,883 refugees located there. A decision on the more permanent shelter type in these camps has not (as of December 2011) been reached and as such; UNHCR is continuing the provision of family tents to refugees.

5.3.4 Durable Solutions

Long periods of exile and displacement are a growing challenge for the international refugee protection regime and the international community. According to its mandate, UNHCR is responsible for finding durable solutions that will allow refugees to rebuild their lives in dignity and peace. Article 1 of its statute states that it is tasked with:

> Seeking permanent solutions for the problem of refugees by assisting Governments and, subject to the approval of the Governments concerned, private organizations to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities (UNHCR, 1950).

UNHCR has outlined three durable solutions open to refugees: voluntary repatriation (the return of eligible persons to the country of origin on the basis of freely expressed willingness to so return), local integration (the process by which immigrants become accepted into society, both as individuals and as groups) or resettlement to a third country in situations where it is impossible for a person to go back home or remain in the host country. In Dadaab, durable solutions could not be described as any sort of viable solution to the crisis as local integration and repatriation are not options or utilized due to conflict and political concern. Resettlement is the only durable solution used at present but this is having little impact on the numbers there. For any solution to take place in the future a radical reassessment of the durable solution strategy will have to take place which may involve an approach involving all three durable solutions on a local, regional and international level.

5.3.4.1 Local Integration

As noted earlier, before 1991 there was a considerable ‘laissez faire’ policy towards refugees by the Kenyan Government and this had resulted in the local integration of the refugees

including the right of employment, education and freedom of movement. With the massive influx in 1991 this then came to an end with GoK disinclined to promote local integration because of the increased concern about the negative economic and environmental impact of large-scale refugee populations, the belief that exiled populations represent a threat to local, national and regional security, popular antagonism to the presence of refugees by host communities who believed that refugees were receiving more assistance than them and an increasingly restrictive asylum climate (Crisp, 2004, p. 5). As well as this, the GoK does not consider Kenya as a destination country, but rather as a transit country temporarily hosting asylum-seekers, and applies an encampment policy which renders local integration nearly impossible. This is implicit in the 2006 Refugee Act, and as a result there are few activities that try to support the integration of refugees, despite their significant contributions to the local economy and shared religious and cultural heritage with the local host population (Pavanello et al., 2010, p. 28). These contributions to Dadaab and its surrounding areas include: significant improvements in education and health facilities, the opening of markets, shops and roads, the host community earning about US$1.8 million per annum from the sale of livestock to the camps every and $1.9 million from the overall support budget for the camps spent on infrastructure investments such as boreholes that benefit the host community (Enghoff et al., 2010).

Despite these positive contributions however, the GoK's reluctance to consider integration in the case of Dadaab was further exacerbated by the mass influx of 2011, the resultant increased insecurity and the belief by many Kenyans that the much of the refugee population there are members and supporters of al Shabaab, especially in the wake of the October 2011 kidnapping of humanitarian workers and the subsequent bomb attacks in the camps leaving a number of Kenyan police officers dead. It is fair to say that local integration for the inhabitants of Dadaab, even those who were born and grew up in the camps, is not an option, but in addition to this after the events of 2011 is even more implausible than ever.

5.3.4.2 Repatriation

In order for voluntary repatriation/return to represent a durable solution, the conditions necessary for successful reintegration must be supported. These conditions span a range of activities, including restoration of infrastructure and services; promotion of housing and property rights; human rights monitoring; livelihoods and employment generation; and efforts to rebuild social capital and social cohesion. These activities in turn require the active

involvement of a range of actors beyond the humanitarian field, extending to development and peace building actors. In addition, an important component of sustainable reintegration is the willingness and capacity of the state to reassume responsibility for the rights and well-being of all its citizens. As such, interventions may also need to address building the capacity of the state and the development of inclusive governance institutions. Successful repatriation programs therefore require a stable political situation in the home country to be able to guarantee that the returnees won't have to reckon with another flight. For instance, the conclusion of a comprehensive peace agreement in Sudan (between the South and the North) brought relative stability in the two countries, which allowed many refugees to return home (Tarr'osy et al., 2011, p. 180), especially from the Kakuma refugee camp in northern Kenya.

Between 1990 and 2005, over one million refugees returned to Somalia, half of whom were assisted by UNHCR. Most went to Somaliland and Puntland, and some 150,000 are thought to have returned to south-central Somalia (Lindley and Haslie, 2011, p. 28). However the 2006 Ethiopian invasion and it's the brutal occupation, the rise of al Shabaab and its extreme implementation of Sharia law, warlords, pirates, bandits and the continued conflict between the TFG and AMISOM and al Shabaab has meant that voluntary repatriation hasn't been a viable option since then. Conflict continues today with little chance of a quick end to the fighting and as a result voluntary repatriation does not constitute a viable option at this moment and it is obvious that unless a radical change in Somalia's internal situation takes place, the refugees will not leave the relative security and services such as free food, education and health services of the Dadaab camps and return back to uncertainty, instability, extremism, violence and the possibility of death. If the 2011/2012 Kenyan military action in Somalia to defeat al Shabaab and create safe zones is even marginally successful it may result in the forced repatriation of refugees as Kenya may then argue that there is no longer a threat to Somali refugees, revoke their refugee status order them back.

5.3.4.3 Resettlement

Resettlement can be defined as 'the relocation and integration of people (refugees, internally displaced persons, etc.) into another geographical area and environment, usually in a third country' (International Organization for Migration, 2004). Because local integration is not an option and voluntary repatriation does not seem viable or feasible in the near future, resettlement is the only realistic durable solution for refugees in Dadaab. However, as other African countries and richer developed countries are reluctant to accept refugees, especially

in large numbers, it is clear that it will at best only involve very small numbers and is not likely to be a solution to the larger problem. As of 2012, UNHCR is focusing its resettlement program on Somali refugees who arrived in Kenya in 1991 and 1992, and on refugees of other nationalities who are in a similarly protracted situation. Refugees who have particular vulnerabilities or serious medical conditions may also be prioritized for submission by UNHCR regardless of their date of arrival. Within this set of priorities, all registered refugees in the camps in Kenya have equal opportunities for resettlement submission through UNHCR. Once a refugee and his/her family have been identified by UNHCR for resettlement processing, you will need to go through each of the following steps in order.

1. UNHCR Case Profiling Interview - Assessment of applicant for submission
2. UNHCR Case Preparation Interview – Once eligibility is confirmed a second more detailed interview occurs to finalize the applicant's information which will then be provided to the resettlement country by UNHCR
3. Consideration by the Resettlement Country – this varies from country to country but may require further interviews or in the case of some such as the US may require DNA testing to confirm whether the applicant is telling the truth about the family relationships included in the case. Once UNHCR has submitted your case to a resettlement country, the decision lies solely with that country
4. Medical Examination - These examinations will be conducted by the IOM. With certain countries, refugees may be rejected for resettlement based on the outcome of the medical examination if they are found to have conditions that are contagious or that will be too expensive to treat.
5. Cultural Orientation Individuals who are accepted for resettlement to a third country will generally undergo a cultural orientation program; some countries will do this in Dadaab, while others wait until the refugees arrive in their new country.
6. Travel Arrangements - Once accepted by a resettlement country, the IOM will arrange travel from Kenya
7. Reception and Integration in the Country of Resettlement - Upon arrival in the country of resettlement, the goal is to ensure integration into the new society as quickly as possible, and various programs, in place to assist in this process.

The timescale of this process varies and after the first interview with UNHCR the entire process takes between one to two years.

(UNHCR Sub Office Dadaab, 2009a, p. 2 - 5)

The resettlement process in its present form in Dadaab could not be considered an effective or even viable durable solution by any stretch of the imagination because of the lack of impact on the refugee population. For example, in 2011 UNHCR Kenya submitted 9,317 applications for submissions for resettlement, the vast majority of them (7,770) to the US, with smaller amounts to Australia, Canada, Britain, Sweden, the Netherlands, Denmark and Norway (UNHCR, 2011f, p. 9). However, the number of refugees that actually left Kenya for resettlement in 2011 was only 2,725, out of a total of 601,576 refugees in Kenya (UNHCR, 2011f), which is less than half a percent (0.45%) of refugees in the whole country, a disproportionately tiny amount considering the huge amount of resources that goes into the process.

As well as this, many refugees in Dadaab also suffer from what could be termed a 'resettlement syndrome' commonly referred to in the camps as 'Buufis' which consists of constant and inappropriate preoccupation by the idea of being resettled to a new country, mainly a western, rich country, or where other relatives had gone to live a prosperous independent life in freedom (Horst, 2007, p. 158). While it is normal for someone in bad situation to dream of a better life, this syndrome can become a problem when this feeling turns into an obsessive longing that starts to disrupt their everyday lifestyle. Refugees who experience this syndrome are observed by their peers as acting like addicts, carrying an extreme obsession that disrupts their life and everyday tasks by actions such as daily visits to the UNHCR field offices every day to follow up their cases.

With local integration and repatriation not really viable options at present, resettlement has been hyped up by many refugees as their way out of the camps, however, the chances of it happening for most are minuscule, and with UNHCR only presently focusing its resettlement program on refugees, who arrived in Kenya in 1991 and 1992, the 154,000 refugees who arrived in 2011 will have to wait until beyond 2032 before they are even eligible to apply.

5.4 Dadaab: Development Assistance in a Protracted Complex Emergency Context

The long-term protracted refugee population in Dadaab, as well as its identification as a complex emergency, means that as well as its short term emergency assistance component, development assistance is also badly needed, as the camps are also badly in need of updated

and more permanent infrastructure in terms schools and hospitals as well as projects in support of livelihoods.

5.4.1 Education Sector

Education is a human right with immense power to transform. On its foundation rest the cornerstones of freedom, democracy and sustainable human development. 130 million children in the developing world are denied this right — almost two thirds of them girls. Nearly 1 billion people, or a sixth of the world's population, are illiterate — the majority of them women. This is a violation of rights and a loss of potential and productivity that the world can no longer tolerate

Kofi Annan (as cited in Bellamy, 1998, p. 4)

UNHCR Partners in the Education Sector in Dadaab Refugee Camps in 2011

Agency		Activity
ADEO	African Development and Emergency Organization	Primary Education in Ifo and Ifo Extension
AVSI	Association of Volunteers in International Service	Teachers training, school construction and classroom rehabilitation
CARE	CARE Kenya	Primary Education in Dagahaley camp
GIZ	Deutsche Gesellschaft fur Internationale Zusammenarbeit	Environmental Education
HI	Handicap International	Inclusive Education Consultants
LWF	Lutheran World Federation	Primary Education in Hagadera camp and Kambioos
NCCK	National Council of Churches of Kenya	Peace Education Programme
NRC	Norwegian Refugee Council	Youth Education Pack (YEP) Centers
WFP	World Food Programme	School Meal Programme
WTK	Windle Trust Kenya	Secondary Education, English language Courses
SCUK	Save the Children UK	Early childhood Development, Child Friendly Spaces (CFS)
UNICEF	United Nations Children Fund	Supporting Education Programmes
FAI	Film Aid International	Capacity Building for Youth

Table 5.3 (compliled from Education Brief UNHCR Sub Office Dadaab, 2011b)

Education is perhaps the best long-term solution to poverty in the developing world. Time and time again, experts say that educating children, especially girls, is the key to ending the global cycle of poverty, dependence and hopelessness. This importance is officially recognized globally by the international community through Goal Two of the Millennium Development Goals (MDGs) which states that the world needs to 'Achieve Universal Primary Education.'

In Dadaab UNHCR and its partners provide primary and secondary education for refugees. However, the education sector is significantly stretched and has been unable to meet the needs resulting from the rapid increase in the number of children and lack of space to build additional schools. This has caused severe congestion in classrooms with the students per classroom ratio higher than 120:1 in some schools. There are over 160,000 children of school age in the three Dadaab camps, but enrolment rates remain low, at 38% (39,884) for primary and 2% (2,713) for secondary school (UNHCR Sub Office Dadaab, 2011e, p. 10). Of the children that are in school, 38% in primary school and 27% in secondary school are girls (UNHCR Sub Office Dadaab, 2011b, p. 3). This reflects both the extra burden of household chores and the Somali custom of young and often forced marriages borne by girls.

Class of over 100 pupils to one young untrained teacher at Illeys Primary School, Ifo Camp, October 2010



Photo: Damien Mc Sweeney

Selection of Classes at Illeys Primary School, Ifo Camp October 2010





Photos: Damien Mc Sweeney

In the three camps as of January 2012, there are 19 primary schools and six secondary schools, all which follow the Kenyan curriculum. In addition, there are six private schools following the Kenyan curriculum, as well as a number of religious schools, Madrassas and Duksis. There are also vocational training in such trades as carpentry and hairdressing available at the three Youth Education Pack (YEP) centers (with a fourth based in Dadaab town for the host community), but these can only accommodate 1% of the youth. Of the 970 teachers, there are only 186 of them trained (UNHCR Sub Office Dadaab, 2011d) with the rest just after finishing secondary school. Because of the sheer numbers of children primary schools in Dadaab operate two daily shifts, one in the morning and a second in the afternoon, meaning teachers are working twice the normal amount, often leading to fatigue. There is also a huge shortage of scholastic materials and with the influx of new refugees from Somalia this year, more than half of whom are children, the demand for classrooms, desks, stationary, textbooks and teachers in Dadaab has increased considerably. In order to meet this increased demand, some 75 new schools, or 1,800 classrooms, need to be built urgently (UNHCR Sub Office Dadaab, 2011a).

In an effort to improve enrolment and attendance as well as alleviating short-term hunger, and graduation rates, a school feeding programme is facilitated by the WFP, in the form of a mid- school porridge made from CSB in all primary schools. The fact that they perform most of the menial household labour such as collecting water and cooking and as

such have poor enrolment rates, programmes targeted specifically at female enrolment and attendance are also operated occasionally. These mainly consist of a small amount of sugar (or another commodity) being given to each girl after continuous attendance for a defined period (often on a weekly basis), thus adding to resources of the girls family, making it attractive for parents to send them. During my deployment to Dadaab I facilitated the UNESCO Education for All (EFA): Global Monitoring Report 2010 research team's mission to Dadaab, visiting many of the camp's schools, arranging interviews with refugee pupils, parents, UNHCR education partners and GoK representatives. It was clear that refugees considered an education for their children very high on their list of priorities. However, despite the camps being there for over 20 years, the education system there is under resourced, underfunded, inadequate and insufficient. This is due to a number of reasons such as the supposedly temporary nature of the refugee camps causing reluctance of many donors to commit funding to build permanent structures and the fact that due to the explosive and uncertain situation in Somalia, planners in Dadaab cannot predict with any accuracy the timing of refugee surges or the number of new arrivals. Another problem which was identified in the research teams report was traced to planning cycles. Because both UNHCR and the NGOs responsible for primary education and secondary education operate on annual financing cycles, it is often the case that UNHCR has been unable to cover funding requests, so the NGOs have had to turn to other sources of finance. The result is that while the need for education has been rising, financing has suffered from continued shortfalls and considerable uncertainty about the future. To enable a sustainable scaling up of education in camps, planners need multiyear commitments from donors, with built-in contingencies for changing circumstances (Education For All: Global Monitoring Report, 2011, p. 208)

Also, from a more practical perspective, because Dadaab students follow the Kenyan curriculum, when there are final examinations, they compete with all the other students in Kenya. However they are immediately at a disadvantage as they don't have the same facilities, have to share textbooks with up to seven people, have mostly untrained teachers, many have no electricity or even lamps at home to study, and often students cannot go to school because of curfews. For the handful of students that finish secondary school, only two or three of these get selected for higher studies through initiatives such as German Government funded 'Albert Einstein German Academic Refugee Initiative' (DAFI), a scholarship which supports tertiary education for deserving refugees worldwide. For the rest there is no official employment because refugees aren't allowed work. However, some do find 'incentive work' with some of the NGOs there working as translators and teachers,

earning an 'incentive' payment of approximately $50 per month. For the many of the rest, a life of unemployment and boredom awaits. The provision of limited third level education in the camps is something that should be further explored in the future as both empowerment and capacity building measures, with the long term view of building up a bank of well qualified Somali youth for when stability does come to Somalia and a short term measure of providing educated applicants for more senior positions within the NGOs in Dadaab, albeit as incentive workers but gathering valuable experience which can be utilized by humanitarian organizations in the future in Somalia.

Finally, there is the added complication of Islamist views in the camps that girls should not attend school and that the Kenyan curriculum i.e. non-Islamic education, being provided to Somali children in Dadaab is unacceptable. For example on 27th October 2011, education officials travelling from Lafey to Mandera, along the Kenya-Somalia border were ambushed by al Shabaab, leaving four people dead, including the Lafey District Education Officer and a school principal. Following this attack, threats were made by against education personnel in the camps, demonstrating al Shabaab's rejection of the schools there (UNICEF, 2011)

However, in spite of the many problems that exist, at least a significant percentage of children in the camps have access to better education facilities than back in their own native countries. As well as this, if peace can ever be achieved in Somalia, at least there would be an educated and healthy youth population in Dadaab that could take their skills home and help in the reconstruction of their country.

5.4.2 Health Sector

As of December 2011, there are three hospitals with a capacity of 576 beds (314 in Dagahaley, over 114 in Ifo and over 148 in Hagadera), with increased bed capacity having been made possible by tents and temporary structures to alleviate the strain of the 2011 influx (UNHCR Sub Office Dadaab, 2011c). Each hospital has a maternity ward, paediatric ward, stabilization centers (for acutely malnourished children with medical complications), adult inpatients, laboratory, comprehensive care centre for HIV, HIV counselling and testing facilities and TB centre. In the new camps, Kambioos and the Ifo extension, hospitals are in the process of being constructed and in the meantime a field hospital will be operational in

Kambioos shortly. The three older camps have access to their own operating theatre where surgery, such as caesarean sections, can be done.

UNHCR Partners in the Health Sector in Dadaab Refugee Camps 2011

	Agency	Services
GoK	Ministry of Public Health and Sanitation/Ministry of Medical Services	Support to coordination and supervision, provision of ARVs, anti-TB drugs, HIV testing kits, immunizations, ensuring policy adherence
IRC	International Rescue Committee	Health and Nutrition Services in Hagadera and Kambioos
GIZ	German International Cooperation	Health and Nutrition Services in Ifo and support to Dadaab Health Centre, referrals to Nairobi
MsF (Swiss)	Médecins Sans Frontiers Swiss	Health and Nutrition Services in Dagahaley
MsF (Spain)	Médecins Sans Frontiers Spain	Health and Nutrition Services in Ifo East and Ifo West
IMC	International Medical Corps	Health and Nutrition Services in Kambioos
ADEO	African Development and Emergency Organization	HIV services in Ifo
NCCK	National Council of the Churches of Kenya	HIV and community reproductive health in all camps
FA	Film Aid	Information, education and communication on health related topics
SC	Save the Children	Support to nutrition services
ACF	Action Contre la Faim	Support to infant and young child nutrition
HI	Handicap International	Support to persons with disabilities in all camps and referral program to Garissa
CTV	Centre for Torture Victims	Mental health services for survivors of torture in Ifo camp
CDC	Centre for Disease Control	Support to disease surveillance, outbreak response and laboratory services in Hagadera
UNICEF	UNICEF	Support to Immunization, nutrition and community health
WHO	World Health Organization	Support to disease surveillance and outbreak response
IOM	International Organization forMigration	Medical examinations prior to resettlement and fitness to travel from border in new arrivals

Table 5.4 (Compiled from Health Sector Brief UNHCR Sub Office Dadaab, 2011c)

There are 18 Health posts in total (five in Dagahaley, six in Ifo, four in Hagadera, two in Ifo 2 and one in Kambioos) which provide primary health care services including management of common illnesses, antenatal care and post natal care, immunization, supplementary feeding programmes (moderately malnourished under-fives, pregnant and lactating women, some chronic illnesses) and outpatient therapeutic feeding programs for severely malnourished under-fives without medical complications. Some health centers also have basic laboratory facilities, HIV counselling and testing facilities and mental health outpatient facilities. As well as this as of December 2011, there are 434 community health workers (138 in Hagadera, 140 in Ifo, 10 in Kambioos, 42 in Ifo 2 and 104 in Dagahaley) at a ratio of 1 per 1063 refugees. These are active in defaulter tracing for immunization and nutrition programmes, screening for malnutrition, identification and referral of sick persons, surveillance of diseases of outbreak importance and mortality, health education and hygiene promotion. These are complemented by other community level workers in reproductive health (18 in Ifo, Dagahaley and Hagadera) and hygiene promoters (UNHCR Sub Office Dadaab, 2011c, p. 2).

One of the great success stories in the health sector is the area of antenatal care. At the beginning of 2008 in Dadaab, there were only about 30% of births born in hospital attended by a skilled healthcare professional, resulting in high rates of maternal mortality (UNHCR Sub Office Dadaab, 2010). This was attributed to a number of factors including: the delay in seeking care, a lack of consent by relatives for Caesarean sections and a shortage of qualified midwives to provide quality obstetric care. The lack of pregnant women presenting for delivery was attributed to cultural factors such as the gender norms in Somali society that promotes modesty precluding women from giving birth in health facilities for fear of exposing their bodies and being perceived as immodest, as well as the fact that women were concerned about “bad” drugs or providers, preferred giving birth at home using traditional providers and traditional methods (The Extending Service Delivery Project, 2008, p. 11). As well as this from a purely practical point of view, the hospitals/health posts that were constructed during the 1991 emergency phase had badly deteriorated and was only providing a very low quality of service. In order to address this, in February 2009, UNHCR brought together all health partners in Dadaab to review maternal deaths and the entire health programme. This resulted in the following:

- Improvement of health infrastructure: New Hospitals built and the rehabilitation of the health posts

- Recruitment of additional staff: Additional female midwives and doctors were employed to ensure 24 hour timely emergency obstetric and neonatal care. It was ensured that this recruitment was gender sensitive to ensure that at least 50% of maternity room staff was female, especially among doctors, nurses and midwives.
- Community sensitization: UNHCR and its partners targeted and worked with community and religious leaders as agents of change as well as with others that have the power of influencing opinion towards improving safe-motherhood. Additionally, education on reproductive health issues was intensified in all the three camps
- Improved transportation services: As Dadaab camps are located in a phase III security situation and UN Agency vehicles are escorted by armed police to and from camps. Agency transportation from refugee houses to hospitals is not possible at night. To overcome this challenge, UNHCR and its health partners introduced community taxis "Mama Taxi" which are hired from the local community. Drivers' mobile cell numbers are distributed to the block leaders for any emergency occurring during the evening and nights.
- Mother incentives: Mothers delivering in hospitals are given a baby package that includes a bar of soap and a basin.

(UNHCR Sub Office Dadaab, 2010)

These initiatives as well as continued upgrading of health facilities have led to huge improvements in maternal health. Dr. Ann Burton, UNHCR's Senior Public Health Officer in Dadaab in an interview in September 2011 announced that:

> Between January and July, 95 percent of all pregnant women at Ifo and Hagadera camps attended antenatal clinics four times during their pregnancies, as recommended by the World Health Organization' and that 'between 84 to 94 percent of women at Dadaab [depending on which camp] gave birth under the supervision of a skilled birth attendant between January and July [2011] (Esipisu, 2011).

This is a huge increase, going from 30% in 2008 up to an average of 89% in 2011. However, despite the great progress that has been made in increasing skilled attendance at delivery, anaemia in pregnant women, late presentation of pregnancy related

complications and delay in consent for life saving procedures remain significant problems meaning maternal mortality and morbidity remain major concerns in Dadaab

New Maternity Ward at Dagahaley Hospital run by MsF (Swiss) opened in 2010. The wooden 'Shed' on the right is an example of the type of building that was in use for many years for treating patients



Photo: Damien Mc Sweeney

.

The system for treating malnutrition in Dadaab is known as the Community Therapeutic Care (CTC) approach and was developed by Irishman Steve Collins, who now heads up the NGO Valid International. It was my first time seeing the approach in the field having studied it extensively in the past and was very impressed. The CTC approach treats the majority of the severely acutely malnourished at home and focuses on outreach and community mobilization to promote participation and behavioural change. Central to the home-based care of the severely acutely malnourished is the provision of appropriate therapeutic foods containing the right mix of nutrients that will aid in treatment and rehabilitation. Ready to Use Therapeutic Foods (RUTF) have been specially designed for

this purpose. The CTC approach facilitates access and coverage by bringing services closer to the household, rather than waiting for caregivers to bring malnourished children to a centre, where often the child will contract other illnesses. It combines three modes of care and treatment:

1. The Supplementary Feeding Program (SFP): Dry take-home ration for children with moderate acute malnutrition without complications (e.g., anorexia)
2. The Outpatient Therapeutic Program (OTP): home-based treatment and rehabilitation with a specially formulated Ready to Use Therapeutic Food (RUTF) provided on a weekly or two-weekly basis, medical treatment using simplified medical protocols, and regular follow-up for children with severe acute malnutrition without complications. In Dadaab OTP is implemented through a large number of decentralized points such as health posts scattered throughout the camps to provide easy and convenient access to the refugees.
3. The Stabilization Centers (SC): Inpatient care, for acutely malnourished children with medical complications and no appetite using standard WHO protocols. In Dadaab each of the three hospitals has a stabilization centre which provides specialized treatment to these children. When they are well enough to leave, they are then return home but are then enrolled in the OPT programme to ensure continued improvement.

(Grobler-Tanner and Collins, 2004, p. 3)

Because of the famine in Somalia, the lack of health care there and the hazardous journey they had to undertake to reach Dadaab, the refugees that arrived as part of the 2011 influx were in very bad medical shape with acute malnutrition and mortality rates amongst the newly arrived being very high, at more than 30% in some areas (UNHCR Sub Office Dadaab, 2011c, p. 8) and these people were treated using the CTC approach.

In 2010 significant gains were made in nutrition status with the lowest levels of malnutrition ever reported in Dadaab, but the huge influx, the already poor health of new arrivals due to the lack of a health system in Somalia and the extreme drought throughout the region, has resulted in this being reversed with global acute malnutrition levels in under-fives standing at 38% in the outskirts of Dagahaley and three to four times the 2010 levels in the other camps (UNHCR Sub Office Dadaab, 2011c).

A Welcome Sight: The Empty Stabilization Center at Hagadera Hospital in April 2010, the year which saw the lowest rates of malnutrition in the camps, a trend which in 2011 was reversed.



Photo: Damien Mc Sweeney

Overall the health situation in the Dadaab camps has deteriorated significantly in 2011 with an increase in mortality rates and an increase in global acute malnutrition in under-fives. As well as this some of the major health challenges being faced by the health sector in Dadaab as of 2011-12 included:

- The movement of new arrivals throughout the camps without health screening which occurs when at registration. This is a significant public health risk given the poor health of new arrivals and the lack of even the most basic healthcare in Somalia, and already in November 2011 there was a cholera outbreak which was attributed to unscreened new arrivals (Nebehay, 2011).
- In the new camps access to essential health services especially for pregnant women and children under five is totally inadequate
- Somali socio cultural factors dictate that traditionally the man is head of the household and responsible for all decision making. The rights and freedoms of women are highly circumscribed, including their ability to make or act on personal

decisions regarding reproductive health, family planning or GBSV. The main social role of women is to bear children, and a man is expected to control his family, including disciplining his wife is she misbehaves or refuses to have sex (The Extending Service Delivery Project, 2008, p. 35). This often leads in low family planning uptake, delay in seeking care for pregnancy related complications and delay in consent for life saving procedures. All of these have hampered progress in reducing maternal mortality and morbidity.

- Under resourced mental health services and psychosocial support. There is a high level of stigma associated with mental illness in the camps as well as inadequate numbers of qualified staff in this area as well as weak community and family based support for mental health interventions.
- Dental health care (curative and preventive) is almost non-existent and blindness prevention services are substandard especially of those who need eyeglasses and cataract surgery. There is also a lack of x-ray and ultrasound facilities in the camps
- Referrals are undertaken for secondary and tertiary care to Garissa and Nairobi, but this is often problematic because of the necessity of a movement pass. For example, during my deployment in March 2011, Kenyan police wouldn't allow passage of a bus containing 26 Fistula[44] patients to Garissa Hospital for treatment because they weren't satisfied with the paperwork, causing undue upset and hardship to the women involved and their families as the bus had to return to Dadaab. After a meeting between UNHCR, the IOM and District Commissioner the situation was resolved and two days later they successfully reached the hospital.

These challenges are in addition to the obvious, near impossible challenge of trying to provide health services for nearly half a million people in dreadful conditions with limited resources.

[44]Perhaps the most devastating maternal injury, obstetric fistulas disproportionately affect poor and young women. An obstetric fistula is an abnormal opening between the vagina and the bladder or rectum (or both) that results from extreme pressure and tissue damage during prolonged or obstructed labor, when the fetus will not fit through the mother's pelvis. If a Caesarean section delivery is not performed to end the ordeal, the baby is usually stillborn and a fistula forms, permitting the uncontrollable passage of urine and feces into the vagina. Women who suffer fistula have not only lost their babies (in most cases), but are also constantly leaking urine and feces, producing a foul odor. Women with fistula usually feel shamed or disgraced, and are often deserted by their husbands and cut off from family, friends, and daily activities, resulting in a life of destitution.

5.4.3 Livelihoods

A common barrier to development faced by many refugees in protracted situations is a persistent lack of livelihood opportunities or activities. Livelihoods can be defined as the capabilities, assets (stores, resources, claims and access) and activities required for a means of living: a livelihood is sustainable which can cope with and recover from stress and shocks, maintain or enhance its capabilities and assets, and provide sustainable livelihood opportunities for the next generation; and which contributes net benefits to other livelihoods at the local and global levels and in the long and short term (Chambers and Conway, 1992). As attributes of livelihoods are the following: the possession of human capabilities such as education, skills, health and psychological orientation; access to tangible and intangible assets; and the existence of economic activities. This problem in Dadaab is a result of three interrelated factors: the fact that agencies in the camps do not engage in enough longer-term development assistance and planning, the restriction that the GoK encampment policy places on the economic activity and opportunities for refugees there, and the phenomenon of aid dependence and lethargy after many years of receiving assistance. In Dadaab, refugees' livelihood strategies depend largely on the following four options: food rations and other goods (e.g. clothes) distributed by UNHCR and partners, incentive work, income from small business activities and micro-enterprises, and remittances from the Somali Diaspora (Dube and Koenig, 2005, p. 27).

About 60 percent of the refugee population can be classified as poor or destitute and struggle to meet their daily needs, largely depending on food rations and/or assistance from within the community (Horst and Elmi, 2007, p. 2). For this 60 percent, rations provide the main source of caloric intake, with 80 to 85 percent of the food sources coming from rations and 10 to 20 percent being purchased. Food purchased is mainly sugar, at times milk and occasionally meat. Though there are considerable differences between the camps, the better-off the refugee household is, the less it depends on rations and the more on purchasing additional goods such as rice, pasta, vegetables, and meat. Food rations are sold to buy foodstuffs considered essential by all Somalis (sugar, milk); to buy preferred food items (pasta, rice) by the richer refugees; or as a livelihood strategy by the poor (selling items with a high monetary value). Thus, in terms of livelihoods, the composition of the food rations in Dadaab is very important, not only in terms of nutritional worth, but also monetary value (Horst and Elmi, 2007, p. 2).

Due to the encampment policy, refugees do not have the right to leave the camps without a pass, reside outside of camps, and are not eligible for work permits. Furthermore because of Kenyan law, refugees are prohibited from working in Kenya. UNHCR and its partners however, have, to an extent, circumvented this by getting refugees to do certain jobs for them and although they are not allowed to receive a wage, they instead receive "incentive payments" as a form of a tax free gift for their efforts. In terms of livelihoods however, less than one percent of the refugee population is engaged in incentive work (Arnold-Martinez, 2008, p. 18) and the payments are quite small ranging from a monthly payment of KES 3100 (€25) for a cleaner to KES 7000 (€58) for a refugee teacher (Floyer-Acland, 2009). This system has often come under severe criticism and is seen by many as a way of exploiting refugee labour. For example, in 2010, in a letter to the press from refugee activists in Dadaab, they assert that:

> Ever since the creation of the refugee camps of Dadaab in 1991 and 1992 and thereafter, UNHCR and the agencies operating in the refugee camps of Dadaab have relied for their operations on the exploited labour of the refugee communities' they go on to say that 'While many of the refugee staff in the agencies work tirelessly for the agencies and their fellow refugees, they still merely receive "incentives" for their hard work and dedication. Even highly experienced individuals, some of whom have graduated from Universities, colleges, and secondary schools in Kenya, Somalia, Ethiopia, Congo, Sudan, etc., receive unliveable wages, let alone wages commensurate with their experience. In addition to the dreadfully low, unliveable wage, refugee staff members are discriminated against in their payment. Specifically, although refugee staff members work as many hours and complete as many or more tasks as national or some international staff members, refugee staff members are paid significantly lower amounts and are called the derogatory name of "incentive" staff members receiving not wages or a salary but incentives (Pambazuka News: Pan African Voices For Freedom and Justice, 2010).

Although this argument is very credible, the fact remains that refugees are prohibited from working in Kenya and any moves to pay an incentive comparable to Kenyan wages would have huge political consequences from the GoK and could quite possibly result in their insistence that the scheme by scrapped. There is also the argument made by many poor Kenyans that the refugees get free food and shelter as well as free education and healthcare so they shouldn't be looking for any wages at all.

Some refugees depend on remittances from relatives all over the world, and within Kenya itself as part of their livelihood strategy for both basic survival and dealing with contingencies. Remittances are easily transferred in two main ways. Firstly, through the Xawilaad, an informal system of value transfer that operates nearly everywhere in the world, run by Somalis and mainly used by Somalis (Horst, 2007, p. 146). Xawilaad is the Somali rendering of the Arabic word hawala, meaning 'transfer of debt', referring to a system of value transfer that has facilitated long-distance trade since the early medieval period of Islam and in its simplest version, involves a customer giving money to an agent in the host country who contacts a second agent in the recipient country with the instruction to pay the recipient. The value or debt is transferred rather than actual money. The debt is settled at a later point, via reverse transactions, trade transactions, multilateral transfers or consolidation of debts involving other agents (Lindley, 2009, p. 522). However, recent developments in the US will have a devastating effect on this particular livelihood strategy, as banks there discontinue with hawala saying that they have been advised that it violates US counterterrorism financing regulations crafted after the 9/11 al Qaeda bombings (Omondi, 2011). Both Oxfam and the American Refugee Committee estimate that this decision, rather than disrupting money flows to Al Shabaab, will disrupt aid from family members abroad to 250,000 Somalis who depend on it, exasperating an already bad situation (Omondi, 2011). The second way of money transfer uses the Kenyan M-PESA system operated by Safaricom, Kenya's largest phone operator. The concept is unbelievably simple, and basically turns a person's phone into a tool for sending and receiving cash, as well as even paying bills electronically. When a customer is registered with the system, paying in cash involves exchanging physical money for the virtual sort, called 'e-float', which is credited to his mobile-money account. E-float can then be transferred to other users by mobile phone, and exchanged for cash by the recipient (The Economist, 2010), at any of the Safaricom agents in the camps.

The camp environment provides refugees with very limited economic opportunities. The vast majority of employed refugees work in the informal sector, attempting to generate income through small enterprises, such as petty trade and services. Others with skills such as carpenters are involved in such activities as furniture making but once again this depends on demand, which in general is low. As well as this, because of poverty and desperation, some refugees also become involved in illegal livelihood activities such as prostitution, alcohol production and smuggling to and from Somalia. During my time there I observed many different types of livelihood activities in the camps, especially in and around the market areas. These are summarized in table 5.5.

Livelihood Activities Observed in Dadaab Refugee Camps in 2010

Trading Activities	**Services**	**Agriculture and Livestock**	**Production**
Shops: everything from Soft drinks to Mobile Phones	Hairdressing	Goat rearing	Carpentry/furniture production
	Electrician		
Pharmacies,	Cash Transfer/Money Exchange	Sheep rearing	Welding, including the production of wheelbarrows
Guest Houses	Radio repair		
Sale of SIM-cards/telephone charging cards	Phone services (national and international)	Donkey rearing	Blacksmithing and production of axes and knives
Sale of Miraa (Kat)	Phone charging services	Cattle rearing	Tailors/Seamstress making clothes
sales of vegetables from plot gardens	Transport of goods (mule carts)	Camels	Ice-blocks
mini cinemas	Transport: BodaBoda bicycles, taxis, matatus	Runoff gardens	Mosquito nets
Butchers	Computer schools	Multi Story Gardens	Textiles (traditional and Western)
Small bars/restaurants	Bicycle repair	Greenhouse Activities	Bread
Traders who buy rations from refugees and sell at wholesale prices in Garissa/Nairobi	Car repair		Jewelry and Crafts
	Language schools		
	Security Services		

Table 5.5

The markets in the camps have helped build a larger community and provided easier access to some resources. Trade is abundant with shops selling just about everything from mobile phones to Miraa (a plant that is chewed and has a mild amphetamine like effect).

However, the returns are often minimal due to a lack of local market access, limited capital investment capability of refugees, and higher product costs induced by the encampment policy (Horst, 2007, p. 80). This is because refugee entrepreneurs face additional transaction costs as they usually cannot leave the camps themselves for refurbishing their stock or buying raw materials, instead having to pay someone from the host community to do so, thus increasing costs. However, recent research has indicated that the business and trade activity in the camps amounts to USD$ 25 million annually (Enghoff et al., 2010, p. 43), not an insignificant amount which indicates a vibrant but fledgling local economy there that could be built upon in the future impacting furthermore in a positive way on livelihoods in the camps.

A few NGOs operate small livelihood projects within the camps. For example, the NRC runs vocational training and for some students that have graduated from their YEP centers, they have helped them set up small cooperative businesses in hairdressing and electronics in the markets. CARE operate a number of microfinance projects and GTZ help both refugees and the host community to set up multi-story gardens[45] to produce vegetables which can be used to supplement the family's food or sold to raise extra income. One livelihoods project that I observed as being particularly successful well thought out and empowering was a socio- psychological women's support project run by the IOM. It organized women that were survivors of abuse, trained them in craft making activities, and supplied them with raw materials with which the women then made into various handcrafts such as mats, fans and handbags (See Photo). These items are then sold providing them with a small income, sustainable skills for the future as well as the social and psychological support of being part of the group itself. However, this project was discontinued in 2010 because donor funding had run out underpinning the negative effects of the short term donor funding cycles that are prevalent in Dadaab.

For the tiny minority of people that are involved in these projects, there is a considerable positive impact on their livelihood security. However, unfortunately, these projects don't even scratch the surface, given the vast number of inhabitants in the camp. Livelihood opportunities in Dadaab are severely limited by the climate, terrain, soil condition, insecurity and inaccessibility of the area. Furthermore, for the refugees, their poor legal status and consequent limited movement obstructs their ability to gain a livelihood

[45] A very simple but effective concept especially suited for arid areas. An ordinary canvas sack is filled with a soil, fertilizer, stone combination and then holes punched all the way up and down and around it. Seeds are planted in a "multi-storey" manner and vegetables will grow out the sides and in all directions.

independently. What little opportunities that are available are extremely limited, and mainly concentrated in the business and services sector. With the camps now close to half a million refugees, the question has to be asked ‘what are all these people going to do?’

Women selling their handmade wares as part of the socio- psychological women’s support project run by the IOM in Dadaab in March 2010



Photo: Damien Mc Sweeney

5.5 Conclusion

The Dadaab refugee complex is, as of 2012, moving towards twenty one years in existence, with a population as of January 2012, in excess of 463,000 people. The challenge and cost of providing assistance to this huge figure is enormous. As a complex emergency and a protracted refugee situation the assistance that Dadaab receives is diverse, multi-faceted and a mixture of humanitarian aid and developmental aid, with humanitarians faced with the dilemma of how to sustain the long-term refugees and yet still save those just arrived. The huge influx of 2011 seriously tested the humanitarian operation in Dadaab, with workers overwhelmed by both the emergency and the influx, the scale of which made any previous

contingency planning obsolete. The provision of new land for new sites in Ifo west, Ifo east and Kambioos and the subsequent response saved many lives but has also created the operational problem of administering six camps, coordination between a huge myriad of additional actors as well as the longer term needs of the newly arrived refugees such as schools and infrastructure.

Because UNHCR and the Dadaab operation are dependent on donors as well as the GoK's refusal to recognize the camp's permanent nature, there is a serious lack of long term planning. The unpredictable nature of donor driven assistance there creates uncertainty about budgets from year to year, a great level of discontinuity in the refugee projects, as well as the problem of the often unrealistic requirement by donors for their funding to be used to produce tangible outcomes within a one-year period. This impacts negatively on refugee protection as projects such as the IOM socio- psychological women's support project are discontinued when funding runs out, is withdrawn or donors prioritize other activities. The lack of long term planning is therefore a serious problem in Dadaab. Overcoming the short-term thinking that exists amongst the stakeholders, which denies the realities of the complex protracted emergency remains a crucial challenge there. This however is a global problem. For example, only 2% of global humanitarian assistance goes towards education (Education For All: Global Monitoring Report, 2011), despite its proven positive effects in poverty alleviation, gender empowerment, public health and development, thus underlining the clear shortfalls in long-term strategies in the humanitarian system itself. In Dadaab, planners need multiyear commitments from donors, with built in contingencies for changing circumstances in order to enable a sustainable and effective scaling up of developmental type interventions such as education and livelihood activities.

The kidnappings of aid workers, the killing of police and moderate refugee leaders and the gun and bomb attacks in Dadaab in 2011 led to the curtailment of the humanitarian operation there due to security concerns. While it is clearly a challenge for agencies to balance the provision of humanitarian assistance there with the acceptable threshold of risks to the lives of staff on the ground, it must remain a priority that UNHCR and the other agencies not remain indefinitely in their secure compounds but instead make appropriate security arrangements to maintain and if necessary expand their presence in the camps to monitor the situation there and ensure that the assistance and the operation continue.

With many refugees having spent up to 20 years in the camps, unable to leave or gain employment, they have been in receipt of aid for many years and at this stage don't really know any other way of life, totally dependent on it. As Agier says:

> How can one be surprised that a culture of aid, made up of begging and dependence, what French writers have called assistancialisme, so rapidly permeates camp life, when aid is their only raison d'être and the sole authorized resource of the refugees? (Agier, 2008, p. 47)

In Dadaab this dependency has in many cases led to the lives of generations spent in limbo, lethargy, and a lack of initiative as well as the fact that the humanitarian assistance provided has become open-ended and expensive. However, because of the huge number of refugees now in Dadaab as well as the ever increased cost at a time that much of the developed world is in recession and cutting aid budgets, this assistance is not sustainable in the long term with this uncertainty a threat to the protection and security of refugees in Dadaab and another reason why a new approach to the situation must be found.

The next chapter (six) will utilize the second pillar of humanitarianism (international law) in the analysis of the various international, regional and national laws and protection mechanisms that exist for the protection and security of the refugee population of Dadaab

Chapter 6

International Law and the Protection and Security of Refugees in Dadaab

When we talk about humanitarianism and the law it is important to differentiate between international humanitarian law, international human rights law and international refugee law. While some of their rules are similar, these bodies of law have developed separately and are contained in different treaties. International Humanitarian Law (IHL) also known as the law of armed conflict or simply the laws of war, is the branch international law that comprises the rules, which, in times of armed conflict, seek to protect people who are not or are no longer taking part in the hostilities, restrict the methods and means of warfare employed, and resolve matters of humanitarian concern resulting from war (International Committee of the Red Cross, 2003). International Human Rights Law (IHRL) is the branch that comprises of rules that seeks to protect the basic rights and freedoms that all people (on the basis of being human) are entitled to (International Committee of the Red Cross, 2003). Finally, International Refugee Law (IRL) is the rules and procedures that aim to protect, first, persons seeking asylum from persecution, and second those recognized as refugees under the relevant instruments (The Rule of Law in Armed Conflicts Project, 2011a). IRL's legal framework provides a distinct set of guarantees for these specific groups of persons, although, inevitably, this legal protection overlaps to a certain extent with international human rights law as well as the legal regime applicable to armed conflicts under international humanitarian law. This chapter thus utilizes the second pillar of humanitarianism (international law) to frame the analysis of the protection and security in Dadaab, by exploring how these various bodies of law impacts upon the vulnerable population there.

6.1 International Humanitarian Law

The International Committee of the Red Cross (ICRC) defines IHL as a set of international rules, established by treaty or custom, which are specifically intended to solve humanitarian problems directly arising from international or non-international armed conflicts. It protects persons and property that are, or may be, affected by an armed conflict and limits the rights of the parties to a conflict to use methods and means of warfare of their choice (International

Committee of the Red Cross, 2003, p. 1). It is based on the principle of distinction, which applies in all armed conflicts. This principle obliges 'Parties to a conflict' (i.e. the warring parties, whether states or non-state armed groups) to target only military objectives and not the civilian population or individual civilians or civilian objects (e.g. homes, schools, and hospitals). Failing to make this distinction in military operations represents an indiscriminate attack and is a war crime. These rules are generally considered to be customary international law, which binds every party to a conflict, government or non-state armed group, whether or not the state on whose territory a conflict occurs has ratified the relevant treaty (The Rule of Law in Armed Conflicts Project, 2011a). IHL basically comprises two strands of law: the law of war, as codified by the Hague Conventions which articulate the rights and obligations of belligerents and humanitarian law: and the Geneva Conventions, which strive to safeguard the basic rights of non-combatants and civilians (Smith, 2007, p. 12).

The first main strand of IHL is the Hague Conventions of 1899 and 1907 which laid down important rules on the conduct of hostilities, including rules in relation to military occupation. The convention made such things as the inhumane treatment of prisoners, the employment of poisoned weapons and the improper use of flags of truce a crime, punishable as offenses against the laws of war (Kelsen, 2003, p. 138).Of course, the gross deficiencies of the Hague conventions, especially in relation to the protection of civilian populations were tragically demonstrated for the entire world to see during World War II. As a result of this terrible experience, the world community of states eventually agreed to supplement the Hague Conventions by means of adopting the Geneva Conventions in 1949(Boyle, 1999, p. 57).

The second main strand of IHL is the four Geneva conventions and the additional protocols. The First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field showed that law could operate even in wartime to impose certain humanitarian rules (Hoffman and Weiss, 2006, p. 39). Subsequently the Geneva Convention was updated three more times: the Second Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea in 1906, the Third Geneva Convention relative to the Treatment of Prisoners of War in 1929 and finally the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War in 1949 (Sriram et al., 2009, p. 55). As well as this there were also two additional protocols added in 1977: protocol I relates to the protection of victims of international armed conflicts. It reaffirms the international laws of the

1949 Geneva Conventions, but adds clarifications and new provisions to accommodate developments that have taken place in modern international warfare such as the outlawing of attacks on dams, dikes, nuclear generating stations and places of worship and forbidding the conscription of children under age 15 into armed forces (International Committee of the Red Cross, 1977). Protocol II relates to the protection of victims of non-international armed conflicts. It defines certain international laws that strive to provide better protection for victims of internal armed conflicts that take place within the borders of a single country (Sriram et al., 2009, p. 55) an area that up until then was ignored because of Westphalian type concerns about state sovereignty.

These two strands (the Hague conventions and the Geneva conventions and their additional protocols) remain the cornerstone of contemporary International Humanitarian Law (Guilloux, 2009, p. 29). However, the development of new and deadlier weapons and the rise of non-state actors over the past few years have in addition led to a number of other Conventions and Protocols in order to update the law. Examples include a 1972 Convention which prohibits biological and toxic weapons, a 1980 Convention which prohibits and restricts the use of certain conventional weapons such as mines, booby traps, incendiary weapons, and laser weapons which may be deemed to be excessively injurious or to have indiscriminate effects (Smith, 2007, p. 13). Another Convention in 1997 saw the prohibition of the use, stockpiling, production, and transfer of antipersonnel mines (Smith, 2007, p. 13), with one of the most recent conventions concluded in 2008 in relation to the banning of cluster munitions (The Rule of Law in Armed Conflicts Project, 2011a).

6.1.1 Criticisms of International Humanitarian Law

Despite IHL having been ratified by almost all the states on earth, it has also been the most universally violated law as there are no mechanisms to prevent the most serious violations of its rules and incapable of ensuring punishment. In modern times classic warfare, based on territorial interests, has given way to conflicts based on ethnic, religious, or economic differences that have often brought about the disintegration of the state and put an 'ungovernable, chaotic entity' in its place (Coté, 2004, p. 154). As a result more wars are being fought by belligerents who do not show the slightest respect for international humanitarian law with many combatants not being members of regular state armies, but rather of informal militia and paramilitary groups with an undisciplined and uncertain chain of command (Barnett and Weiss, 2008, p. 275). IHL is not equipped to deal with this change

because with the dismembering of the state that occurred in some conflicts such as Somalia, there is no longer a legitimate entity with whom to negotiate or even hold accountable. In the absence of an authority with territorial jurisdiction, the safety of humanitarian workers or even access to victims cannot be guaranteed.

Furthermore; this type of conflict has produced even more civilian victims than classic warfare, as they are often specifically targeted because of religious, ethnic, tribal or even tactical reasons. Non-state actors often operate in small groups, with limited military hardware and resources in comparison to the state entities with whom they are in conflict, their only hope of real influence is to employ guerrilla tactics and attack the opposition at its weakest points—and in terms of security, the weakest points involve civilian targets and, inevitably, civilian casualties (Meron, 2011, p. 68). These victims are not, strictly speaking, 'protected persons' under IHL, with this being in contemporary times, a significant weakness (Coté, 2004, p. 156).

Another weakness in the protection mechanisms in international humanitarian law stems from the conventional distinction between international and internal conflicts. The legal regulation of international armed conflicts is more detailed and the protection afforded by the law greater than is the case with non-international armed conflicts. One example is the obligation on parties to an international armed conflict to accord captured combatants the status of prisoner of war (POW) with the associated rights and obligations. This prevents the prosecution of a POW for the mere fact of participation in hostilities. There is no such right to POW status in the law governing non-international armed conflicts (The Rule of Law in Armed Conflicts Project, 2011a). The provisions of the Geneva Conventions in relation to internal conflicts are contained in a single article, Article 3, which is common to the four conventions and it provides no enforcement mechanism. Although Additional Protocol II of 1977 deals specifically with internal conflicts, it contains very few provisions and again has no enforcement mechanism (Coté, 2004, p. 156). These limited provisions illustrate a Westphalian desire amongst states to maintain control over what many perceive to be internal security matters as opposed to conflicts.

The lack of any effective enforcement mechanism is also a weakness with IHL, particularly in contemporary times and especially in relation to non-state actors. It is probably the most significant reason why combatants deliberately breach international humanitarian

law. Judge Theodor Meron[46] believes that this is because the principle of reciprocity, which helped to shape international law as a system of mutual inter-state obligations and works well among equal opponents who share common values, is not an effective enforcement mechanism when it comes to non-state actors engaged in asymmetric warfare (Meron, 2011, p. 68). The establishment of the International Criminal Court (dealt with later in this chapter) may be a vehicle for enforcement by establishing the principle of individual criminal responsibility for the violation of international humanitarian law, a credible concept because of its Article 8 states that it has jurisdiction in respect of war crimes (Doria et al., 2009, p. 1116). However, because the ICC's role is one of a subsidiary nature, and the main task of prosecuting violations of international humanitarian law remains with States, its effectiveness remains to be seen. There is obviously a great need for the international community to devise appropriate enforcement mechanisms in order to coerce compliance by non-state actors (as well as some states) with international humanitarian law. However, the main problem is that there is a lack of agreement as to the form such control structures should take and even if an enforcement mechanism was agreed upon, most non-state actors operate outside of the international system and thus perceive there to be little reason for compliance. Nevertheless, while there is no perfect solution, Meron also believes that enforcement mechanisms of various types can have an impact and the imposition of new compliance regimes could ensure more civilian lives are saved in the future. He mentions that non-state actors, be they the more traditional rebel or liberation groups, or the newer, global terrorist organizations, do not operate in a vacuum. Although they are outside the international system, they are however, supplied arms, allowed access to financing, and given sanctuary by states that are within the international system. It should therefore be explored how the leverage associated with the supplying of financing and arms can be used to enforce compliance with IHL. Examples of liberation movements that have been persuaded to abide by obligations under IHL include groups in the Congo in 1960, Yemen in 1962, and Nigeria in 1967. Political and economic pressure was also effective when placed on the Palestinian Liberation Organization during the Black September of 1970 by Saudi Arabia which threatened to cut oil funding, and by the Soviet Union, which threatened to stem the flow of arms to the group (Meron, 2011, p. 68 - 70).

[46] Judge Theodor Meron was the president of the International Criminal Tribunal for the former Yugoslavia(ICTY) until 2005, and now serves as a judge on the Appeals Chambers of the International Criminal Tribunal for Rwandaand the ICTY.

6.2 International Human Rights Law

The concept of global justice and humans having certain universal rights, or status, regardless of legal jurisdiction or other localizing factors, such as ethnicity, nationality and sex has been around for thousands of years. For example the Persian Empire (Iran) established unprecedented principles of human rights in the 6th century BC under the reign of Cyrus the Great. After his conquest of Babylon in 539 BC, the king issued the Cyrus Cylinder, discovered in 1879 and recognized by many today as the world's first charter of human rights. The passages in the cylinder declared that citizens of the empire would be allowed to practice their religious beliefs freely and abolished slavery. One such passage says:

> I am Cyrus, king of the world, great king, legitimate king, king of Babylon … I strove for peace in Babylon and in all his [other] sacred cities. As to the inhabitants of Babylon ... I abolished forced labour ... I returned to these sacred cities … the images which [used] to live therein and established for them permanent sanctuaries (Ross, 2008, p. 3).

Throughout the ages many Kings, Emperors, Philosophers and Civilizations have all left their mark, positively or negatively on the notion of Human Rights. In the 18th century, for example, in a clear reference to the necessity of universal human rights, the liberal theorist Immanuel Kant asserted that:

> The peoples of the earth… have entered in varying degrees into a universal community, and it has developed to the point where a violation of rights in one part of the world is felt everywhere. The cosmopolitan right is therefore not fantastic and overstrained; it is a necessary compliment to the unwritten code of political and international right, transforming it into a universal right of humanity (Kant as quoted in Bromley and Smith, 2004, p. 533).

In the last 60 years however, since the inception of the Universal Declaration of Human Rights (UDHR), the concept of universal human rights has evolved from mere theory into an internationally recognized, codified legal framework, culminating most recently in the establishment of the International Criminal Court (ICC) and the further evolution of the concept of the Responsibility to Protect.

IHRL can be defined as a set of international rules, established by treaty or custom, on the basis of which individuals and groups can expect and/or claim certain behaviour or benefits from governments. Human rights are inherent entitlements which

belong to every person as a consequence of being human (International Committee of the Red Cross, 2003). As well as this numerous non-treaty based principles and guidelines known as 'soft law'[47] also belong to the body of international human rights standards with the main sources of IHRL including the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights (1966), as well as Conventions on Genocide (1948), Racial Discrimination (1965), Discrimination against Women (1979), Torture (1984) and Rights of the Child (1989). The main regional instruments are the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), the American Declaration of the Rights and Duties of Man (1948) and Convention on Human Rights (1969), and the African Charter on Human and Peoples' Rights (1981) (International Committee of the Red Cross, 2003). These apply in peacetime; however, many of its provisions may be suspended during an armed conflict. For example, article 4(1) of the International Covenant on Civil and Political Rights says that states can withdraw temporarily from their commitments in times of public emergencies[48](The International Covenant on Civil and Political Rights, 1976). As a form of international law, international human rights law is primarily made up of treaties, that is agreements between states intended to have binding legal effect between the parties that have agreed to them; and customary international law, rules of law derived from the consistent conduct of states acting out of the belief that the law required them to act that way (Rosenne, 1984, p. 55). For example the UN Declaration of Human Rights while not a treaty itself was explicitly adopted for the purpose of defining the meaning of the words 'fundamental freedoms' and 'human rights' appearing in the United Nations Charter, which is binding on all member states. For this reason the Universal Declaration and the ICCPR are fundamental constitutive documents of the United Nations, binding it, states and even non-state actors to IHRL (Mertus, 2009, p. 114). Many

[47]Soft laws can be defined as 'legal instruments that are not legally binding, but act more as guides to policy.' They are not treaties in the usual sense of the term, but guidelines and standards put forward in resolutions and declarations. In time, such soft law provisions can turn into international customary law which could be a basis for new formulations of hard law provision. A further characteristic of soft laws contained in the recommendations formulated by international organizations is that they are the result of negotiations with States. So, soft-law definition can also be expanded to mean "recommendations that rest on the consensus of States and thereby assume some authority that may be taken into account in legal proceedings, but whose breach does not constitute a violation of international law in the strict sense, and thus does not entail State responsibility Alborzi, M. R. (2006). *Evaluating the effectiveness of international refugee law: the protection of Iraqi refugees*, M. Nijhoff Publishers.

[48] Article 4(1) of the ICCPR states that: 'In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.'

international lawyers, in addition, believe that the Declaration forms part of customary international law (Smith, 2007, p. 36) and is a powerful tool in applying diplomatic and moral pressure to governments that violate any of its articles. The Declaration continues to be widely cited by governments, academics, advocates and constitutional courts and individual human beings who appeal to its principles for the protection of their recognised human rights.

As well as this, instead of depending on judgements in relation to customary IHRL, some states have gone further and codified it within their own national legal systems. Article 56 of the UN Charter obligates member states to take 'joint and separate action' to promote observance of human rights and fundamental freedoms for all (Mertus, 2009, p. 37). Thus one way of promoting international human rights law would be for a state to include incorporating international norms into a state's constitution and criminal law. For example, to comply with the Genocide Convention a country must make genocide a crime within its own legal system. Much international human rights law is obeyed because its norms have been incorporated into the legal systems of countries (Hathaway, 2005, p. 228). One such example of this incorporation in domestic law of international norms is found in the United Kingdom's Human Rights Act of 1998. The Act makes the norms of the European Convention part of the domestic law of the UK. Under this Act, a resident of the UK can now bring a human rights claim in British courts under this Act instead of having to go to the European Court of Human Rights in Strasbourg, France (Equality and Human Rights Commission, 2011).

6.2.1 The International Criminal Court

The movement for the creation of an international court to deal with crimes committed against humanity gained momentum after the Nuremberg Trials 1945 -1949, which were established to deal with the genocide and crimes against humanity committed by the Nazis in World War II. The trials demonstrated that the existing international legal structure did not have a standing body with the means or jurisdiction to prosecute such crimes. Consequently, nearly 60 years later the 'Rome Statute of the International Criminal Court' established the ICC at an international conference in Rome on 17th July 1998, where 120 countries voted to adopt it, 7 countries[49] voted against it and 21 abstained. Presently there are 117 countries who are States Parties to the Rome Statute of the International Criminal Court (The International

[49] USA, China, Iraq, Israel, Libya, Qatar and Yemen.

Criminal Court, 2011). It is the first ever independent permanent, treaty based, international criminal court established to promote the rule of law and has the power to indict, try and punish major human rights violators, although a number of 'ad hoc' tribunals[50] created over the years to try these crimes attempted to do so. Up until the ICC's establishment there was no international body whose role was specifically the prosecution of individuals for war crimes and crimes against humanity.

The ICC can only prosecute crimes committed on or after 1st July 2002 (article 11, Rome Statute of the International Criminal Court, 1998), the date on which the Rome Statute entered into force, thus its jurisdiction doesn't apply retrospectively. Also it can only generally exercise jurisdiction in cases where the accused is a national of a state party or the alleged crime took place on the territory of a state party. As well as this, although the ICC is legally and functionally independent from the United Nations, it allows the Security Council to refer to the Court situations that would not otherwise fall under the Court's jurisdiction (article 13, Rome Statute of the International Criminal Court, 1998), as it did in relation to the situations in Darfur and more recently Libya, which the Court could not otherwise have prosecuted as neither Sudan nor Libya are state parties. It claims jurisdiction over the severe violations of both IHL and IHRL (International Committee of the Red Cross, 2003) which it refers to as the 'most serious crimes of concern to the international community as a whole'. These are the crime of genocide, crimes against humanity and war crimes, with the latter having the Geneva Conventions incorporated into article 8 of the Rome Statue, with improvements made upon them to incorporate violations in internal conflicts such as civil wars (Doria et al., 2009, p. 1092).

6.2.2 Criticisms of International Human Rights Law

Islamist countries such as Sudan, Pakistan, Iran, and Saudi Arabia have criticized the Universal Declaration of Human Rights for its perceived failure to take into the account the cultural and religious context of Islamic countries because their governments and legal systems were based on Sharia law. Saudi Arabia has refused even to sign it because of its reference to freedom of religion (Waardenburg, 2002, p. 167). An example of this criticism is

[50] Recent examples include The "International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991", more commonly referred to as the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR)

when Iran's ambassador to the UN, Said Rajaie-Khorassani in a statement in to the GA in 1983 asserted:

> That the Universal Declaration or Human Rights, which represented secular understanding of the Judeo-Christian tradition, could not be implemented by Muslims and did not accord with the system or values recognized by the Islamic Republic or Iran; his country would therefore not hesitate to violate its provisions, since it had to choose between violating the divine law of the country and violating secular conventions (Brems, 2001, p. 201).

The main reasons that Islamists reject IHRL (apart from the fact it is manmade) are women's rights, religious freedom, discrimination on the basis of religion and Islamic 'hudud' punishments (punishment which involve death or mutilation). This can be explained by the fact that in these areas the actual law of many Islamic states is based on the sharia (Darraj, 2010, p. 103). In many Islamic states women are discriminated against with little or no rights. As Azam Kainguian of the Committee to Defend women's Rights in the Middle East writes:

> In Iran, the Sudan, Pakistan and Afghanistan, Islamic regimes proceeded to transform women's homes into prison houses, where confinement of women, their exclusion from many fields of work and education, and their brutal treatment became the law of the land (Kainguain as quoted in Darraj, 2010, p. 106).

She also points out that under sharia, a woman's testimony equals only half that of a man, which biases domestic cases in favour of the husband, and that in inheritance cases, sharia dictates that daughters inherit only half as much as sons (Kainguain as quoted in Darraj, 2010, p. 106). Also in these countries Muslims are not allowed marry non-Muslims, religious freedom is non-existent with Muslims who change faith (Apostasy) subject to the death penalty or imprisonment. As well as this, Sharia criminal law identifies hudud crimes, six crimes that the Qur'an considers particularly serious and for which a particular type of punishment is prescribed entailing the infliction of pain. Apostasy, theft, banditry, adultery and even drinking alcohol are subject to punishments such as amputation of hands or legs, crucifixion, stoning to death or flagellation (Brems, 2001, p. 216 - 217). All these Islamic laws are odds with both the UNDHR and IHRL.

Another criticism is that many of the mainly Western powers, who champion IHRL and push for its enforcement, often condemning African, Asian and Arab countries for their human rights records, are the very countries that violate IHRL when it suits them. For

example one only has to look at the United States and its invasion of Iraq, rendition policy, use of torture and their off shore detention of prisoners in Guantanamo bay. Because the detention centre is located on Guantanamo Bay, Cuba, the United States authorities claim that it is beyond US sovereign territory and as such attempts to circumvent the application of human rights protections in the United States constitution and access to United States courts. As well as this, the detainees are referred to as 'enemy combatants' a classification invented to thwart the non-application of the protections of both IHRL, and especially IHL which classifies people as wounded, sick or shipwrecked armed forces, civilians or prisoners of war (Duffy, 2005, p. 378). These violations are viewed as hypocrisy in relation to IHRL and in its annual survey of the state of human rights in 2004, Human Rights Watch stated that abuses committed by the United States in Guantánamo and Iraq significantly weakened the world's ability to protect human rights. It goes on to say that:

> Not only does the United States invite others to mimic its policy by openly defying the law, but it reduces its leverage over others because Washington seems hypocritical when calling upon others to uphold principles that it violates (Weiss and Thakur, 2010, p. 283).

By violating IHRL the US has lost much of its moral authority and this has impacted negatively on the promotion and implementation of IHRL. Addressing the United Nations in 2007, Zimbabwe's president, Robert Mugabe, himself a massive violator of IHRL, accused U.S. President George W. Bush of 'rank hypocrisy' for lecturing him on human rights and likened the U.S. Guantanamo Bay prison to a concentration camp. As he said: 'His hands drip with innocent blood of many nationalities, he kills in Iraq. He kills in Afghanistan. And this is supposed to be our master on human rights?' (Parsons, 2007)

Finally, some critics assert that human rights and IHRL are another form of Western imperialism and domination over the sovereignty of smaller, non-Western nations. For example many believe that IHRL holds the rights of the individual above all else, including, in some cases, the security of the family and society. For non-Western nations and cultures that place greater emphasis on family, society and the state this is very problematic. This argument is also sometimes referred to as the 'Asian values challenge' because many or its critics often come from Asian societies (Darraj, 2010, p. 101). An example of this is Singapore which places restrictions on freedom of speech, freedom of assembly and the freedom of the press, which the government asserts are necessary to preserve economic prosperity and racial and religious harmony (Green and Karolides, 2005, p. 514). In recent

times they have also made increasing use of the defamation laws to those who report or express dissenting views. In November 2010, British author Alan Shadrake was convicted of contempt of court and given a US$15,400 fine as well as six weeks in prison for his critical review of Singapore's death penalty law and administration in his book *Once a Jolly Hangman: Singapore Justice in the Dock* (The Telegraph, 2010). As a member state of the United Nations Singapore is bound to respect 'fundamental human rights' enshrined in the Universal Declaration on Human Rights, in which Freedom of Expression is guaranteed by Article 19, however Singapore's government's view is different. They assert that human rights principles and conceptions are dominated by Western perceptions and argue for an 'Asian Values' interpretation of human rights, characterized by the primacy of duty to the community over individual rights and the expectation of trust in authority and dominance of the state leaders (Stacy, 2009, p. 12).

6.3 International Refugee Law

International refugee law is a set of rules and procedures that aims to protect, first, persons seeking asylum from persecution, and second those recognized as refugees under the relevant instruments. Its legal framework provides a distinct set of guarantees for these specific groups of persons, although, inevitably, this legal protection overlaps to a certain extent with international human rights law as well as the legal regime applicable to armed conflicts under international humanitarian law (The Rule of Law in Armed Conflicts Project, 2011b). In relation to refugees, IHL can be applicable during times of international and internal armed conflict, and extends to them only as long as they flee to a belligerent or occupied country, or one that is beset by an internal conflict. IHL does not protect refugees who flee to the territory of a state that is not taking part in the armed conflict, as was the situation with such groups as the Afghan refugees in Pakistan and Iran, Iraqi refugees in Iran after the Gulf War, and Rwandan refugees in Zaire, Burundi, and Tanzania (Terry, 2002, p. 28). The main sources of refugee law are treaty law, notably the 1951 Convention relating to the status of refugees and its 1967 Protocol, and customary international law, which as mentioned previously, applies to all states irrespective of whether they are a party to relevant treaties or not. Regional instruments represent a further set of protections, particularly the 1969 Organization of African Unity Convention (for Africa) and, although it is not formally legally binding, the 1984 Cartagena Declaration in relation to Latin America (The Rule of Law in Armed Conflicts Project, 2011b).

The 1951 convention was originally limited to protecting mainly European refugees in the aftermath of World War II but is extremely important because it defines what the term 'refugee' means[51] and outlines a refugee's rights including such things as freedom of religion and movement, the right to work, education and accessibility to travel documents, but it also underscores a refugee's obligations to a host government. However it must be said that the post WWII refugee situation is very different from the refugee situations in contemporary times and as a result the UN system and UNHCR has struggled to meet and adapt to these new challenges. A key provision of the 1951 convention stipulates that refugees should not be returned, or refouled, to a country where he or she fears persecution. It also spells out people or groups of people who are not covered by the Convention (UNHCR, 2001a, p. 16). Subsequently the 1967 protocol removed the geographical and time limitations written into the original Convention making refugee law and protection universal (UNHCR, 2001a, p. 16). In addition to this the term 'refugee' has been broadened since the 1950s through regional agreements to cover a variety of people in diverse situations who need assistance and protection. In addition, refugee rights have been incorporated in other areas of international and regional law, thus providing a complementary source of legal protection to refugees. The most notable or these expansions is found in the Convention Governing the Specific Aspects of Refugee Problems in Africa, a regional instrument adopted by the Organization of African Unity (OAU) in 1969, which, in addition to the 1951 Convention definition, defines a refugee 'as a person fleeing external aggression, internal civil strife, or events seriously disturbing public order' in African countries (Betts, 2011, p. 191). The Cartagena Declaration of 1984 covering Central American refugees also goes further than the 1951 Convention by including:

> Persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order (Betts, 2011, p. 191).

Guy S. Goodwin-Gill, a professor of law asserts that IRL can be broadly divided into six basic principles: the principle of asylum, the principle of non-refoulement, the principle of

[51]Article1of the Convention defines a refugee as a person who is outside his/her country of nationality or habitual residence; has a well-founded fear of persecution because of his/her race, religion, nationality, membership in a particular social group or political opinion; and is unable or unwilling to avail himself/herself of the protection of that country, or to return there, for fear of persecution

protection, the principle of non-discrimination, the principle of international co-operation and the principle of solutions (Goodwin-Gill, 1995, p. 12).

6.3.1 The Principle of Asylum

While no international legal instrument prescribes exactly what is meant by asylum (Goodwin-Gill, 1995, p. 12), the Institute of International Law does however, define it in a very broad manner as meaning 'the protection which a State grants on its territory or in some other place under the control of certain of its organs, to a person who comes to seek it' (Hurwitz and Hurwitz, 2009, p. 16). An asylum-seeker is a general term for a person who has not yet received a decision on his/her claim for refugee status. It could refer to someone who has not yet submitted an application or someone who is waiting for an answer. Not every asylum-seeker will ultimately be recognized as a refugee, but many will(UNHCR and Inter-Parliamentary Union, 2001, p. 50). The basis for the principle of asylum has roots in a number of conventions and declarations, one of the most recognizable being the Universal Declaration of Human Rights (UDHR) in which its article 14 states that 'Everyone has the right to seek and to enjoy in other countries asylum from persecution' (United Nations, 1948b). The 1951 Convention relating to the Status of Refugees provides and its 1967 protocol identifies five protected grounds for the seeking of asylum and recognition of refugee status: fear of persecution because of race, nationality, religion, political opinions and membership and/or participation in any particular social group or social activities (Steiner, 2009). Its article 31 in an effort to stop penalization and detention states that:

> The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence (United Nations, 1951).

It also states that:

> The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable

> period and all the necessary facilities to obtain admission into another country (United Nations, 1951).

Finally, in an effort to encourage states to respect and recognize asylum seekers, article 1 of the 1967 United Nations Declaration on Territorial Asylum notes that 'Asylum granted by a state, in the exercise of its sovereignty, to persons entitled to invoke Article 14 of the UNDHR shall be respected by all other states'. However, in an effort to respect state sovereignty, it also emphasizes that it is for 'the state granting asylum to evaluate the grounds for the grant of asylum' (United Nations, 1967). The primary responsibility in relation to the recognition of asylum therefore lies with individual states. In 2010 there were 845,800 individual applications for asylum or refugee status submitted to Governments or UNHCR offices in 166 countries or territories (UNHCR, 2011g, p. 25).

6.3.2 The Principle of Non-Refoulement

The 1951 Convention relating to the Status of Refugees was the first example of non-refoulement being enshrined in international law. Article 33 of the Convention states that:

> 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 on account of his race, religion, nationality, membership of a particular social group or political opinion (United Nations, 1951).

Also, Article 13 of the 1976 ICCPR states that:

> an alien lawfully in the territory of a State Party to the present Covenant may be expelled there from only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority (United Nations, 1976a).

This article enhances the principle of 'non-refoulement' in international law because it specifies what action must be taken before anyone can be forcibly expelled, however it is limited in the sense that does not mention refugees specifically, and only refers to aliens 'lawfully' within a state. Article 7 of the ICCPR is also relevant as it protects against torture stating that 'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment' (United Nations, 1976a). The relationship between torture and refugees is

even more relevant when the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is considered. Article 3 states that:

> No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture (United Nations, 1987).

It goes on to say:

> For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights (United Nations, 1987).

The 1987 convention provides broader protection than the 1951 Convention in that it is an absolute right; however, its effect is restricted in that it only applies to situations involving torture (Weissbrodt and Hortreiter, 1999, p. 8).

On a regional level, Africa has put in place very strong legislation with regard to refugee protection in the form of the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa. The principle of non-refoulement is enshrined in Article 2(3) which states that:

> No person shall be subjected by a Member State to measures such as rejection at the frontier, return or expulsion, which would compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened (Organization of African Unity, 1969).

The principle is less limited then its equivalent in the 1951 UN Convention because the five reasons for leaving the previous state are greatly expanded, there are no situations in which a refoulement will be accepted and unlike many other instruments, explicitly recognizes that particular countries will have to call for help when they are over-burdened with refugees, as well as imposing a duty on other states to assist (Kuruk, 1999, p. 331 - 332). Another regional agreement dealing with refugees is the American Convention on Human Rights, in which Article 22 deals with non-refoulement stating that:

> In no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status or political opinions (Organization of American States, 1978).

There have also been several European Union instruments dealing specifically with the problem of asylum and refugee flows. Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms has been interpreted by the European Court of Human Rights as implicitly prohibiting the return of anyone to a place where they would face a 'real and substantiated' risk of ill-treatment in breach of the prohibition of torture or inhuman or degrading treatment or punishment (UNHCR, 1997). Article 2 of the 1995 Council of Europe's Resolution on Minimum Guarantees for Asylum Procedures, provides that the member state's asylum procedures will fully comply with the 1951 Refugee Convention, and especially with the non-refoulement provision as well as stating that a potential refugee will not be expelled until a decision on their status has been made (UNHCR, 1997).

Despite the abundance of agreements dealing with refugees, breaches still regularly occur. For example in December 2009, Thailand forcibly returned over 4,500 Hmong asylum seekers to Laos despite concerns voiced by the UN that they could face persecution at home. The group included 158 people recognized as refugees by UNHCR, which condemned the forced return (Zieck, 2010, p. 6). As well as this many commentators such as Maryellen Fullerton remain concerned about the direction Europe and many Western states are taking with regard to the non refoulement principle and believe that initiatives such as the safe third country and the safe country of origin lists are designed to circumvent the principle (Fullerton, 2001 and Fullerton 2006). Despite this however, the fact that the principle is codified in so many instruments is a hugely positive development and implemented as intended, offers significant protection for many victims of persecution throughout the world.

6.3.3 The Principle of Non-Discrimination

Article 1 (3) of the UN Charter states that one of its main purposes and principles was:

> To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion (United Nations, 1945).

The subsequent 1948 Universal Declaration of Human Rights goes a step further and expands on the principle of non-discrimination in the United Nations Charter with its article 2 stating that:

> Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex language, religion, political or other opinion, national or social origin, property, birth or other status (United Nations, 1948b).

In relation to refugees, article 3 of the 1951 convention contains a simple and straightforward statement: 'The contracting states shall apply the provisions of this Convention without discrimination as to race, religion or country of origin'(United Nations, 1951). The UNHCR statute says something similar when it stresses that the work of the High Commissioner shall be purely humanitarian and non-political, with the primary purpose being that of providing protection to those in need, guaranteeing the status and rights of individual refugees, and finding a lasting solution to their problems, regardless of political interests (Goodwin-Gill, 1995, p. 25). There are also regional instruments in Europe, the Americas, Africa and Asia which deal with discrimination. Therefore, there is a myriad of declarations, conventions and legislation in existence to assist the international community to take the necessary measures to ensure that the principle of non-discrimination is followed and applied, and that no refugee or asylum-seeker is prejudiced in his or her search for refuge and protection. Unfortunately, however discrimination still occurs and with the downturn in the global economy, seems even to be on the increase in some quarters.

6.3.4 The Principle of Protection

Governments normally guarantee the basic human rights and physical security of their citizens. But when people become refugees this safety net disappears with them lacking even the most basic of protections because it is often their own government that is trying to persecute them. If other countries do not let them in, and do not protect and help them once they are in, then they may be condemning them to a situation where their basic rights, security and, in some cases their lives, are in danger. The principle of protection is an area where International Humanitarian Law, International Human Rights Law and International Refugee Law overlap in a significant manner, thus the principle is used as a short-hand umbrella notion within which to discuss the question of who receives and should receive

protection, what protection does and should entail and how protection can be implemented, particularly at the national level, where legislation may be required (Goodwin-Gill, 1995, p. 18).

6.3.5 The Principle of International Co-operation

We are living in an increasingly globalized and interconnected world with international institutions such as the IMF, WB and the UN now playing a greater role in people's lives politically, socially and economically. The Millennium Development Goals (MDGs) adopted by world leaders in 2000provides concrete, numerical benchmarks for tackling extreme poverty in its many dimensions and its Goal 8 aspires to 'Develop a Global Partnership for Development' in recognition of the need for the entire international community to work together towards the common end of making sure that human development reaches everyone, everywhere (United Nations Development Programme, 2011).Also, article 1.3 of the UN charter commits members to:

> Achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion (United Nations, 1945).

This basic rule of co-operation is further clarified in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations which states that:

> States have the duty to co-operate with one another, irrespective of the differences in their political, economic and social system, in the various spheres of international relations, in order to maintain international peace and security and to promote intern national economic stability and progress, the general welfare of nations and international co-operation free from discrimination based on such differences (United Nations General Assembly Resolution 2625 (XXV), 1970).

The necessity for co-operation with UNHCR and between states themselves has been in many international instruments including the Preamble to the 1951 Convention which recognizes that the effective co-ordination of measures taken to deal with the protection of refugees will depend upon the co-operation of States with UNHCR (United Nations, 1951). Other instruments recognizing cooperation include the 1967 UN Declaration on Territorial

Asylum, the Preamble to the 1969 OAU Convention governing the Specific Aspects of Refugee Problems in Africa, Resolution 67 (14) of the Council of Europe on Asylum to Persons In Danger of Persecution, and the 1984 Cartagena Declaration (Goodwin-Gill, 1995, p. 28).

6.3.6 The Principle of Solutions

According to its mandate, UNHCR is responsible for finding durable solutions that will allow them to rebuild their lives in dignity and peace. Article 1 of its statute states that it is tasked with:

> Seeking permanent solutions for the problem of refugees by assisting Governments and, subject to the approval of the Governments concerned, private organizations to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities (UNHCR, 1950).

There are three solutions open to refugees where UNHCR can help: voluntary repatriation; local integration; or resettlement to a third country in situations where it is impossible for a person to go back home or remain in the host country. However, it must be noted that there are two other less desirable, 'solutions' that occur: the warehousing of refugees to in camps and the forcible repatriation of refugees.

6.3.7 Contemporary Challenges for International Refugee Law

There has, without doubt, been a major change in attitudes towards refugees and asylum-seekers. Where once they were viewed as innocent people to be protected and cared for, they are often now seen as a danger to a host states' economy and national security. Refugees and asylum seekers have become campaign issues in many recent elections with governments and opposition parties vying with each other to appear toughest on the 'bogus' asylum-seekers 'flooding' into their countries living off welfare and 'stealing' jobs from the indigenous populations. They obviously make a perfect target for people wanting to invoke the age-old prejudice against foreigners. International Refugee Law although not being able to combat ignorance and prejudice, is a considerable body of law and legislation which can however offer specific, codified protection to refugees and guarantees them their human rights and dignity.

The world has become a more complex place in contemporary times with increased numbers of refugees and IDPs, an increase in protracted refugee situations, a rise in international terrorism and a rise in complex emergencies. These are unlikely to disappear in the near future, and, if anything, the refugee situation is likely to worsen. IRL needs to constantly evolve in order to keep up with these developments, broadening its remit to protect whatever vulnerable groups need protecting. As well as this, IRL, like much of international law, it is only as effective as the respect given to it by states and unfortunately many countries either break or ignore it, refouling, imprisoning or even torturing refugees. It therefore also needs to be enhanced so that there is greater accountability with more enforcement powers to ensure compliance in a diverse, complicated and complex 21st century setting.

6.4 Kenya and Dadaab: Refugees and International Law

Kenya is a signatory to all the main international conventions in relation to refugees: the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol Relating to the Status of Refugee as well as the regional level, the 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa (Burton Wagacha and Guiney, 2008, p. 92). It has also ratified most of the major International Human Rights treaties including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights for the child (CRC), and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). On the regional level, Kenya has also ratified the African Charter on the Rights and welfare of the Child and the 1981 African Charter on Human and Peoples' Rights (Kippenberg, 2008, p. 79). On a domestic level, Kenya has passed the 2006 Refugees Act which incorporates or domesticates all the human rights treaties to which Kenya is a signatory to or has ratified[52], and this in theory at least, means that refugees' rights as provided in any other human rights treaty are now protected and are therefore part of Kenyan law. As well as this, following the passing of the new Kenyan Constitution in 2010, Legislators are presently working on a new updated Refugee Bill. This chapter will examine the effectiveness of all these different conventions, treaties and laws in relation to the protection and security of refugees in Dadaab.

[52] 16(1) of the GoK 2006 Refugee Act states that 'subject to this Act, every recognized refugee and every member of his family in Kenya shall be entitled to the rights and be subject to the obligations contained in the international conventions to which Kenya is party and (b) shall be subject to all laws in force in Kenya'

6.4.1 The Right to Asylum

The GoK 2006 Refugee Act, section 2, defines asylum as:

> The shelter and protection granted by the Government to persons qualifying for refugee status in accordance with the provisions of this Act and in accordance with International Conventions relating to refugee matters(Government of Kenya, 2006b).

These international conventions include the UDHR (article 14(1)), the 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa (article 2(3)) and the 1986 African Charter on Human and Peoples' Rights, article 12(3), which states that:

> Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with laws of those countries and international conventions (Organization of African Unity, 1986).

It is clear that there is significant and strong legislation provided for in Kenya in relation to the right to asylum. However, despite the fact that huge numbers of refugees have entered Kenya over the years, the right to enter and seek asylum is far from guaranteed. For example, following the intervention of Ethiopian troops in support of the TFG in December 2006, the Kenyan authorities closed Kenya's border with Somalia on 3rd January 2007 (BBC News, 2007) with it being officially closed ever since. Subsequently, the UNHCR run transit centre in the border town of Liboi was also closed, denying asylum seekers a regulated entry point, effectively trapping many in the Somali border town of Dobley (IRIN, 2011a). Referring to concerns that fighters from the UIC (from which Al Shabaab emerged) and possibly al-Qaeda operatives might enter Kenya and endanger Kenya's national security, Kenya's then Foreign Minister Raphael Tuju said that Kenya was 'not able to ascertain whether these people [Somali refugees] are genuine refugees or fighters and therefore it's best that they remain in Somalia'(BBC News, 2007). Despite the border being officially closed, hundreds of thousands of refugees have managed to enter Kenya and the closure of the refugee transit centre in Liboi has resulted in a huge increase in the vulnerability of these asylum seekers travelling from the border to the camps. Asylum seekers can no longer rely on the safe passage to the camps previously guaranteed by UNHCR's presence in Liboi, as smugglers, bandits, corrupt police and even Islamists all prey upon them. A 2010 Human rights Watch report investigating police abuse of asylum seekers asserts that:

> The border and transit centre's closure has created the opportunity for Kenyan police operating in the border areas near Dadaab to intercept and extort money from newly arriving asylum seekers and to unlawfully arrest, detain, abuse—and in some cases deport—those who do not pay. Many police officers have willingly and systematically seized the opportunity. Some rape asylum seekers as they cross into Kenya and large numbers of Somalis face unlawful arrest and days and even weeks of arbitrary detention in inhuman and degrading conditions in the Liboi, Dadaab, and Garissa police stations (Simpson, 2010, p. 22).

As well as this there have been many examples of asylum seekers not being allowed apply for refugee status by officials and forcibly removed from Kenya. One disturbing example occurred in March 2011in Mandera. It began in October 2010 when there was a fresh outbreak of fighting between TFG forces backed up by pro-Government ASWJ militia and Al-Shabaab in Bula Hawo on the border with Kenya and Ethiopia. Fierce clashes there displaced some 60,000 Somalis, with thousands fleeing over the Kenyan border (Roble, 2010). In response the Kenya Red Cross set up a temporary refugee camp in Mandera, in northeast Kenya with the support of the local Authorities. On 17th March 2011, Kenyan authorities ordered the Red Cross to stop providing services and close the camp which was by now housing about 13,000 asylum seekers. That evening, according to several organizations working in Mandera, government officials accompanied by armed Kenyan security forces intimidated camp residents, telling them to leave the camp and return to Somalia by noon the next day, in clear violation again of the non-refoulement principle as the people in the Mandera camp were not given the opportunity to claim asylum with the majority forced to return to Somalia where the fighting continued (Human Rights Watch, 2011a).

Finally on 21stJuly 2011, the Kenyan government issued a statement about the refugee situation in the country and the drought which contained a series of worrying assertions, and signalled that it may even be assessing the criteria for claiming asylum. The statement asserts that 'the current influx of refugees into Kenya is of Somalis seeking food and not people running away from violence'(Mutua, 2011). Obviously, this is clearly not the case, as renewed military campaigns by African Union (AMISOM), TFG troops and their allies were launched on multiple fronts, with AMISOM and the TFG attacking positions in Mogadishu and Ethiopian forces and the ASWJ militia attacking Al-Shabaab in Central Somalia (UNHCR, 2011b). The famine is only one factor of many interrelated complex humanitarian, environmental and political factors which continues to cause Somalis to flee,

not least the on-going conflict, the disruption of grazing patterns caused by the conflict, the lack of access for humanitarian organizations due to insecurity and Al Shabaab's ban on humanitarian aid as well as their imposition of extreme conditions and punishments associated with Sharia law in the areas they control. Formulating such a distinction raises the possibility that Kenya in the future may not recognize the right to seek asylum for those fleeing famine and starvation as opposed to war, which would be a huge step backwards, impact negatively on asylum seekers and cause significant pain and suffering to those in need of protection and humanitarian assistance.

6.4.2 The Right to Non-Refoulement

Under section 46 of the 2011 Kenyan Citizenship And Immigration Bill, the authorities have the right to regulate, who is present on its territory and may prevent certain categories of people from entering or remaining in Kenya, such as criminals and those deemed to be a threat to its national interests (Government of Kenya, 2011a). However, despite legitimate security concerns, Kenyan and international law obliges Kenya to allow asylum seekers access to Kenyan territory to seek asylum and prohibits their refoulement. These laws include section 18 of Kenya's 2006 Refugee Act states that:

> No person shall be refused entry into Kenya, expelled, extradited from Kenya or returned to any other country or to subjected any similar measure if, as a result of such refusal, expulsion, return or other measure, such person is compelled to return to or remain in a country where the person may be subject to persecution on account of race, religion, nationality, membership of a particular social group or political opinion; or the person's life, physical integrity or liberty would be threatened on account of external aggression, occupation, foreign domination or events seriously disturbing public order in part or the whole of that country (Government of Kenya, 2006a).

As well as this Kenya is party to a number of international and regional conventions which prohibit refoulement. These include the 1951 Convention relating to the Status of Refugees (article 33), the 1976 International Covenant on Civil and Political Rights (article 13) and the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (article 2(3)).

It is clear that there is significant and robust legislation provided for in Kenya in relation to the right to non-refoulement, but in spite of this it still continues as Kenyan authorities sporadically try to return asylum seekers to Somalia against the protests of UNHCR, aid agencies and human rights organizations. For example, in January 2009 UNHCR reported one particularly worrying case when Kenyan authorities forcibly returned three Somalis who had entered the country along the Liboi border area in north-eastern Kenya. The three, one woman and two men were among several Somalis whose vehicle was intercepted by the border police as it entered Kenyan territory on 16thJanuary. According to border officials, the driver refused instructions to stop and the police opened fire and wounded three passengers. The injured were taken from Liboi to Dadaab, to receive medical attention. In Dadaab, the three wounded were interviewed by UNHCR and said they had fled the fighting in Mogadishu and had come to Kenya to seek asylum. UNHCR officially informed the local authorities and requested that they be handed over to the Kenyan Department of Refugee Affairs and UNHCR for further action. However, on 21st January, six policemen turned up at the Dadaab Health Centre, where the three asylum seekers were undergoing medical treatment for their bullet wounds, ordered them into a police van and drove them to the border, returning them to Somalia (UNHCR, 2009). These actions are clearly in violation of the principle of non-refoulement enshrined in international refugee law and indeed their own domestic law, however, despite UNHCR advising governments not to return Somali civilians to south-central Somalia because of the 'risk of serious harm that civilians may face there due to widespread violations of the laws of war and large-scale human rights violations'(Human Rights Watch, 2011a), they still occur with worrying frequency. Another more recent example, according to the Refugee Consortium of Kenya (RCK), a Kenyan refugee rights organization which monitors abuses in the Garissa, Dadaab, and Liboi areas, occurred during a two-week period in April 2011, when Kenyan police refouled over 100 Somalis, sometimes carrying out these deportations at night when detection would be less likely (Human Rights Watch, 2011c, p. 40).

The recent lockdown of the camps and UNHCR and its partner's suspension of all non-critical operations have meant that the presence of humanitarians within the camps has been severely curtailed. This has resulted in a massive deterioration in the protection afforded by their presence in the camps through their observation and field office activities with a significant chance of further refoulement occurring unhindered and even without UNHCRs knowledge. Despite the fact that refoulement has been occurring with considerable frequency, it would be quite remiss not to mention that the fact that there are nearly half a

million refugees in Dadaab is evidence that it is not widespread GoK policy, occurring instead in a more localized, sporadic and uncoordinated fashion. However, the 2011 Kenyan military incursion with a view to creating safe zones in Somalia (discussed in detail in Chapter 7) may indicate that this is changing with the GoK possibly attempting to create a situation in which it can forcibly repatriate the refugees from Dadaab back there.

6.4.3 Right to Freedom of Movement

Since the early 1990s, Kenya has adopted an informal encampment policy for most refugees in Kenya, restricting their movement to the limited confines of refugee camps. Because the policy has never been justified and formalized in specific legal terms, it violates international human rights and refugee law guarantees of refugees' right to freely move in their country of refuge (Simpson, 2010, p. 71). Some of these international laws include:

Article 13 (1) of the UN Declaration of Human Rights which states that 'Everyone has the right to freedom of movement and residence within the borders of each state'(United Nations, 1948b), Article 26 of the 1951 Refugee Convention which provides that:

> Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory subject to any regulations applicable to aliens generally in the same circumstances(United Nations, 1951)

Article 12(1) of the ICCPR which states that:

> Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence(United Nations, 1976a).

As well as this on a regional level, the African Charter on Human and Peoples' Rights Article 12(1) states that:

> Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law (Organization of African Unity, 1986).

Despite being party to all this legislation, however, the GoK since the early 1990s have operated an encampment policy for the vast majority of refugees in Kenya who live in the Dadaab and Kakuma refugee camps (Simpson, 2010, p. 71). Under this policy, all

refugees registered in the camps could not move outside of the camps unless they received special permission. The 2006 Refugees Act has solidified this encampment policy with section 16(2) stating that:

> The Minister may, by notice in the Gazette, in consultation with the host community, designate places and areas in Kenya to be transit centers for the purposes of temporarily accommodating persons who have applied for recognition as refugees or members of the refugees' families while their applications for refugee status are being processed; or refugee camps (Government of Kenya, 2006b),

In addition section 25 states that

> Any person who …… resides without authority outside the designated areas specified under section 16(2), commits an offence and shall on conviction be liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment(Government of Kenya, 2006b).

Section 17 of the act also allows for camp managers to 'issue movement passes to refugees wishing to travel outside the camps'(Government of Kenya, 2006b), but it doesn't say what the criteria for travel outside the camps are. UNHCR and the DRA have created an ad hoc list of reasons which remain unpublished, which are not available in writing and includes the following: health, education, resettlement interviews in Nairobi, and a general category called humanitarian reasons, which can include everything from visiting sick relatives to funerals or weddings (Simpson, 2010, p. 73).There were many occasions during my time in Dadaab that I reported on refugees, including women, children, and infants being found outside the camps without movement passes and brought to court. There was a serious lack of uniformity in their treatment with some charged with illegal presence and some charged with travelling without a movement pass. Some were just released and handed over to UNHCR; some were fined and released on payment while some were imprisoned, all for the same offences (Bukovac, 2010).

It is clear that this encampment policy operated in Dadaab is in breach of both IRL and IHRL. The question must be therefore be asked, why does UNHCR as the international UN agency tasked with protection of refugees go along with it? Verdirame believes that there are a number of reasons for UNHCR's acceptance and promotion of encampment, despite their manifestly negative impact on the protection of refugees. Firstly,

the greater visibility of encamped refugees in great numbers makes it easier for it to raise funds from donors; secondly, refugees can be more easily controlled in camps thus simplifying the provision of humanitarian assistance; thirdly, UNHCR's institutional inertia is partly responsible for the perpetuation of the encampment policy because it now lacks the experience or insights of alternative ways of assisting refugees and fourthly, encampment is bolstered by UNHCR's approach to durable solutions with repatriation being viewed as the 'best' solution, asylum is regarded as temporary and camps become acceptable as intermediate holding grounds until repatriation is affected (Verdirame et al., 2005, p. 288). However, although there is merit to Verdirame's arguments, it must be noted that UNHCR is there at the invitation of the GoK who has decided to keep refugees in the camps and as such in reality, UNHCR can do little about it and even if UNHCR refused to cooperate, the GoK would probably be unlikely to change its policy and situation of refugees could be even worse.

The encampment of hundreds of thousands or young and potentially productive refugees in the Dadaab camps for over twenty years is not only illegal, but also unethical and inhuman, and a major economic burden to the international community as the flow of humanitarian aid continues (Burton Wagacha and Guiney, 2008, p. 100).This lack of mobility also effectively 'imprisons' refugees and limits their ability to accomplish commercial growth and independent enterprise. A 2010 report commissioned by the Danish, Norwegian and Kenyan governments recognizes this fact and recommends a re-evaluation of the encampment policy saying:

> With the camps now over 18 years old and the refugee crisis emanating from Somalia not likely to be solved in the near future, it is recommended that GoK re-evaluates the encampment policy towards the Dadaab refugees, as the productive capacity of refugees could be significantly enhanced and applied if they were not subject to encampment (Enghoff et al., 2010, p. 11).

The camps are also detrimental for Kenya and the North Eastern Province (NEP) because the presence of refugees cannot be used as a catalyst for economic development (because of their supposedly short term nature) and can, like what has happened in Dadaab, become a national security concern as having many thousands of unemployed bored young people hanging around the camps with little or no control over their lives or futures results in significant discontent and even violence, making them ripe for recruitment for militias such as Al Shabaab.

6.4.4 Refugees Right to Work and Equal Pay

All refugees have the right to work and equal pay under international law. Some examples include article 23(1) of the UN declaration of Human Rights states that 'everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment' with article 23(2) stating that 'everyone, without any discrimination, has the right to equal pay for equal work'(United Nations, 1948b). Article 6(1) of the International Covenant on Economic, Social and Cultural Rights also states that:

> the States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right(United Nations, 1976b).

In addition article 7 of the ICESCR states that:

> The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular: (a) Remuneration which provides all workers, as a minimum, with fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work (United Nations, 1976a).

As well as this the 1951 Convention Relating to the Status of Refugees obliges Contracting States Parties to guarantee refugees the right to work and sets three standards to guide States in implementing the provision. Firstly, article 17(1) states that:

> The Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment(United Nations, 1951).

Secondly, article 17(2) of the Convention stipulates:

> That restrictions imposed to protect nationals from competing for jobs with foreigners shall not be applied to refugees…who fulfils one of three conditions: a) when s/he has completed three years' residence in the host country; b) s/he has a spouse possessing the nationality of the country of residence, but may not benefit

> from this provision if s/he has abandoned that spouse; c) one or more of his/her children are nationals of the country of residence(United Nations, 1951).

Finally article 17(3) states that:

> Contracting States shall give sympathetic consideration to assimilating the rights of all refugees to be the same as those of nationals and in particular of those refugees who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes (United Nations, 1951)

In terms of domestic law there was little legislation in relation to a refugee's right to wage-earning employment until the passing of the Kenya Refugees Act 2006 which attempts to provide refugees with some of the provisions outlined in the 1951 Convention with regard to wage-earning employment, however it falls quite short of these standards. The only provision in relation to wage-earning is contained in section 16(4) which states that:

> Subject to this Act, every refugee and member of his family in Kenya shall, in respect of wage-earning employment, be subject to the same restrictions as are imposed on persons who are not citizens of Kenya (Government of Kenya, 2006b).

This means that restrictions applied to foreigners working in Kenya shall also apply to refugees, but the real effect of this is that the vast majority of refugees are not able to obtain work permits because most are unskilled and permits are only issued to non-nationals with specialized skills not available locally or nationally in Kenya. However the fact remains that the GoK has ratified many international treaties guaranteeing the right to work confirmed by its own 2006 Refugee Act section 16(1) which states that:

> Subject to this Act, every recognized refugee and every member of his family in Kenya shall be entitled to the rights and be subject to the obligations contained in the international conventions to which Kenya is party and (b) shall be subject to all laws in force in Kenya (Government of Kenya, 2006b).

But yet despite these legal protections, refugees are not entitled to equal pay for equal work. Even in Dadaab refugees employed by the international organizations and UNHCR in all sectors, ranging from health to education to translation services are not provided with a wage but are instead provided with an 'incentive payment' as a form of a 'gift' for their efforts with this payment being quite small ranging from a monthly payment of KES 3100 (€25) for a cleaner to KES 7000 (€58) for a refugee teacher (Floyer-Acland, 2009). The system has often come under severe criticism and is seen by many as a way of

exploiting refugee labour while ignoring the legal commitments of the GoK under international law.

6.4.5 Right to Protection against Statelessness: Citizenship by Birth or Registration

Kenya is a party to the African Charter on the Rights and Welfare of the Child (ACRWC) and the UN Convention on the Rights of the Child (Citizenship Rights in Africa Initiative, 2011, p. 1) These both provide for every child to have the right to acquire a nationality with the article 6 of the ACRWC further providing that:

> States Parties to the present Charter shall undertake to ensure that their Constitutional legislation recognizes the principles according to which a child shall acquire the nationality of the State in the territory of which he [sic] has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws (Organization of African Unity, 1990).

In line with this principle, section 11 of Kenya's 2001 Children Act already provides that:

> Every child shall have a right to a name and nationality and where a child is deprived of his identity the Government shall provide appropriate assistance and protection, with a view to establishing his identity (Government of Kenya, 2001).

However, the 2010 Constitution fails to provide for children born in Kenya of stateless parents or who would otherwise be stateless to have citizenship by birth, and this lack of a provision in the Constitution is in violation of Kenya's obligations under the ACRWC. In terms of Kenyan citizenship by registration, the 2011 Citizenship and Immigration Bill, actually goes further names refugees and asylum seekers as specific groups that cannot apply for citizenship by registration or even birth, with its section 21(1)(k) stating that:

> A person who has been lawfully resident in Kenya for a continuous period of at least 7 years and who satisfies the following conditions may apply to be registered as a citizen if that person was at the time of his/her birth, entry or residency in Kenya not a refugee or an asylum seeker (Government of Kenya, 2011a).

Many countries in Africa provide that a child born on their territory of a parent also born there shall have the right to citizenship by birth; or (alternatively or in addition) that a child born on the territory who is resident there for a large proportion of his or her

childhood and remains there until reaching the age of 18 shall then have the right to recognition of citizenship by birth. These provisions ensure that statelessness is not a multi-generational problem, and that marginalized populations are progressively integrated into society (Citizenship Rights in Africa Initiative, 2011, p. 2). If these provisions were enacted in Kenya it would go a long way towards alleviating many of the problems experienced by refugees, especially the youth, in Dadaab. However, because of the perceptions by many Kenyans of Somalis being pirates, terrorists and arm smugglers, and the perception by the GoK that Somalis in Dadaab, Kakuma and Nairobi represent a significant threat to national security, it is clear that the legislation in the respect of the granting of citizenship to refugees has been formulated specifically to prevent this, given the large numbers of Somalis who would otherwise be eligible to become citizens and the fact that offering citizenship to a large number of Somali refugees is politically unfeasible in the current climate.

6.4.6 Dadaab and the Right to Development

The Right to Development can be defined as:

> An inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social cultural and political development in which all human rights and fundamental freedoms can be fully realized (Article 1(1) United Nations, 1986 Declaration on the Right to Development).

This little known and little talked about right was officially affirmed in 1981 by the Organization of African Unity in its 1981 African Charter on Human and Peoples' Rights and then, in 1986, by the UN with the Declaration of the Right to Development. During the nineties, it was reaffirmed as a human right in many international meetings, including the 1992 Earth Summit in Rio de Janeiro, the 1993 World Conference on Human Rights in Vienna, the 1995 International Conference on Social Development in Copenhagen and the 2000 UN Millennium Declaration (Sitta). The declaration describes development as

> A comprehensive economic, social, cultural and political process, which aims at the constant improvement of the wellbeing of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting there from (United Nations, 1986).

Although the Right to Development itself is not a legally binding instrument, it does draw its legal foundation from binding human rights covenants such as the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights which have been constituted as international law by a large number of countries (Kirchmeier, 2006, p. 15). Kenya has ratified both of these treaties as well as the 1981 OAU African Charter on Human and Peoples' Rights, where the Right to Development was first internationally affirmed. However despite this, it is clear that the refugees in Dadaab are not afforded this right, because over the past twenty years, there has been no appreciable progress in resolving neither the underlying causes of armed conflict in Somalia nor the continued deterioration of conditions in the Dadaab camps. Enormous amounts of funding have flowed into the region yet most of it is directed towards immediate humanitarian relief efforts, rather than longer-term programming aimed at providing conditions of stability in which individuals can pursue their right to development. In addition, it can be argued that the host communities living in the North Eastern Territories are also not afforded this right as the region itself been seriously neglected for many decades suffering from high poverty rates, lawlessness, lack of infrastructure and lack of development.

This is recognized by some of the recommendations of a major 2010 NORDECO report which calls for the development of an overall area development strategy which focuses on viable livelihood support rather than hand-outs from humanitarian agencies. It also calls for the integration between humanitarian and development work, with the introduction of longer term sustainable developmental approaches as opposed to the short-term planning prevalent in humanitarian interventions. In addition it recommends the undertaking of development planning for the Dadaab area that recognizes its status as a major urban centre with a sizeable level of economic activity. These strategies would benefit both refugees and host community members as they would seek to unleash the potential for further development of trade and economic linkages as well as forming the basis for developing a coordinated approach among key development partners, with GoK taking a leading role (Enghoff et al., 2010, p. 11). The long term protracted nature of the camps in Dadaab urgently requires ‘thinking outside the box’ and maybe if this thinking was based on the right to development it would improve the lives of hundreds of thousands of refugees and host community members alike.

6.4.7 Dadaab and Infringements of International Humanitarian Law (IHL)

One of the most major advances in IHL is the fact that conflict no longer has to be international in nature for 'Parties to a conflict' (i.e. the warring parties, whether states or non-state armed groups) to be bound by it, as IHL is considered to be customary international law, which binds every party to a conflict, government or non-state armed group, whether or not the state on whose territory a conflict occurs has ratified the relevant treaty (The Rule of Law in Armed Conflicts Project, 2011a). In Somalia and Dadaab, as well as the various infringements on IHRL and IRL there have also been significant infringements on IHL. Although all the parties including the TFG and AMISOM, to the conflict in Somalia are guilty of abuses, one of the main culprits is Al Shabaab, who, as an armed group that effectively controls and acts as the de facto governing body in much of Somalia is responsible for respecting the laws of war, the Geneva Conventions and fundamental human rights as well as holding those who abuse them to account. Despite its extreme Islamist philosophy of not believing in any manmade laws, accept their own narrow interpretation of extreme Sharia law which they believe comes from god, its attacks on humanitarians and humanitarian convoys both within Somalia and the Dadaab refugee camps are War Crimes as defined by article 8 section 2(e)(iii) of the Rome Statute of the International Criminal Court which states that it is a war crime to be:

> Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict (Rome Statute of the International Criminal Court, 1998).

International humanitarian law also requires all parties to an armed conflict to only target combatants and never civilians. Article 8 section 2(e)(i) of the Rome Statute states that it is a war crime to 'Intentionally direct attacks against the civilian population as such or against individual civilians not taking direct part in hostilities'(Rome Statute of the International Criminal Court, 1998). Al Shabaab are guilty of this as frequently and deliberately target civilians with a recent example being when, on October 7th 2011, a suicide bomber detonated a car bomb outside a building where scholarships were being awarded by the Turkish government to Somali students, killing more than 100 civilians, mostly students and their families (Roggio, 2011). Its grenade attack on a Christian Church in Garissa in November 2011, which left two civilian dead and three others injured (BBC News Africa,

2011) can also be defined as a war crime not only under this section but also under the Rome Statute's article 8, section 2(e)(iv) which states it's a crime to:

> Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives (Rome Statute of the International Criminal Court, 1998).

Al Shabaab may also be guilty of the war crime of rape and sexual slavery which is covered by article 8 (2)(e)(vi) of the Rome Statute which states that war crimes include:

> Committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Convention (Rome Statute of the International Criminal Court, 1998).

This is based on a recent December 2011 report in the New York Times having drawn on interviews with victims, aid workers and United Nations officials, accuses Al Shabaab of seizing women and girls as spoils of war and gang-raping and abusing them (Gettleman, 2011). It claims that it is now losing ground due to multi-front advances against it by the various armies and militias; it is now running low on cash and resources with the result that it can no longer pay their several thousand fighters the way they used to. As a result they are now forcing families to hand over girls for arranged marriages that often last no more than a few weeks and are essentially sexual slavery, to keep many young men fighting for them. Sheik Mohamed Farah Ali, a former al Shabaab commander who defected to TFG asserts that 'These are hardly marriages, there's no cleric, no ceremony, nothing' adding that Shabaab 'fighters had even paired up with thin little girls as young as 12, who are left torn and incontinent afterward. If a girl refuses, he said, 'she's killed by stones or bullets'(Gettleman, 2011). In Dadaab there have been many cases where women and girls have sought protection after being told that they were promised to al Shabaab fighters. I met a number of these women in the Safe Haven protection unit in Ifo, a twenty four hour secure unit for at risk women and children, who told me that they could not now live in the general population of the camps because of fear of abduction or even death by al Shabaab for defying them (Bukovac, 2010). The United Nations' special representative for children and armed conflict Radhika Coomaraswamy has condemned these abuses saying 'for al Shabaab, forced marriage is another aspect they are using to control the population'(Gettleman, 2011).

Other infringements of the Rome Statute include the conscription of child soldiers[53] highlighted by the recent comments again of Radhika Coomaraswamy who said that 'al Shabaab recruits on the community level by extorting, threatening or intimidating families to turn their children over to them' (DeCapua, 2011) and the use of the refugee camps in Dadaab for military activities including recruitment[54], which contravenes the principle recognized in international law that such camps should be 'exclusively civilian and humanitarian in character.' This principle is derived from international humanitarian, human rights, and refugee law and is embodied in the guidelines of the UN refugee agency and UN Security Council resolutions (Albin-Lackey and Tayler, 2010, p. 55)

Al Shabaab has also infringed on every section of article 1 related to all four of the Geneva conventions, the associated protocols as well as their reaffirmation and expansion by the Rome Statute. This article and its four sections seek to protect civilians and non-combatants and prohibit at any time and in any place against:

1. **Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture** - Al Shabaab breach this on a regular basis as it carries out frequent amputations, floggings and beatings with al-Shabaab leaders in many areas of Somalia, not only embracing amputations and executions but have turned them into mandatory public spectacles (Albin-Lackey and Tayler, 2010, p. 33). One particularly cruel and inhumane case that I came across in Dadaab was a refugee in his twenties who was accused of theft by Al Shabaab and had his right hand and left leg amputated by them, ensuring that he will never work again and is in need of assistance for the rest of his life.
2. **The taking of hostages** – Al Shabaab have also breached this with the most recent examples being the September 2011 kidnapping of a Kenyan driver for the aid agency CARE and the subsequent October 2011 kidnapping of two Spanish aid workers from Medicine Sans Frontiers from Ifo camp in Dadaab with intelligence pointing to them all having been moved to Somali areas controlled by Al Shabaab (Ombati, 2011b) and later sold to pirates.

[53]Rome Statute Article 8 section 2(e)(vii) "Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities";

[54] Al Shabaab is not alone here in this infringement as the TFG with the support of the GoK were also heavily recruiting in the camps: see Human Rights Watch. (2009). *Kenya: Stop Recruitment of Somalis in Refugee Camps* [Online]. Human Rights Watch. Available: http://www.hrw.org/en/news/2009/10/22/kenya-stop-recruitment-somalis-refugee-camps?tr=y&auid=5531349 [Accessed 06/04/2011].

3. **Outrages upon personal dignity, in particular humiliating and degrading treatment** – Al Shabaab have imposed their extreme brand of Islam on all areas under their control; women have been stripped of all their rights, public gatherings have been banned as has dancing at weddings, musical ringtones on cell phones, western music, and movies. They have also barred men from shaving their beards and moustaches, or wearing long hair and anyone deemed to be breaking this rule are beaten or whipped and then have their heads shaved publicly with razor blades or broken bottles (Albin-Lackey and Tayler, 2010, p. 24 - 26).
4. **The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples** - Al-Shabaab's infringes on this law on a regular basis. It bases its justice on an extreme version Sharia law which singles specific crimes out singles out for specific punishments. These include theft (punishable by amputation), extra-marital sex (punishable by death or flogging), and apostasy or renunciation of Islam (punishable by death). Their 'judges' in their non-constituted courts are often its local commanders who have no qualifications to be making any legal decisions. One of al Shabaab's most abhorrent examples of this breach of the Geneva Conventions was the 2008 stoning to death of Asha Ibrahim Dhuhulow a 13 year old gang rape victim in a Stadium for adultery in the southern Somali port city of Kismayo (Mohamed, 2008). Asha was born and lived in Hagadera camp in Dadaab until 2008 before leaving to find relatives in Kismayo. When there, she was raped by three men and when she tried to report the rape to al Shabaab, they arrested Asha along with the alleged offenders. These offenders were then released and Asha charged with adultery and sentenced to be stoned to death. Witnesses describe how she was forcibly bound, buried screaming up to her waist and then pelted with large rocks until she was dead (Shephard, 2008). More recently, in December 2011, in another example of their infringement of IHL, al Shabaab beheaded two young men in the Afmadow district of Lower Juba region after accusing them of spying for the Kenyan military (Shabelle Media Network, 2011).

6.5 Conclusion

All the different branches of international law gives a myriad of protection and rights to refugees in the Dadaab camps. However these protections and rights are only as effective as the respect given to them by states and as there is a serious lack of enforcement mechanisms in case of infringement, many states and non-state parties either break or ignore them. Kenya is a party to nearly all the International treaties and Conventions in relation to refugee law, human rights law, humanitarian law and the Rome Statute of the International Criminal Court. It is also a party to the regional treaties and conventions dealing with refugees and Human Rights and has even incorporated these treaties into domestic law through its new 2010 Constitution which recognizes all its international commitments.

Thus, through the United Nations, the African Union and its own domestic laws and instruments, Kenya has affirmed the relevance of human rights as reflected by the crucial interdependence of economic, social and cultural rights and civil and political rights. It seeks to uphold rule of law, to protect and promote the fundamental human rights contained in the treaties and their national constitutions and to uphold the principles of good governance. Accordingly, in line with this, there is robust protection and rights available to the refugees of Dadaab, on a par with the citizens of Kenya, at least in theory anyway. However, the fact is that Kenya violates the human rights of Somali refugees and asylum-seekers on a regular basis. Somalis fleeing violence in their homeland often fail to find refuge in the overcrowded and dangerous refugee camps, where if they do get there have to live in ‘open prisons’ due to restrictions on their movements, denied the right to work or even the right to development. They are vulnerable to harm and abuses such as beatings, detention, robbery, extortion and sexual assault from bandits, Islamists and Kenyan security forces, as well as refoulement back to Somalia, where they face the risk of even graver human rights abuses.

Whilst undoubtedly Kenya must be commended for shouldering the lion's share of responsibility world-wide by hosting such a huge Somali refugee population, the Kenyan authorities' restricting of the rights of Somali refugees and asylum-seekers as well as their inaction on reports of any abuse by their security forces, is a matter of profound concern. With the October 2011 military incursion into Somalia by the Kenyan army and the significant escalation of armed activities in Dadaab, Garissa and the NEP by al Shabaab it is essential that the refugee’s rights, security and protection be upheld. It is hugely important that UNHCR and other UN agencies such as the UNDSS not withdraw to their secure compounds but instead make appropriate security arrangements to maintain and if necessary

expand their presence in the camps to monitor the situation there and ensure people's rights are upheld. After all, that is UNHCR's ultimate reason for existence: the protection of refugees.

As well this, Al Shabaab, whether they accept or recognize it or not, are guilty of serious breaches of international humanitarian law. As the de facto governing body in much of Somalia and with obvious influence and support in the Dadaab refugee camps they are responsible for respecting the laws of war, the Geneva Conventions and fundamental human rights as well as holding those who abuse them to account. According to the International Criminal Court's definition of War Crimes al Shabaab are also guilty of the war crimes of recruitment of child soldiers, attacks on humanitarians and humanitarian convoys, the deliberate targeting of civilians and places of worship and if recent reports are true, may be guilty of mass rape and sexual slavery.

It is clear that the lack of any effective enforcement mechanism is major weakness with IHL, IHRL and IRL, particularly in protracted refugee situations such as Dadaab and especially amongst non-state actors such as Al Shabaab. It is probably one of the most significant reasons why they tend to deliberately breach international humanitarian law. It therefore needs to be enhanced so that there is greater accountability with more enforcement powers to ensure compliance in a diverse, complicated and complex, contemporary 21st century setting.

In the next chapter (seven) the third pillar of humanitarianism (humanitarian intervention/R2P) is used to frame the analysis of the tools available versus the tools employed by the international community to ensure the security and protection of the refugees in Dadaab as both a complex emergency and a PRS. In addition it is used to investigate the 2011 Kenyan army intervention in Somalia, the Azania/Jubaland initiative and the possible repercussions for both the inhabitants of Dadaab and even the future existence of the camps themselves.

Chapter 7

Dadaab: Humanitarian Intervention and Responsibility to Protect

The greatest kindness in war is to bring it to a speedy conclusion

Prussian General Helmuth von Moltke (as quoted in Walzer, 2006, p. 47)

The term 'humanitarian intervention' is often widely used to describe a wide array of international actions, from the distribution of humanitarian aid to virtually any form of military intervention, regardless of whether it is in response to a serious humanitarian crisis or not. The recent wars in Iraq and Afghanistan have further complicated matters as there has been a tendency for these wars to be described quite incorrectly as humanitarian interventions by some quarters in the media and politics. For many, the term itself even seems like a contradiction in terms, begging the question of how the use of force or the loss of life could be reconciled with humanitarianism, the doctrine that man's duty is to strive to promote the welfare of mankind. James Pattison defines humanitarian intervention as:

> Forcible military action by an external agent in the relevant political community with the predominant purpose of preventing, reducing, or halting an on-going or impending grievous suffering or loss of life (Pattison, 2010, p. 28).

He also identifies four defining conditions in relation to humanitarian interventions: to be engaged in military and forcible action, to be responding to a situation where there is impending or on-going grievous suffering or loss of life, to be an external agent and to have a humanitarian intention, that is, the predominant purpose of preventing, reducing, or halting the on-going or impending grievous suffering or loss of life (Pattison, 2010, p. 28). This Chapter investigates the tools available versus the tools employed, in terms of the third pillar of humanitarianism of humanitarian intervention and R2P, by the international community to ensure the security and protection of the refugees in Dadaab as both a complex emergency and a PRS. In addition it is used to investigate the 2011 Kenyan army intervention in Somalia, the Azania/Jubaland initiative and the possible repercussions for the inhabitants of Dadaab and even the future existence of the camps themselves.

7.1 Origins of Humanitarian Intervention

In the sixteenth and seventeenth centuries, classical writers and theorists such as Francisco de Vitoria, Francisco Suárez, Alberico Gentili and Hugo Grotius treated gross abuses of human rights as legitimate grounds for resorting to war - a component of the 'just war doctrine'[55], or, as some modern international lawyers would put it, as a justification for humanitarian intervention (Malanczuk, 1993, p. 7). Many of the rules developed by the just war tradition have since been codified into contemporary international laws governing armed conflict, such as the United Nations Charter and the Hague and Geneva Conventions (Orend, 2008, p. 1). In the 'De Jure Belli' Gentili was one of the first to recognize that a state may be allowed to interfere with the absolute sovereignty of another state if that state is harming either its own population or the people of another state. If a population, for whatever reason, is not capable of defending itself against maltreatment by its sovereign, then Gentili states that unless the community of states wishes to exempt sovereigns from the law, which he argues would be disastrous, then there is a corresponding necessity in international law to remind them of their duty and hold them bound by it, even if this results in the violation of the principles of state sovereignty (Meron, 1991, p. 115). Grotius built on much of Gentili's work as well as drawing on earlier just war doctrines associated with Saint Augustine and Saint Thomas Aquinas. He asserted in his treatise on the law of war and peace that it was permissible to resort to war in order to assist peoples who were resisting extreme tyranny (Falstrom, 2007, p. 302).

In 1648, the treaty of Westphalia gave birth to the modern states system when for the first time ever the existence of separate sovereignties in one international society was formally recognized (McGrew, 2005, p. 29 - 30). The key principles of the treaty were: the recognition of the sovereignty of states, their fundamental right of political self-determination, the legal equality between states and the principle of non-intervention of one state in the internal affairs of another (Jackson and Owens, 2005, p. 53 - 55). Today, 'the Westphalian System' of independent states continues to dominate the way the worlds peoples are organized with the seeds of state sovereignty and non-intervention that were sown in 1648 eventually evolving and finding their way into the charter of the United Nations, the Geneva Conventions and other contemporary bodies of international law. The principles of absolute

[55] The origins of the Just War Doctrine are a synthesis of classical Greco-Roman and Christian values which can be traced back to the works of Aristotle, Cicero and Augustine. Just war theory can be meaningfully divided into three parts, which in the literature are referred to as: 1) J*us ad Bellum*, which concerns the justice of resorting to war in the first place; 2) J*usin Bello*, which concerns the justice of conduct within war, after it has begun; and 3) J*us post Bellum*, which concerns the justice of peace agreements and the termination phase of war.

sovereignty and non-interference enshrined in the Westphalian System means, in theory, that states cannot wage war on other states on the whims of leaders, or interfere with their internal business. However, supporters of humanitarian intervention would assert that adherence to (or the excuse of) the principle of non-interference by the international community has in the past resulted in genocide and horrendous crimes against humanity, citing examples such as the hundreds of thousands of innocent civilians slaughtered in Rwanda and Cambodia. References to humanitarian intervention began to appear in the international legal literature in the 19th century after England. France, and Russia, using language that was little different from that used by NATO in recent times to justify its use of force against the Gaddafi regime in Libya, intervened in Greece in 1827 to stop Turkish massacres of Greek Christians (Weiss, 2007, p. 32).

The discourse between the concepts of Westphalian state sovereignty and armed humanitarian intervention has been contested for many centuries and continues even today.

7.2 Recent History

Since the end of the Second World War, an international effort has been undertaken to protect civilians in armed conflict and prevent genocide, crimes against humanity, and war crimes. The establishment of the United Nations Charter represented yet another stage in the relations between states and extended the doctrine of non-intervention to all states[56], permitted intervention in the internal affairs of a state only when international security was threatened and insisted that all such acts of intervention had to be authorized by the United Nations acting as a representative of the international community. The first principle established the equality of all states and recognized their claim to non-intervention; the second principle limited intervention to a clearly specified purpose, and placed the internal affairs of the state outside external interference; and the third principle regulated the mode of intervention (Parekh, 1997, p. 52). Thus supporters of humanitarian interventionism believe that it is consistent with international law, providing it conforms to the requirements of the UN Charter and even though it may contravene state sovereignty, it does not do so at the expense of international order, and may in fact be necessary to protect or preserve it (Atack, 2002, p.

[56] Chapter I, article 2(1) states "The Organization is based on the principle of the sovereign equality of all its members" while Chapter I article 2(4) states that "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations"

285). As well as this in 1948, the Convention on the Prevention and Punishment of the Crime of Genocide was adopted by the United Nations, and entered into force three years later. This convention identifies for the first time what is meant by the crime of genocide,[57] assets that parties guilty of the crime shall be punished 'whether they are constitutionally responsible rulers, public officials or private individuals' and allows for the possibility of a humanitarian intervention by stating that:

> Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide (United Nations, 1948a).

The Convention was the stepping stone in the international community's attempt to ensure the horrors witnessed during the Holocaust would never occur again. This convention, as well as the Geneva conventions was later incorporated into the Rome Statute of the International Criminal Court.

Because of the Cold War Humanitarian Interventions were quite rare until the 1990s, however, during this time there were several incidents where the intervention had the effect of ending a severe and widespread deprivation of human rights. However, virtually all of them were cases of unilateral intervention, meaning the intervention was undertaken by a state (or states) without the authorization or the United Nations or a regional organization (Murphy, 1996, p. 85). In some cases, the intervening state justified its action primarily on the basis or self-defence, such as the interventions by Tanzania in Uganda in 1979 and Vietnam in Cambodia in 1978. In other cases, the intervening state asserted that it had been invited to intervene by the target state or by a local insurgency that had toppled the target state's regime, such as was claimed by France (at least initially) when intervening in the Central African Republic in 1979. In still other cases, complicated mixtures or rights based on consent, rescue of nationals, regional organization authorization, and rights under international agreements were put forward, such as the intervention by western states in the Congo in 1964 and the interventions by the United States in Latin and Central America in 1965, 1984, and 1989 (Murphy, 1996, p. 85). The reason for all this unilateral action was that the Security Council, the intended 'vehicle for true collective action' was paralyzed by the

[57] Article 2 identifies genocide as meaning any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: Killing members of the group; Causing serious bodily or mental harm to members of the group; Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; Imposing measures intended to prevent births within the group; Forcibly transferring children of the group to another group.

Cold War and the frequent and consistent use of the opposing permanent members veto powers.

After the Cold War, the 1990s witnessed a series of large-scale and often controversial Humanitarian Interventions (HI) such as:

- Operation Provide Comfort in Northern Iraq in 1991
- UNOSOM I & II and UNITAF in Somalia in 1992 and 1993
- Operation Uphold Democracy in Haiti in 1994
- United Nations Assistance Mission In Rwanda (UNAMIR) in Rwanda in 1994
- Operation Deliberate Force in Bosnia in 1995
- Operation Allied Force against the Federal Republic of Yugoslavia during the Kosovo War in 1999
- United Nations Transitional Administration in East Timor (UNTAET) in East Timor in 1999

The proliferation of interventions during the 1990s suggested a trend towards international support for HI. As Pattison asserts 'the Security Council-authorized interventions of the 1990s have already gone a long way towards establishing the acceptability of humanitarian reasons for the use of force in the international community' (Pattison, 2010). This trend was reversed however in the wake of the 9/11 attacks when Western powers became increasing reluctant to intervene for purely humanitarian purposes. Nevertheless, despite this, some UN operations did take place during the 2000s, in particular the United Nations Mission in the Democratic Republic of Congo[58] (MONUC) and the United Nations Stabilization Mission in Haiti[59] (UNSTAMIH). The 2011 intervention in Libya however, may indicate that the idea of HI is far from dead.

The 1990s also saw liberal democracy emerge as a dominant ideology in the world with dissemination of universal human rights and justice being an intricate part of this liberal model, evolving from declarations like the Universal Declaration of Human Rights (UDHR) to regional legislation like the European Union Charter of Fundamental Rights. As well as this the establishment by the UN General Assembly in 1993 of the Office of the High Commissioner for Human Rights (OHCHR) was seen as another positive step in the

[58] Renamed the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) in 2010

[59] Also known as MINUSTAH, an acronym of the French Translation.

evolution of IHRL. Its mandate is to promote universal ratification and implementation of human rights, assist in the development of new human rights norms, support human rights organs and treaty-monitoring bodies as well as responding to human rights violations (Mertus, 2009, p. 14). Up until recently the emphasis placed by the international community on Westphalian inspired state sovereignty meant that human rights were ignored or denied as many government leaders acted as they pleased, in many cases committing inhumane acts against their own citizens, safe in the knowledge that international law applied only to states and shielded them from individual responsibility. As Paul Gordon Lauren says, 'victims remained objects of international pity rather than subjects of international law' (Lauren, 2003, p. 27). However, the contemporary evolution and codification of IHRL has led to an erosion of state sovereignty for two main reasons.

Firstly, the evolution of IHRL has also led to an expansion of International Criminal Law to enforce human rights abuses. International criminal courts have jurisdiction over genocide, war crimes and crimes against humanity which are referred to as the 'hard core' international crimes and usually result in gross and widespread violations of human rights (Schabas and Bernaz, 2010, p. 438). International criminal law provides for the punishment of persons responsible for violations of these international crimes and thus, the close linkages between human rights law and international criminal law (Schabas and Bernaz, 2010, p. 438). A very recent example of this was on the 6th September 2011 when the International Criminal Tribunal for the former Yugoslavia convicted Momčilo Perišić, a former Chief of the General Staff of the Yugoslav Army, for crimes against humanity and war crimes committed in Bosnia and Herzegovina and Croatia and sentenced him to 27 years of imprisonment (The International Criminal Tribunal for the former Yugoslavia, 2011). This development means that government officials can no longer hide behind the excuse of state sovereignty and can be held personally responsible for massive infringements on human rights.

Secondly, the UN Security Council expanded the range of Chapter VII peace enforcement action and has stated that human rights violations were linked to international peace and security. Recently, on 17th March 2011 for example the UN Security Council passed Resolution 1973, adopted under Chapter VII of the UN charter, in relation to the conflict in Libya. The resolution formed the legal basis for military intervention in the Libyan civil war, demanding 'an immediate ceasefire' and authorizing the international community to establish a no-fly zone and to use all means necessary short of foreign occupation to

protect civilians (Roth, 2011). The assertion by the Security Council that human rights violations were linked to international peace and security as well as its willingness to intervene has thus shrunk the scope of domestic jurisdiction protected by state sovereignty. In so doing, they have set a precedent that security can refer to the security of persons within states, based on their human rights, and not just to traditional military violence across international frontiers (Forsythe, 2006, p. 60).

7.3 The Range of Tools Available to the UN Security Council for Humanitarian Interventions

In terms of humanitarian intervention, there are three main types of responses that can be authorized by the UNSC; Peace Keeping missions, Peace Enforcement missions and Enforcement missions. Jane Boulden identifies these three types of missions clearly in her 'Peacekeeping to Full Scale Enforcement Spectrum', but it must be noted that this spectrum has many grey areas, especially, as was seen in the 2011 intervention in Libya, when it comes to the boundary between peace enforcement and full-scale enforcement which in many cases is not clear cut.

The Peacekeeping to Full Scale Enforcement Spectrum (Boulden, 2001, p. 3)

Peacekeeping	**Peace Enforcing**	**Enforcement**
Impartial	Impartial	Not Impartial
Consent Required	Consent Desirable but not Required	Consent Not Required
Self Defence	Self Defence plus Specific use of Force Authorization	Full use of force Authorization

Table 7.1

7.3.1 Peacekeeping

There is no mention of peacekeeping in the UN charter, but as Edward C Luck says 'even at the UN, necessity often acts as the mother for all invention' (Luck, 2006, p. 36). In 1956, war again erupted in the Middle East, this time with global security implications. Following

Fedayeen[60] raids on Israel from the Sinai and the nationalization of the Suez Canal, Israeli forces invaded the Sinai, supported by British and French air strikes on Egyptian airbases. As London and Paris prepared their own ground assault and Moscow threatened a massive military response, Lester Pearson, the Canadian Prime Minister, proposed in the General Assembly the creation of something quite new: a truly international peace and police force, large enough to keep these borders at peace while a political settlement was being worked out (Luck, 2006, p. 36). The General Assembly moved quickly, passing Resolution 998 (Es-I) mandating the Secretary General to submit a plan for the 'setting up, with the consent of the nations concerned, of an emergency international United Nations Force to secure and supervise the cessation of hostilities' (United Nations General Assembly, 1956). The UN Secretary-General at the time Dag Hammarskjöld complied and on 7th November 1956, the first large scale peacekeeping operation[61] in UN history, the UN Emergency Force in the Middle East (UNEF) was launched. The deployment of armed troops to assist in the implementation of agreements reached between the UN and parties to a conflict added a new dimension to international relations. To govern these operations, Hammarskjöld laid down three principles: consent from the territorial state and other parties involved; impartiality on the UN side to secure credibility in the operation and non-use of force by the UN side, unless in individual self-defence or collective mission defence (Bring, 2011, p. 17). When UNEF was established, Hammarskjöld considered it a new departure as peacekeeping operations (PKOs) were not foreseen under either Chapter VI or VII of the Charter, but fell somewhere in between, with Chapter VI½ has been suggested as their legal basis (Bring, 2011, p. 17). This 'VI½ perception' is appropriate and useful: appropriate because PKOs are a more ambitious involvement than anything provided for in Chapter VI, but not as aggressive as anything provided for in Chapter VII.

7.3.2 Enforcement Operations

Chapter VI of the UN Charter is concerned with the peaceful settlement of disputes where force may be involved in the form of peacekeeping operations and outlines procedures where

[60] Fedayeen refer to militants or guerrillas of a nationalist orientation from among the Palestinian people. Most Palestinians consider the Fedayeen to be freedom fighters while the Israeli government describes them as terrorists. The ideology of the Palestinian Fedayeen was mainly socialist or communist, and their proclaimed purpose was to defeat Zionism, 'liberate Palestine' and establish it as 'secular, democratic, nonsectarian state' Palestinian Fedayeen groups were united under the umbrella the Palestine Liberation Organization after the defeat of the Arab armies in the 1967 Six-Day War.
Burgat, F. (2003). *Face to face with political Islam*, I. B. Tauris.

[61] Although small UN observer missions had been fielded in 1948 and1949in India-Pakistan and Israel-Palestine, UNEF was first large-scale UN Peace Keeping Operation.

the Security Council in effect acts as either a conciliator or as a mediator to achieve peace. However, Articles 39, 40 and 41 of Chapter VII makes it clear that enforcement measures and the use of devastating force can be used when there is a threat to global security. Article 39 states that;

> The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security (United Nations, 1945).

Article 41 states that:

> The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations (United Nations, 1945).

Finally, article 42 states that

> Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations (United Nations, 1945).

An example of a full scale enforcement mission can be found after the 1990 invasion by Iraq of Kuwait (Boulden, 2001, p. 3). After the invasion, the United States, with the support of much of the international community, turned to the United Nations seeking sanctions under Chapter VII of the Charter. The Security Council took action by degrees through a series of resolutions. It first demanded Iraqi withdrawal from Kuwait (Resolution 660), then established an embargo and froze Iraqi and Kuwaiti funds overseas (Resolution 661), condemned and rejected Iraq's 'annexation' of Kuwait (Resolution 662), demanded the release of diplomatic and consular officials and other foreign nationals held hostage by Iraqi forces (Resolutions 664, 667, 674), authorized naval enforcement of its embargo (Resolution 665), explicitly extended the embargo to air traffic (Resolution 670), and, finally, authorized the use of force in the form of Resolution 678. Such missions, which remain rare, do not have

the consent of the target government, they take sides in the conflict, and they deploy force in a war-like fashion to accomplish their goals, the opposite of peacekeeping's consent-based model (Hurd, 2010, p. 144).

7.3.3 Peace Enforcement

Over the course of the 1990s, an increase in complex emergencies as well as the spread of non-state actors led to the UN having to use actions falling between traditional peacekeeping and full scale enforcement operations. The authorization of the use of force by the Security Council in situations that fall into the grey area between the two has thus come to be known as peace enforcement. The term 'peace enforcement' has, therefore, come to be widely used to describe UN operations where force is involved short of full-scale enforcement operations. Weiss identifies two related, but actually quite distinct, sets of objectives involved in peace enforcement: the compelling of compliance and provision of protection (Weiss, 2005, p. 202). Compliance involves the search for comprehensive political settlements leading to sustainable peace. It contains traditional peacekeeping tasks, such as monitoring cease-fires, but it also encompasses complex ones whose ultimate success requires willingness and a capacity to use deadly force. These include the "containment and demobilization of soldiers; the destruction of weapons; the formation and training of new armed forces; and monitoring existing police forces and forming new ones.

Examples of this form of military operation include NATO's Implementation Force and Stabilization Force in Bosnia and the US led Multinational force in Haiti. A variant on this approach is the use of force to compel parties to the negotiating table, such as the NATO air strikes carried out on Bosnia preceding the Dayton Accords (Weiss, 2005, p. 202). The other form of enforcement action consists of providing protection for civilians backed by the threat or use of military force. This can take a variety of forms; the most common are the maintenance of humanitarian corridors and the protection of aid convoys such as the UNITAF mission in Somalia in 1993as well as the creation of safe havens or protected areas such as the no-fly zone in northern Iraq from 1991 – 2003, and more recently in 2011 in Libya during the uprising against the Gaddafi regime. It also often requires the interposition of forces between civilians and potential attackers such as armies, militias, and gangs (Weiss, 2005, p. 203).

Peace enforcement missions are authorized under Chapter VII of the UN Charter, can use force beyond self-defence, are intended to be impartial and non-judgmental, and although the consent of the parties to the conflict is desirable, it is not a requirement (Boulden, 2001, p. 3)

7.3.4 Problems Associated with UN Missions

Alex Bellamy believes that the problems with these peace keeping/enforcement missions include the often vaguely worded nature of much Chapter VII enforcement mandates generating confusion and questions of interpretation, the lack of a UN army and the UN's overstretched and bureaucratic mechanisms giving rise to genuine concerns about whether the UN is in any position to conduct large-scale enforcement measures effectively as well as the debate about whether the UN should be engaged in conflict or war at all (Bellamy et al., 2009, p. 227 - 228). As well as this, there is also the very real problem that some military leaders do not like and are in many cases unsure of the challenges involved in peacekeeping operations. In that famous grey area between peacekeeping and full enforcement lie a host of challenges: the forcible disarmament of belligerents, such as those in the Hutu refugee camps like Goma in the DRC; the meaningful protection of safe areas to ensure that incidents like the Srebrenica massacre[62] never occurs again, and the protection of humanitarian workers and aid convoys with the inevitable interactions with humanitarian workers and NGOS, with both sides often having a less positive attitude towards the other.

7.4 Humanitarian Intervention and its Evolution to the Responsibility to Protect

By the end of the 20th century there was a marked change in the nature of armed conflict: large inter-state wars were replaced by violent internal conflicts, where the vast majority of casualties are now civilians. The genocides in Cambodia, Rwanda, and Bosnia demonstrated massive failures by the international community to prevent mass atrocities. As well as this, increased globalization and its erosion of borders and transnational flows, has resulted in deterioration of space, the collapse or near-collapse of 'weak' and failing or failed states (such as Somalia) as well as the proliferation of a host of non-state actors, including militias, paramilitaries, warlords, Islamists, traffickers, pirates, drug cartels, smugglers and mafias,

[62]The massacre in July 1995 of 8,000 men and boys in the supposedly UN safe area of Srebrenica which was supposed to be protected by a 400 strong Dutch contingent of the United Nations Protection Force (UNPROFOR)

often organized into shadow networks running shadow economies (Weiss, 2007, p. 48 - 57). Thus, many in the international community believed that it was time to move towards crisis prevention and response as well as the security and protection of the community and the individual, not only the states. In response to this, the UN tasked the International Commission on Intervention and State Sovereignty (ICISS) with trying to develop a global political consensus on the question of humanitarian intervention in the context of what has become known as the 'R2P' as well as examining how the failures in Bosnia and Rwanda could have been better dealt with (Chandler, 2010, p. 126).

7.4.1 The International Commission on Intervention and State Sovereignty

In his 2000 Millennium Summit report, Kofi Annan the then UN Secretary-General, Annan challenged the international community to address the real dilemmas posed by intervention and sovereignty. He also identified three specific concerns which had been raised in relation to humanitarian intervention. Firstly, some worried that it could become a cover for gratuitous interference in the affairs of sovereigns. Secondly, others were concerned that it might encourage secessionists to use violence to provoke intervention, triggering human rights abuses. Finally, a third group expressed scepticism about the selectivity with which any principle of humanitarian intervention would be applied (Bellamy, 2009, p. 35). Annan acknowledged that 'the principles of sovereignty and non-interference offer vital protection to small and weak states' but, he continued to ask:

> If humanitarian intervention is, indeed, an unacceptable assault on sovereignty how should we respond to Rwanda, to Srebrenica, to gross and systematic violations of human rights that offend every precept of our common humanity? (Bellamy, 2009, p. 35).

He then finally asserted that:

> Surely no legal principle, not even sovereignty, can ever shield crimes against humanity. Armed intervention must always remain the option of last resort, but in the face of mass murder, it is an option that cannot he relinquished (Bellamy, 2009, p. 35).

To respond to this challenge, the Canadian government established the independent International Commission on Intervention and State Sovereignty (ICISS) in September 2000, whose mandate was to build a broader understanding of the tension between intervention and

state sovereignty and to find common ground for military intervention to support humanitarian objectives (Weiss and Thakur, 2010, p. 319).The work of ICISS centred on a central question:

> When, if ever, it is appropriate for states to take coercive, and in particular military, action, against another state for the purpose of protecting people at risk in that other state (Welsh et al., 2006, p. 198).

In trying to answer this, the ICISS report maintained that the international community should view the relationship between sovereignty and intervention as complementary rather than contradictory. In other words sovereignty needs to be linked to the responsibility of states to the protection of their citizens. Hence, sovereignty should no longer be conceived as undisputed control over territory, but rather as a conditional right dependent upon respect for a minimum standard of human rights. In the words of the ICISS:

> It is acknowledged that sovereignty implies a dual responsibility: externally to respect the sovereignty of other states, and internally, to respect the dignity and basic rights of all the people within the state. In international human rights covenants, in UN practice, and in state practice itself, sovereignty is now understood as embracing this dual responsibility. Sovereignty as responsibility has become the minimum content of good international citizenship (International Commission on Intervention and State Sovereignty, 2001, p. 8).

The timing of the ICISS reports release in December 2001, shortly after the September 11, 2001 terrorist attacks, couldn't have been more unfortunate and as co-chairperson Gareth Evans commented nearly caused it to be 'suffocated at birth'(Evans, 2008, p. 44). In addition the invasion of Iraq in 2003, premised in part on an argument of humanitarian intervention, was even more destructive to the advancement of the R2P agenda because it demonstrated that great powers can and will, at times, act for questionable narrow interests even against broad international opposition (Edgar, 2006, p. 258). This resulted in many states, especially in the developing world, worrying that the R2P agenda might be abused by powerful states eroding the sovereignty of smaller developing countries. However, past and on-going humanitarian disasters, including the failure to protect the people of Rwanda and more recently Darfur, could not be ignored and eventually R2P slowly gained support and became more prevalent. As Weiss asserts 'As a result of the horror in Rwanda, there were few policymakers, pundits, or practitioners who dared to exclude humanitarian intervention in principle'(Weiss, 2007, p. 99).

The ICISS report insists that states have the primary responsibility to protect their citizens from genocide, mass killing and ethnic cleansing and that when they prove either unwilling or unable to fulfil this duty, then R2P is transferred to the international community (Bellamy and Davies, 2011, p. 16). According to 1CISS, the R2P is comprised of three interrelated sets of responsibilities: the responsibility to prevent, which addresses the root causes and the direct causes of internal conflict and other man-made crisis putting populations at risk: the responsibility to react, which deals with the response to situations of compelling human need with appropriate measures which may include coercive measures like sanctions and international prosecution, and in extreme cases military intervention and: the responsibility to rebuild which deals with the provision, particularly after a military intervention, of full assistance with recovery, reconstruction and reconciliation, as well as addressing the causes of the harm that the intervention was designed to halt or avert (Weiss, 2007, p. 101).

7.4.2 Responsibility to Protect: Further Developments

In September 2003, UN Secretary-General Kofi Annan called for member states to strengthen the UN to better advance development, security, and the protection of human rights. In recognition of the urgent need to address the UN's failures to respond to genocide, he challenged Member States to include protection from genocide as part of this UN reform agenda, and formed the 'High-level Panel on Threats, Challenges and Change', which again included ICISS co-chair Gareth Evans, to report on how the UN should confront the greatest security threats of the 21st century (Bellamy and Davies, 2011, p. 21). In December, 2004, the High-level Panel released its report, *A More Secure World: Our Shared Responsibility* which was even more wide-ranging in scope than the ICISS report, following a human security approach that linked together poverty, disease, and environmental degradation with conflict both within and between states, terrorism, proliferation of weapons of mass destruction, and transnational organized crime(Evans, 2008, p. 45). It had quite a bit of substance with 101 recommendations on the strengthening of the international security framework and strongly endorsed the international responsibility to protect populations from grave threats, especially its recommendation 55 which states that:

> The Panel endorses the emerging norm that there is a collective international responsibility to protect, exercisable by the Security Council authorizing military intervention as a last resort, in the event of genocide and other large-scale killing,

> ethnic cleansing or serious violations of humanitarian law which sovereign Governments have proved powerless or unwilling to prevent (United Nations High-level Panel on Threats Challenges and Change, 2004, p. 106).

As well as this, there were detailed recommendations spelling out the 'five basic criteria of legitimacy' for the use of force, drawing very directly on the ICISS report as did the recommendation on the issue of legal authority for the use of force, again reflecting a key ICISS theme, that the 'task is not to find alternatives to the Security Council as a source of authority but to make the Council work better than it has'(Evans, 2008, p. 45).After consultations with governments and UN officials, and with input from many civil society organizations, Kofi Annan published his own report entitled 'In Larger Freedom: Towards Development, Security and Human Rights for All' in which he discussed many things including UN reform, the Millennium Development Goals and the Responsibility to Protect. He emphasized the need of governments to take action against threats of massive human rights violations and other large scale acts of violence against civilians, calling on them to embrace the Responsibility to Protect, emphasizing that while it is first and foremost the individual governments responsibility to protect its population, the responsibility shifts to the international community when the state is unable or unwilling to protect their citizens (Annan, 2005, p. 35). As well as advocating the use of military force as a last resort to protect civilians, the report also emphasized that the international community must use a range of other measures in order to protect populations, which could include, sanctions, diplomatic and humanitarian efforts, as well as setting the scene for the September 2005 World summit attended by 150 heads of state to commemorate the UN's sixtieth anniversary (Evans, 2008, p. 46).

The 'Responsibility to Protect' was one of the few substantive items to survive the brutal negotiations associated with this summit and the agreed document contained clear, unambiguous acceptance by all UN members of individual state and collective international responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity (Thakur, 2006, p. 286). The R2P that emerged from the World Summit contained three major components: firstly, formal recognition of the responsibility of sovereigns to their own populations, secondly, a commitment to develop the institutional capacities and behaviours necessary to prevent genocide and mass atrocities, assist states in the fulfilment of their responsibilities, and improve the effectiveness of peaceful and consensual measures, and finally, a reaffirmation or the idea that the Security Council has the

authority to intervene if it sees fit to do so (Bellamy and Davies, 2011, p. 24). As such this effectively tied R2P to existing international legal norms, and although less than envisaged by the ICISS, it did however mark an important milestone in the normative development of responsible sovereignty and the consequences that could occur if parties engaged in gross abuse of human rights against their people. On 28 April 2006, the Security Council unanimously adopted Resolution 1674 on the protection or civilians in armed conflict which reaffirmed the World Summit's provisions regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and the Security Council's 'readiness' to adopt appropriate steps 'where necessary' (Bellamy, 2009, p. 133). Again, although the resolution didn't go as far as the recommendations made by the ICISS, it was however a hefty declaration of support which has tied the R2P to the protection of civilians.

In 2007 the new UN Secretary-General (UNSG) Ban Ki-moon indicated his intention to further support the implementation of R2P and in February 2008, his office announced the appointment of Edward Luck as a Special Adviser with a focus on the responsibility to protect populations from genocide, ethnic cleansing, war crimes and crimes against humanity (United Nations Office of the Special Adviser on the Prevention of Genocide, 2012). In 2009 the Secretary-General released his report on *Implementing the Responsibility to Protect* which emphasized three pillars. Pillar one stresses that States have the primary responsibility to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. The UNSG asserted that this pillar was the 'bedrock' of R2P. Pillar two stresses that the international community should encourage and assist states to provide assistance to States in building capacity to protect their populations, while pillar three focuses on the responsibility of international community to take timely and decisive action to prevent and halt genocide, ethnic cleansing, war crimes and crimes against humanity when a State is 'manifestly failing' to protect its populations (International Coalition for the Responsibility to Protect, 2009). The subsequent 2009 General Assembly debate revealed a broad consensus around the secretary-general's approach, with 94 speakers, representing some 180 governments (including the Non-Aligned Movement) participating in the debate and of those, only four (Cuba, Venezuela, Sudan, and Nicaragua) called for a renegotiation of the 2005 R2P agreement (Bellamy, 2010, p. 147). The debate on the implementation of R2P that is on-going, as of early 2012, is focusing on the concept of R2P being much broader than just military intervention, with particular emphasis being place on the Responsibity to Prevent.

In March 2011, the Security Council in its first major invocation of the responsibility to protect passed Resolution 1973, which authorized force in Libya in response to the threat by the military to civilian protesters there. In the course of the mission NATO in March assumed control of all operations in Libya, which at this stage was after growing to a 28-nation coalition, including Arab countries such as Jordan and Qatar, with over 100 fighter jets and support aircraft at its disposal as well as a dozen frigates to control the Mediterranean (Reuters, 2011). NATO was tasked by the UNSC to enforcing the no-fly zone and naval blockade or providing military logistical assistance. Fighting in Libya ended in late October with the vast majority of the country now in the hands of the new Libyan government and the killing of Muammar Gaddafi which resulted in the UNSC voting to end NATO's mandate for military action on 31st October 2011 (BBC News, 2011b). Many observers consider the intervention in Libya a great success with Gareth Evans former chair of the ICISS asserting that Libya was a textbook case for the application of the R2P principle (Evans, 2011a). However, there are still a number of questions to be contemplated. Firstly, if this was a peace enforcement mission with a narrow mandate and supposed to be impartial, how did NATO end up taking sides in a civil war, becoming the defacto Air Force of the Libyan rebels, and actively supplying them with arms (which are still as of February 2012, in the hands of the various militias who are refusing to be disarmed) breaking the embargo section of UNSC resolution 1973? Secondly, the death toll in Libya when NATO intervened was around 1,000-2,000 (judging by UN estimates) and by the end of the intervention the death toll was about 30,000 dead and 50,000 wounded (Milne, 2011). As the missions' main objective was to protect civilians, one has to wonder with this high dead toll whether the civilians of Libya would have been less affected without the intervention. Thirdly, Human Rights Watch has outlined human rights abuses by the Libyan rebels including one incident in Sirte where 53 pro-Gaddafi supporters were tied up and executed (Human Rights Watch, 2011b). As well as this, the treatment of Gaddafi by the rebels when captured would certainly qualify for investigation as a war crime. Thus one has to wonder if this intervention has just resulted in one group of state abusers after being substituted for another. Finally, if R2P was such a success in Libya, why has the UNSC not invoked it in the case of Syria where similar if not even worse atrocities against civilians, as of March 2012, are occurring?

From these questions it is clear that R2P is far from perfect and it must be recognized that perhaps the most daunting challenge of a humanitarian intervention an appropriate exit strategy because without one the mission will be faced with the dilemma of either staying indefinitely and assuming the burdens of governance, as in Bosnia, or like

Somalia, withdrawing and allowing the country to fall back into chaos. Commentators such as Jon Western and Joshua S. Goldstein believe that what is needed is a comprehensive transition strategy, whereby foreign combat forces can exit as peacekeepers take over, and peacekeepers can exit when local governing institutions are in place and an indigenous security force stands ready to respond quickly if violence resumes. As well as this, the earliest phases of an intervention must include planning for a transition strategy with clearly delineated political and economic benchmarks, so that international and local authorities can focus on the broader, long-term challenges of reconstruction, political reconciliation, and economic development (Western and Goldstein, 2011). It is clear that the refinement and further evolution of R2P will continue into the future as lessons are learned from missions such as Libya. Further evolution may involve the Security Council or General Assembly to embrace tough guidelines for the use of military force such as the five criteria: seriousness of risk, right intention, last resort, proportionality, and balance of consequences which was advocated by the ICISS report, but which failed to be adopted by the 2005 UN Summit, which Evans believes could be 'an important tool for achieving success in hard cases' (Evans, 2011a).

7.5 Dadaab and Humanitarian Intervention

In the past the UN Security Council (UNSC) has asserted that human rights violations constituted a threat to international peace and security and confirmed its willingness to take action, including in 2006 its endorsement of the Responsibility to protect principle. For example in 1992, in resolution 794 in relation to Somalia it stated that:

> The magnitude of the human tragedy caused by the conflict in Somalia, further exacerbated by the obstacles being created to the distribution of humanitarian assistance, constitutes a threat to international peace and security (United Nations Security Council Resolution 794, 1992)

As well as that in 2000 in UNSC resolution 1296 in relation to the targeting of civilian populations it:

> Notes that the deliberate targeting of civilian populations or other protected persons and the committing of systematic, flagrant and widespread violations of international humanitarian and human rights law in situations of armed conflict may constitute a threat to international peace and security, and, in this regard, reaffirms its readiness

> to consider such situations and, where necessary, to adopt appropriate steps (United Nations Security Council Resolution 1296, 2000)

In 2006 in an endorsement for the Responsibility to Protect, resolution 1674 states that the UNSC:

> Reaffirms the provisions of paragraphs 138 and 139 of the 2005 World Summit Outcome Document regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity (United Nations Security Council Resolution 1674, 2006)

In addition to this the UNSC has also in the past considered the mass movements of refugees as being a threat to international security. For example in the UNSC Resolution 688 in relation to Iraq it states that it was:

> Gravely concerned by the repression of the Iraqi civilian population in many parts of Iraq, including most recently in Kurdish populated areas, which led to a massive flow of refugees towards and across international frontiers and to cross-border incursions, which threaten international peace and security in the region (United Nations Security Council Resolution 688, 1991).

In chapter four the many threats faced on a daily basis by refugees and asylum seekers in and around Dadaab from bandits, Islamists, rival clans and even the Kenyan security forces was outlined in significant detail, while in chapter six the many infringements in relation to IRL, IHRL and IHL against them was identified. As well as this in 2011 alone conflict and famine caused the mass displacement of 154,000 people who made their way to the Dadaab complex. Thus the situation in Dadaab has threats to the civilian population, gross infringements of human rights and the mass movement of people associated with it; all of which are considered by the UNSC to be threats to international peace and security, and as such, refugees in Dadaab might be a case warranting the type of protection implicit in R2P.However, there has been no mention of Dadaab at Security Council level over the past 20 years, despite it now holding nearly half a million people. The three humanitarian interventions in the 1990s in Somalia (UNOSOM I, UNITAF and UNOSOM II, discussed in detail in Chapter 2), though credited with limited success in terms of creating humanitarian corridors, delivering aid and saving many lives, were considered failures as they couldn't disarm the various combatants, put a stop to the chaos or stabilize the country. This failure in Somalia and deaths of many peacekeepers while serving there has meant that the

international community, especially the US, has no taste for further interventions and have all but abandoned it to its fate as a failed state. With the Dadaab emergency so intertwined with the conflict in Somalia, it is unlikely that there will be an invocation of R2P or peace keeping missions on the ground there in the future, no matter how further the situation deteriorates.

It is worth noting that from the early 1990s and to some extent ever since, Somalia has been an obvious case for some kind of humanitarian intervention/peace enforcement/R2P operation and had such an operation been successfully, the refugees in Dadaab might never have arrived and/or might have been able to return to Somalia. Ironically, the failed humanitarian intervention in 1992-93 actually contributed to the destabilization that produced the Dadaab PRS. The African Union mission in Somalia (AMISOM) authorized by the UNSC and deployed in 2007 does have some elements of humanitarian intervention/peace enforcement/R2P components but has been ineffective in its mandate to stabilize the country. The prolonged crisis in Somalia illustrates the extreme difficulty of stabilizing failed states, the ultimate prerequisite for resolving protected refugee situations such as Dadaab.

7.6 Kenyan Unilateral Military Intervention and the Azania/Jubaland Initiative

On 13th October 2011, two Spanish Medicine Sans Frontiers (MsF) workers Blanca Thiebaut and Montserrat Serra were kidnapped by al Shabaab from Ifo camp in broad daylight and their driver shot in the neck. These kidnappings as well as the kidnappings of two other Europeans from holiday resorts in Kenya was seen as an considerable escalation of operations by Al Shabaab and thus an unacceptable security threat by the Kenyan government, who sent the Kenyan army into Somalia on the 16th October 2011. The GoK asserted this infringement was to rescue these aid workers and neutralize the threat from al Shabaab to Kenya. However, research indicates that this incursion was far from a knee jerk reaction and had been planned for a number of years. This intervention in Somalia is believed by many to be part of a coordinated longer term strategy to push al Shabaab from Central and South Somalia and set up an autonomous buffer zone inside Somalia (Ross, 2011). This buffer zone known as either Azania or Jubaland (both historical names for the region) is a proposed new semi autonomous region comprising three regions on the Kenyan border. It was conceived principally by Kenya as a buffer zone against al-Shabaab and to potentially serve as a temporary home for the large number of people fleeing conflict elsewhere in Somalia. In addition it now seems that it may also be used to move refugees from the Dadaab

camps back to Somalia. Recently released Wiki leak cables from the US embassy in Nairobi state that:

- As far back as July 2009 the formation of a Jubaland State was being planned as political, clan, and military players in the region began to shift alliances and manoeuvre for political positions (WikiLeaks Cable reference id: #09NAIROBI1552, 2009)
- In January 2010, the GOK received from the Government of China weapons, ammunition, supplies, and textiles for making uniforms in support of the GoK's Jubaland initiative. Also The GOK is highly interested in developing a major port complex in the Island of Lamu with China as a potential partner for the port development project and associated regional infrastructure: road and rail infrastructure to Southern Sudan and Ethiopia, and pipeline infrastructure to Southern Sudan and Uganda to exploit possible oil and gas finds (WikiLeaks Cable reference id: #10NAIROBI181, 2010)
- In February 2010 Kenya wanted to develop a buffer zone inside Somalia to prevent al-Shabaab infiltration and incursions (WikiLeaks Cable reference id: #10NAIROBI147, 2010)
- In February 2010 Kenya had begun to train up to 2,000 Somalis to be deployed against al-Shabaab in Lower and Upper Juba (WikiLeaks Cable reference id: #10NAIROBI159, 2010)
- In February 2010 Kenyan officials emphasized their strategic focus on denying al-Shabaab control of the Kismayo port, a key logistics hub (WikiLeaks Cable reference id: #10NAIROBI159, 2010).

Thus over the past two years Kenya appears to have planned the creation of a 'buffer zone' inside Somalia, with Kismayo as its capital. In fact, technically, this zone was created in 2011 when Mohamed Abdi Gandhi, former Defence Minister of Somalia declared himself president of Azania (see map) (News 24, 2011).However, until now, the existence of Azania is more virtual than real, since much of the area is under the control of Al Shabaab and Gandhi actually lives in Nairobi (Berhane, 2011). However, with the Kenyan military advancing on Kismayo this may change. It has made significant gains established bases deep into Somalia, including at Busar, El Ade, Fafahduun in the Northern Sector, and Bilis Qooqani, Afmadow and Tabda in the Central Sector (Ochami, 2012) and looks poised for a two pronged assault on Kismayo. As well as this the GoK has agreed to amalgamate its

troops with the AMISOM mission bringing its troop levels to 17,700 (Oluoch and Kimani, 2012) and if an attack does take place it will be now be part of a coordinated AMISOM/TFG effort with international support. If Kismayo is captured, AMISOM forces could be deployed there to support any Jubaland/Azania government initiative. As well as securing a buffer zone for Kenya, this would also pave the way for a major infrastructure project in the region, as envisaged by the Wiki leaks cables mentioned earlier, with Lamu, connected by a rail and road network to Ethiopia and Sudan, being converted into an oil terminal, providing an outlet for the as yet unexploited oilfields of southern Sudan and northern Kenya (Rémy, 2011).

Possible State of Azania



Map 7.1

7.6.1 The Consequences of the Kenyan Intervention for Dadaab

Long before the Kenyan intervention in Somalia the effects of the planning for the 'Jubaland Initiative' were being felt in Dadaab. Because of the GoK's refusal to recognize the long term nature of the Dadaab camps as well as not considering Kenya a destination country, but rather as a transit country temporarily hosting asylum-seekers (Pavanello et al., 2010, p. 28), it has pursued restrictive policies for many years towards Somali asylum seekers and refugees. This includes the January 2007 decision to close the border with Somalia; the related decision to shut down the refugee reception office in Liboi, which made the journey to the Dadaab camps

more dangerous and expensive and the continued prohibition on freedom of movement, freedom of employment for all camp-based refugees. It has also failed to rein in its abusive police force which, since the border closure, has intercepted, extorted, abused, arbitrarily detained, and deported thousands of Somali asylum seekers. In addition, for several years the Kenyan government has used various tactics to delay the opening of Ifo II and refused to provide more land for the camps at Dadaab despite massive overcrowding and congestion. For example, during my time in Dadaab in 2010 the GoK made land available to extend Ifo camp with clearance and demarcation beginning in June 2010. UNHCR and the various IPs began putting infrastructure in place such as boreholes and the construction of compounds, schools and field offices began. On 8thSeptember (2010) in a high profile internationally broadcast visit to publicise the Ifo extension, the UNHCR High Commissioner for Refugees, Mr Antonio Guterres accompanied by the UNHCR Director of the Regional Bureau for Africa, the UNHCR Kenyan Representative, the Kenyan Assistant Minister for Immigration and the Commissioner for the Department of Refugee Affairs came to Dadaab to overview the extension's progress, meet with refugee leaders and local MPs.

High Commissioner for Refugees Mr Antonio Guterres (centre) meets GoK officials and local MPs in Dadaab in September 2010



Photo: Damien Mc Sweeney

However, just four months later in January, in a total reversal, the GoK told UNHCR to stop construction, despite more than US$12 million of donor funding having been committed for the extension to provide space for 80,000 refugees and relieve overcrowding in the complex. Richard Floyer-Acland the then UNHCR Head of Sub Office in Dadaab believed at the time that:

> The Kenyan government was loath to see too much development in terms of infrastructure and improved conditions, for fear this might encourage Dadaab's refugees to stay in the country (Provost and Hamza, 2011).

Permission was later begrudgingly given in July 2011, when the gigantic influx of refugees overwhelmed the humanitarian agencies there and could no longer be contained within the old camps.

It is clear that the presence of 463,501 refugees in Dadaab has now become an unacceptable security risk to many Kenyans and government officials. So if the Kenyan military intervention achieves the creation of even a marginally stable buffer zone against al-Shabaab it will have major implications for the refugees in Dadaab as it will allow Kenyan officials and ministers to argue that refugees should be now accommodated in Azania/Jubaland instead of Kenya. Already the senior protection officer of the Kenyan Department for Refugee Affairs and former DRA camp manager of Dadaab, Omar Dhadho, said in an interview, 'as a country, we have hosted enough; we have enough refugees in the country. So the other countries must also come in to assist' (Majtenyi, 2011). In June the internal security assistant minister, Orwa Ojodeh, told Human Rights Watch that given that:

> Fighting in Somalia has ended the international community should consider setting up IDP camps inside of Somalia near the Kenyan border, and offer services to Somalis there in order to reduce the number of refugees entering Kenya (Human Rights Watch, 2011c, p. 45).

Echoing his sentiments, Aden Duale, the MP for Garissa also told Human Rights Watch, 'The best solution is to build camps in Jubaland. Kenya and Ethiopia can play a role in protecting them' (Human Rights Watch, 2011c, p. 46). However, on 22nd January 2012, in the most blatant admission yet that Kenya plans to start moving refugees from the Dadaab camp back to Somalia, the Kenyan Permanent Secretary in the Ministry of State for Internal Security Francis Kimemia stated that 'there are safe places inside Somalia following the operation by Kenyan troops; these refugees will be moved anytime' (Ombati, 2012).

There is no doubt that a peaceful and stable Somalia in coordination with a strategic mix of the three durable solutions of local integration, voluntary repatriation and resettlement, is key to solving the dilemma of the Dadaab camps. However, the installation of an administration by Kenya in order to create a buffer zone between it and the conflict may inevitably lead to more conflict as the clans unite behind al Shabaab against the occupying power, as they did in the past when Ethiopia invaded. Even if Kenya is successful in setting up 'safe zones' which may provide access to food aid and an end to the immediate threat of famine, it is not a substitute for the absence of a functioning state. As well as that, over the course of 2011 Kenya attempted to work with at least six Somali allies, all of who had different agendas and loyalties, and include the Ras Kamboni brigade, the TFG, the self-declared 'Azania' regional administration, the Isiolo militia, ASWJ, militia and various Gedo region clan militias (Menkhaus, 2012, p. 4). In addition to this there is also the issues of the various clans in the Jubaland region with the large Darood, Digil-Mirifle, Sheekal, Dabarre, Bantu, Bajuni, Dir, Gaaljaal, Awrmale and Haber Gedir clans all present (Menkhaus, 2012, p. 4).With the contested nature of these many stakeholders as well as their ever shifting allegiances, this makes the prospect of crafting a regional buffer state very challenging.

However, if the GoK are happy that these safe areas in Jubaland/Azania are even relatively secure, then this may then lead to the closure of most of the Dadaab camps as the Kenyan government would assert that this region is now safe and conflict free, revoke refugee status for the Somalis in Dadaab relocate them there thus resolving one of Kenya's most significant security concerns. It must be remembered however that decision to decongest the Dadaab camps by the forced repatriation of refugees to Azania/Jubaland however would violate Kenya's obligations under numerous international laws against refoulement, however, due to the lack of any significant enforcement mechanisms or sanctions in relation to these as well as the wariness of the international community when it comes to Somalia and Dadaab, it may be a infringement that Kenya is more than willing to carry out, and the international community more than willing to ignore.

7.6.2 Dadaab: R2P and the International Community's Obligations

As we saw in chapter two 'spikes' in the conflict and food insecurity in Somalia over the years have resulted in corresponding influxes to the Dadaab camps and caused international attention to be briefly focused on the catastrophe there, with increased media attention and donor funding as a consequence. However, as soon as the next big emergency develops,

Dadaab soon disappears from the media spotlight and political agenda back into the international 'black hole' where it has lingered for years, with only the 'sticking plaster' of humanitarian assistance to keep it company. An example of this was in 2011 when fierce fighting and famine in Somalia resulted in 154,000 refugees fleeing to Dadaab. This was followed by another influx: of press, celebrities and politicians, focusing the world attention on the camps for a brief period during the summer months, only to be forgotten again about a few short months later.

However, as this was happening in Dadaab, Ken Menkhaus, a noted academic and advisor on US policy towards Somalia, called for the international community to invoke the responsibility to protect in facilitating a 'diplomatic surge' to ensure humanitarian assistance reaches communities suffering from famine conditions in South and Central Somalia (Menkhaus, 2011). R2P is often misunderstood to be a call for armed humanitarian intervention, but the doctrine actually envisions a range of non-military options such as diplomacy and prevention before military force is considered. In fact prevention was considered to be the most important pillar of the ICISS report which asserted that 'prevention is the single most important dimension of the responsibility to protect' (International Commission on Intervention and State Sovereignty, 2001). This was confirmed by the UN 2005 World Summit when heads of states endorsed the Outcome Document of the High-level Plenary Meeting of the General Assembly, of which section 138 in relation to R2P states that:

> Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability (United Nations General Assembly, 2005)

It is quite clear from the signals and comments coming from Kenyan politicians and government officials that an integral part of Kenya's Jubaland/Azania initiative of creating a buffer zone in Somalia is the transfer of Somali refugees back there from Dadaab. If this is a forced repatriation of hundreds of thousands of people then the GoK will be in serious violation of IHRL, IRL and possibly the crime against humanity[63] of the 'deportation or

[63]The Rome statute of the ICC under article 7 defines crimes against humanity as meaning any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population or

forcible transfer of a population' covered under article seven of the Rome Statute of the International Criminal Court. Thus the warning signs are now there, and it is now time for the 'responsibility to prevent' pillar of R2P to be invoked in the case of the population of Dadaab. After all, the refugees there have seen enough death and conflict and as the camps move into their 21st year of existence the international community have a 'responsibility to prevent' any more suffering.

7.7 Conclusion

Recent efforts to perfect humanitarian intervention have been fuelled by deep changes in public norms about violence against civilians and advances in conflict management. Two decades of media exposure to mass atrocities, ethnic cleansing, and genocide have altered global attitudes towards intervention. The previously sacrosanct concept of state sovereignty has been made conditional on a state's responsible behaviour, and in 2005, the UN General Assembly unanimously endorsed the doctrine of the responsibility to protect at the UN's World Summit. Both UN Security Council resolutions on Libya this year passed with unprecedented speed, without a single dissenting vote with the intervention in Libya reflecting how the world has become more committed to the protection of civilians. In the wake of conflicts as well, the international community has shown that it can and will play a role in maintaining order and restoring justice. Peacekeeping and peace enforcement missions now enjoy widespread legitimacy and have been remarkably successful in preventing the recurrence of major violence in many cases. In addition because of successful post conflict tribunals and the International Criminal Court, individuals, including national leaders such as Charles Taylor, can now be held liable for egregious crimes against civilians. Still, although international norms now enshrine civilian protection and levels of violence are down, humanitarian interventions remain constrained by political and military realities. The international community's inaction in the face of attacks on Syrian protesters, as of early 2012, demonstrates that neither the UN nor any major power is willing or prepared to intervene when abusive leaders firmly control the state's territory and the state's security forces and are backed by influential allies. Furthermore, the concept of civilian protection

---

with knowledge of the attack: Murder, Extermination, Enslavement, Deportation or forcible transfer of population, Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, Torture, Rape, sexual slavery, enforced prostitution, Persecution against any identifiable group or collectively on political, racial, national, ethnic, cultural, religious, gender grounds, Enforced disappearance of persons, the crime of apartheid and other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health

still competes with deeply held norms of sovereignty, especially in former colonies. Although humanitarian intervention can succeed in many cases, given these constraints, it is not always feasible.

The recent Kenyan intervention in Somalia and its Jubaland/Azania initiative was years in the planning and is aimed squarely at keeping the Somali conflict at bay and 'solving' its refugee problem in Dadaab. Given the abandonment of Somalia by the international community to conflict, famine, warlords, Islamists and bandits, one suspects that when the population of Dadaab came close to half a million and conflict spilled over the border in the form of kidnappings and shootings the GoK decided that the situation was no longer acceptable and sent their troops in. As well as this despite Kenya's inevitable self-interest, one might also argue that the Kenyan government is currently doing more to resolve the causes of the conflict in Somalia than most other nations. Ultimately and realistically, conflict resolution and the cessation of violence in Somalia will be necessary precursors to alleviating the suffering of Somali civilians inside Somalia and refugees in Kenya, Ethiopia, Yemen and elsewhere. The international refugee regime essentially only treats the symptoms of the conflict, while the underlying causes continue to rage inside Somalia. So, one might contend that the Kenyan military with their intervention, at least, is attempting to take responsibility and address those underlying causes. However, it seems that the forced repatriation of hundreds of thousands of refugees from Dadaab, many of them Kenyan born who have never even seen Somalia is also part of that plan. It is clear that the international community has an obligation to ensure that this crime against humanity is prevented and this may involve the invocation of R2P sooner rather than later. The international community has failed the people of Somalia but must not fail the people in Dadaab.

Chapter 8
Conclusion

At the beginning of this thesis humanitarianism was defined as the 'the doctrine that man's duty is to strive to promote the welfare of mankind.' Humanitarianism is a hugely complex and contested concept, with many dilemmas, meaning many things to many people, and as the world became more complex and diverse over the years, so too did humanitarianism. In the twenty first century, debates over neutrality, complex emergencies, deserving victims, do no harm, the limits of state sovereignty, the appropriateness of humanitarian intervention, the responsibility to protect, the justness of pre-emptive war and how to deal with terrorism dominate discussions on the direction humanitarianism is taking in these times.

Weak and failed states, the mass movement of people and Protracted Refugee Situations (PRS) are some of the major challenges that humanitarianism and the international community face in contemporary times. Because of the 1991 disintegration of Somalia into a failed state and the on-going conflict there for the past two decades; hundreds of thousands of refugees have fled to Kenya, producing an enormous PRS there. Before 1991, when Kenya played host to less than 15,000 refugees it had a welcoming and humane attitude towards refugees, allowing them to integrate and all the rights afforded to Kenyan citizens. Things changed dramatically however when the mass influx of 1991/1992 resulted in refugee numbers exploding to 420,000, overwhelming the authorities who had to call for international assistance leading to UNHCR taking over the management of refugee affairs. The Kenyan authorities, faced with such massive numbers of refugees spread throughout the country hardened their attitude with some genuine concerns about security, economic sustainability and the threat of a backlash from its own citizens who suspected that refugees were taking their jobs. As a result refugees were moved to camps in Kakuma and Dadaab, in the most remote and harshest parts of Kenya, close to the borders of both Sudan and Somalia respectively making the locations dangerous for many refugees.

The Dadaab refugee complex was established originally to accommodate 90,000 refugees, but as of January 2012, with a total population of 463,507, hold five times their intended capacity. In 2011 alone, due to three years of protracted drought conditions aggravated by escalated conflict, violence and insecurity, over 154,000 vulnerable Somalis arrived, many with little more than the clothes on their backs (UNHCR Sub Office Dadaab,

2011d, p. 1) and the prospect of increased insecurity and diminished protection in and around the camps. This case study has raised many fundamental issues for both humanitarianism and development and these will be discussed here.

8.1 Security and Protection Concerns Continue in Dadaab

There are many protection and security concerns associated with the refugees in Dadaab, who have to live in 'open prisons' due to restrictions on their movements, denied the right to work or even the right to development. In addition, as mentioned in Chapter four there is significant insecurity in and around Dadaab and a serious lack of protection of refugees, in particular women and girls, who have to contend with large scale Gender Based Sexual Violence (GBSV). There is little doubt that since its establishment, Dadaab has been a dangerous place, with many issues such as clan violence, ethnic violence, and tension with the host community, bandits (shiftas), Islamists and corrupt security forces contributing to the insecurity there. This is made more confusing and further exacerbated by the fact that many of these factors are so intermingled. For example, shiftas and members of al Shabaab can be refugees or host community members as well as being members of clans or subclans who in turn are often defined by shifting allegiances. In addition a significant amount of violence, insecurity and protection concerns can be traced to the effects of the GoK encampment policy which basically imprisons refugees in the camps, the vast majority unemployed with a lack of future prospects and dependence on humanitarian aid. This leads to boredom, criminal activity, sexual violence, substance abuse, domestic violence and a tension that consistently simmers below the surface that can explode into a full scale riot with extreme speed. Furthermore, the police who are tasked with the protection of refugees are sometimes the very people robbing, beating, raping and extorting them. Kenya is a developing country and like most such countries its police, internal security and military forces are often poorly trained, underpaid, lack equipment and characterized by corruption and lack of respect for human rights. All these problems are then exacerbated by PRS's such as Dadaab where there are a number of actors involved in security and protection duties. The new enhanced Security Partnership Project (SPP) between UNHCR and the GoK is a commendable initiative and will hopefully have some positive impact on the camps, but with key pillars such as the re-establishment of the screening centre in Liboi not even been commenced, nearly two years after the SPP's inception, it will not be enough. As well as this, the SPP only addresses things on a material, resource based level and doesn't look at the bigger picture. Even if and when

all the extra police and equipment arrive, the problems of police abuse and corruption will remain. To tackle these problems, a change in the culture of the security forces must occur, with stronger screening, better pay and conditions, strong reporting and enforcement mechanisms all as part of a larger longer term strategy. This is something tangible that the international community could assist in and if implemented properly could have very positive implications not only for the refugees in Dadaab, but also for Kenyan citizens.

8.2 Dadaab and Humanitarian Pillar One: Humanitarian Assistance/Response

The Dadaab refugee complex is, as of 2012, moving towards twenty one years in existence, with a population as of January 2012, in excess of 463,000 people. The challenge and cost of providing assistance to this huge figure is enormous. As a complex emergency and a PRS the assistance that Dadaab receives is diverse, multi-faceted and a mixture of humanitarian aid and developmental aid, with humanitarians faced with the dilemma of how to sustain the long-term refugees and yet still save those just arrived. The huge influx of 2011 seriously tested the humanitarian operation in Dadaab, with workers overwhelmed by both the emergency and the influx, the scale of which made any previous contingency planning obsolete. The provision of new land for new sites in Ifo west, Ifo east and Kambioos and the subsequent response saved many lives but has also created the operational problem of administering six camps, coordination between a huge myriad of additional actors as well as the longer term needs of the newly arrived refugees such as schools and infrastructure. Because UNHCR and the Dadaab operation are dependent on donors as well as the GoK's refusal to recognize the camp's permanent nature, there is a serious lack of long term planning. The unpredictable nature of donor driven assistance there creates uncertainty about budgets from year to year, a great level of discontinuity in the refugee projects, as well as the problem of the often unrealistic requirement by donors for their funding to be used to produce tangible outcomes within a one-year period, impacting negatively on projects and programmes there. The protracted nature of PRS such as Dadaab means that there is a strong moral and practical case for developmental interventions. However, Kenya, just like most other host states, fears these situations becoming permanent and resists long term programming. As a result the humanitarian assistance provided has become open-ended and expensive, predicted to reach a quarter of a billion dollars for 2012 (Government of Kenya and UNHCR, 2011, p. 5). At a time when much of the developed world is in recession and cutting aid budgets it is clear that this assistance is not sustainable in the long term. In Dadaab

and other PRS, planners need multiyear commitments from donors, with built in contingencies for changing circumstances in order to enable a sustainable and effective scaling up of developmental type interventions such as education and livelihood activities. On a larger scale host governments need to move away from this fear of these situations becoming permanent (20 years is a long time to be considered temporary) and start, with the assistance of the international community, incorporating these camps and populations into Regional and National Development planning programmes and strategies.

8.3 Dadaab and Humanitarian Pillar Two: International Law

In 1948, the UN General Assembly adopted the Universal Declaration of Human Rights. Refugees have been able to avail themselves of article 14 of the Declaration, to seek asylum from persecution in other countries. But the real promise of the Declaration lies in its guarantees of equality and non-discrimination, of the rights to education and free choice of employment, of freedom of movement within states and the right to leave and return to one's own state. Refugees in protracted situations are often denied these rights for years, such as is the case in Dadaab. As discussed in Chapter six, all the different branches of international law give a myriad of protection and rights to the refugees in the Dadaab camps as Kenya is a party to nearly all the International treaties and Conventions in relation to refugee law, human rights law, humanitarian law and the Rome Statute of the International Criminal Court. It is also a party to the regional treaties and conventions dealing with refugees and human rights and has even incorporated these treaties into domestic law through its new 2010 Constitution which recognizes all its international commitments. Thus, through the United Nations, the African Union and its own domestic laws and instruments, Kenya has affirmed the relevance of human rights as reflected by the crucial interdependence of economic, social and cultural rights and civil and political rights. It seeks to uphold rule of law, to protect and promote the fundamental human rights contained in the treaties and their national constitutions and to uphold the principles of good governance. Accordingly, in line with this, there is robust protection and rights available to the refugees of Dadaab, on a par with the citizens of Kenya, at least in theory anyway. However, often the rights and protection which were given on paper were not actually given in real life, as these protections and rights are only as effective as the respect given to them, and as there is a serious lack of enforcement mechanisms in case of infringement, many states including Kenya either break or ignore them. Kenya violates the human rights of Somali refugees and asylum-seekers on a regular basis by restricting the

movement of refugees and asylum-seekers, denying them the right to employment as well as their inaction on the frequent reports of abuse by their security forces.

As well this, Al Shabaab, as the de facto governing body in much of Somalia and with obvious influence and support in the Dadaab refugee camps, are (whether they recognize it or not) responsible for respecting the laws of war, the Geneva Conventions and fundamental human rights as well as holding those who abuse them to account. According to the International Criminal Court's definition of War Crimes al Shabaab are guilty of the war crimes of recruitment of child soldiers, attacks on humanitarians and humanitarian convoys, the deliberate targeting of civilians and places of worship and if recent reports are true, may also be guilty of mass rape and sexual slavery. It is clear that the lack of any effective enforcement mechanism is major weakness with IHL, IHRL and IRL, particularly in protracted refugee situations such as Dadaab and especially amongst non-state actors such as Al Shabaab. This is probably one of the most significant reasons why they tend to deliberately breach international law. Enforcement mechanisms relating to international law need to be enhanced so that there is greater accountability with more enforcement powers to ensure compliance in a diverse, complicated and complex, contemporary 21st century setting. Maybe this is a possibility for the ICC to become more involved as its Article 8 claims that it has jurisdiction in respect of war crimes. A referral to investigate the various warring parties in Somalia, including the TFG and al Shabaab for war crimes to the ICC from the UN Security Council might be a good start, with the ICC establishing that there is individual criminal responsibility for the violation of international humanitarian law and focusing the world's attention further on the conflict while building up information on the abusers which can be used if stability ever returns. If the commanders of the various armed groups feel that they might someday be brought to account for the abuses occurring under their watch maybe they would be less inclined to allow or ignore them.

8.4 Humanitarian Pillar Three: Humanitarian Intervention/Responsibility to Protect and the Azania/Jubaland Solution

Given the abandonment of Somalia by the international community to conflict, famine, warlords, Islamists and bandits, one suspects that when the population of Dadaab came close to half a million and conflict spilled over the border in the form of kidnappings and shootings in Dadaab and the NEP, the GoK decided that the situation was no longer acceptable and sent in their troops in October 2011. However, this incursion was not just a 'knee jerk' reaction

but was part of a larger strategy known as the Jubaland/Azania initiative which (as dealt with in Chapter seven) was years in the planning and aimed squarely at keeping the Somali conflict at bay by creating a buffer zone and 'solving' its refugee problem in Dadaab by moving refugees into safe zones within this buffer. Despite Kenya's inevitable self-interest, it could be argued that the GoK is currently doing more to resolve the causes of the conflict in Somalia than most other nations, and that the Kenyan military with their intervention, at least, is attempting to take responsibility and address those underlying causes. If the GoK succeeds in pacifying and stabilizing the Jubaland area, making it safe enough for Somali refugees to return and humanitarian agencies to operate there providing support, this could solve many of the problems associated with Dadaab, because the returning refugees would be still be supported by UNHCR through repatriation schemes and they would have the freedom to move around and find employment, and most importantly not be just seen as refugees anymore. In addition if a significant percentage of refugees return it would make local integration of certain groups easier, such as the children and grandchildren born in the camps, been educated through the Kenyan curriculum and who can speak Swahili and English.

However, it seems that regardless of how stable this area is, the forced repatriation of hundreds of thousands of refugees from Dadaab, many of them Kenyan born, who have never even seen Somalia, is on the GoK's agenda. It is clear that the international community has an obligation to ensure that this is prevented and this may involve the invocation of the Responsibility to Protect (R2P). R2P is often misunderstood to be a call for armed humanitarian intervention, but the doctrine actually envisions a range of non-military options such as diplomacy and prevention before military force is considered. In fact prevention was considered to be the most important pillar of the ICISS report which asserted that 'prevention is the single most important dimension of the responsibility to protect' (International Commission on Intervention and State Sovereignty, 2001). It is quite clear from the signals and comments coming from Kenyan politicians and government officials that an integral part of Kenya's Jubaland/Azania initiative of creating a buffer zone in Somalia is the transfer of Somali refugees back there from Dadaab. If this is a forced repatriation of hundreds of thousands of people then the GoK will be in serious violation of IHRL, IRL and possibly guilty of the crime against humanity of the 'deportation or forcible transfer of a population' which is covered under article seven of the Rome Statute of the International Criminal Court. Thus the warning signs are now there, and it is now time for the 'responsibility to prevent' pillar of R2P to be invoked on the behalf of the vulnerable population in Dadaab. After all, the refugees there have seen enough death and conflict and

as the camps move into their 21st year of existence the international community have a 'responsibility to prevent' any more suffering.

8.5 International Burden Sharing and Durable Solutions

At the end of 2010 there were 43.7 million forcibly displaced people worldwide, including 15.4 million refugees. Eighty percent of the world's refugees are in developing nations, as are the vast majority of internally displaced people (UNHCR, 2011g, p. 10). The high number of refugees hosted by developing countries underscores the disproportionate burden carried by those least able to afford it as well as the need for international support. There has been considerable recognition for the need of more international burden sharing, especially in PRS. For example, section 133 of the 2005 World Summit Outcome adopted by the UNGA states that:

> We commit ourselves to safeguarding the principle of refugee protection and to upholding our responsibility in resolving the plight of refugees, including through the support of efforts aimed at addressing the causes of refugee movement, bringing about the safe and sustainable return of those populations, finding durable solutions for refugees in protracted situations and preventing refugee movement from becoming a source of tension among States. We reaffirm the principle of solidarity and burden-sharing and resolve to support nations in assisting refugee populations and their host communities (United Nations General Assembly, 2005)

In addition in 2008, Mr. Antonio Guterres, United Nations High Commissioner for Refugees asserted that:

> We need to recognize that protracted refugee situations are the responsibility of the international community as a whole. It is neither realistic nor fair to leave the resolution of a refugee situation to the host state alone. Only through a concerted effort by the international community with true burden and responsibility sharing can they be resolved and this will require the mobilization of additional resources for community development as well as humanitarian response (UNHCR, 2008a)

However, despite this, there remains an enormous lack of international burden sharing, with Western states attempting to 'ring-fence' their countries against the arrival of asylum seekers leaving developing countries with the lion's share of the refugee burden. For example, in Europe as the Cold War ended, many countries developed measures to limit and deter

refugees and asylum seekers. The imposition of advance visa requirements on citizens from refugee producing countries or regions has become commonplace in the EU and elsewhere in the industrialized world, resulting in refugees and asylum seekers lacking a valid entry visa being prevented from even boarding an airplane or ship heading for safety (Fullerton, 2006, p. 144). Carrier sanctions[64] have also become common with airline, shipping and freight companies facing significant fines if they board asylum seekers without entry documents for the destination (Karanja, 2008, p. 368). As well as this, those who manage to travel to developed countries increasingly face an array of devices or procedures that turn them away at the border either immediately or within a matter of days. One such device has been the development of the 'safe third country' principle, under which some states turn away asylum seekers, no matter what countries they fled or what persecution they fear, if they passed through a country en route to the destination state that the destination state considers to be safe. In 2004, France, Germany, Italy, Spain and Britain went even one step further by banding together and developing a 'safe country of origin' list resulting in citizens from any of the states on this list being ineligible to apply for asylum (Fullerton, 2006).

With this background, Kenya may legitimately argue that it has had to shoulder overwhelming part of the Somali refugee problem, even though it is itself a developing country with drought and extreme poverty prevalent in many parts of the country. In fact one fifth of its population lives below the World Bank absolute poverty line of less than $1.25 per day (UNDP International Human Development Indicators, 2011). But yet, despite this, they are still playing host to 600,000 refugees, while much of the developed world reinforce their borders against the arrival of asylum seekers, refusing and avoiding any significant burden sharing despite the rhetoric. It is clear that the Kenyan government and UNHCR and its implementing and operational partners lack the capacity to deal with these numbers in a sustainable, long term or effective manner as envisaged by the various refugee law instruments. However, its 2011 incursion into Somalia with the view to creating a buffer zone may indicate that it has grown tired of shouldering the burden of over 600,000 refugees and is

[64]In Western Europe, carrier's sanctions have been codified into the Schengen Convention and the Draft Convention on Crossing of External Borders. Both legislation, in Article 26 and Article 14 respectively, require Member States to incorporate into their national legislation measures obliging carriers to take all necessary measures to ensure that persons coming from third countries are in possession of valid travel documents and or the necessary visa, and to impose appropriate penalties on carriers failing to fulfill this obligation. They are required also to implement measures that oblige carriers that brought an alien who is refused entry into the territory of a Contracting Party to assume responsibility for him at once and return him/her to the Third State from which S/he was transported, issued the travel document or any third state guaranteeing entry
Karanja, S. K. (2008). *Transparency and proportionality in the Schengen information system and border control co-operation*, Martinus Nijhoff Publishers.

now laying the groundwork for a longer term solution to the problem: the mass repatriation of refugees back to Somalia in areas that the Kenyan military will deem 'safe'. It is crystal clear that there needs to be much greater international burden-sharing in relation to refugees but in particular to PRS. Undoubtedly the best solution for PRS is to stabilize the country of origin so that refugees can return, with appropriate supports in place so they can eventually become self-sufficient. This is easy to call for, but extremely difficult to put into practice, as has been seen in Somalia, Afghanistan, Iraq and elsewhere. Even with political will and resources, there is no guarantee that the international community can succeed in stabilizing a failed state. Despite this, conflict resolution and the cessation of violence in Somalia will be necessary precursors to alleviating the suffering of Somali civilians inside Somalia and refugees in Kenya, Ethiopia, Yemen and elsewhere. The international refugee regime essentially only treats the symptoms of the conflict, while the underlying causes continue to rage inside Somalia. The humanitarian operation in Dadaab, in the longer term cannot continue indefinitely as the numbers there and the ever increasing funds and resources required are not sustainable. Stakeholders there at present just accept the 'status quo' instead of thinking outside the box and challenging the system there. Maybe the GoK, UNHCR and the international community should examine the courageous step taken by Tanzania in 2010 when it offered local integration, including citizenship to 162,000 Burundian refugees who had been in the country since 1972 (Seregni, 2011). Substantial research examined by NORDECO in Chapter five indicates that the Dadaab refugee camp already brought infrastructural and socio-economic benefits to the host community. It estimated that in 2010 the total economic benefits for the host community due to the existence of the camps and the humanitarian community was USD 14 million (Enghoff et al., 2010, p. 74). The integration of nearly half a million people is unlikely to be considered for the foreseeable future, however, there are many young refugees born in the camps on Kenyan soil, educated in the Kenyan school curriculum, who speak Somali, Swahili and English and who have never been to Somalia. Maybe, these people could be considered for integration as part of an overall solution in the future which could involve a mix of all three durable solutions, integration for some, voluntary repatriation with UNHCR supports for others and resettlement on a National, Regional and international level. Other countries need to both accept more refugees and provide greater support to host countries such as Kenya. However, in the contemporary economic climate of fear and confusion this is problematic and unlikely to occur to any great extent in the near future.

8.6 International Mechanism to Deal with PRS

As we saw in chapter two 'spikes' in the conflict and food insecurity in Somalia over the years have resulted in corresponding influxes to the Dadaab camps and caused international attention to be briefly focused on the catastrophe there, with increased media attention and donor funding as a consequence. However, as soon as the next big emergency develops, Dadaab soon disappears from the media spotlight and political agenda back into the international 'black hole' where it has lingered for years, with only the 'sticking plaster' of humanitarian assistance to keep it company. An example of this was in 2011 when fierce fighting and famine in Somalia resulted in 154,000 refugees fleeing to Dadaab. This was followed by another influx: of press, celebrities and politicians, focusing the world attention on the camps for a brief period during the summer months, only to be overlooked again a few short months later. The problem with Dadaab and indeed all PRS, is that major security or humanitarian incidents focus the world's attention on them for a brief period of time but these situations are then forgotten about.' It is clear that there is need for a better international mechanism to deal specifically with PRS and Protracted IDP situations on a political level. When a conflict is in a 'hot' phase the UNSC and/or sometimes the UN Human Rights Council may address it at that particular time. However as the refugee/IDP situation moves away from the top of the international political agenda, none of the central political institutions of the UN such as the UNSC, UNGA, and Human Rights Council have responsibility for it. Instead the primary UN operational agencies such as UNHCR and WFP, deal with it on the ground, but politically it moves into a 'black hole', where like Dadaab and other PRS, it can linger for up to 20 years. What are fundamentally needed are political solutions and therefore some mechanism needs to be devised whereby the UNSC/UNGA/Human Rights Council address refugee/IDP situations on an on-going basis, and not just when things deteriorate to the extent that there may be a threat to regional or international security.

8.7 Epilogue

The goal of any humanitarian operation should be to make itself unnecessary and obsolete. By this standard, the international community has failed spectacularly in both Somalia and Dadaab: 1991 to 2012 is a long time for both a failed state and a PRS to be in existence. The international community should be ashamed of allowing this to continue and this was put very aptly by Ken Menkhaus when he asserted that:

> The bulk of international relief efforts operate on the edges of the crisis, especially in the burgeoning refugee camps on the Kenyan-Somali border, which have now grown to an astonishing 470,000 refugees. This is not a famine relief strategy – it is a macabre game of 'Survivor' rewarding those lucky and strong enough to straggle across the border with a prize of shelter, food rations, and the prospect of being warehoused in a refugee camp for the next 20 years. We can – and must – do better (Menkhaus, 2011, p. 2).

At the time of writing (April 2012) with the Kenyan intervention in Somalia on-going and GoK ministers and officials stating that refugees can be moved back there 'anytime soon', there is a chance that the Dadaab camps may be closed or at least vastly reduced in the next few years. However, the many issues raised and investigated in this thesis in terms of protection, security, refugee 'warehousing', complex emergencies, humanitarian assistance, and development assistance in emergency settings, International Law (IHRL, IHL and IRL), humanitarian interventions and R2P are all prevalent in the other Protracted Refugee Situations which have also been on-going for many years and will, unfortunately, be ongoing for many years to come.

Bibliography

(Hearing before the United States House of Representatives Committee on Foreign Affairs, 2007). Current situation in Darfur *United States House of Representatives Committee on Foreign Affairs*
Washington: DIANE Publishing.

ABC News. (2012). *Militants target Kenyan New Year's revellers* [Online]. ABC News. Available: http://www.abc.net.au/news/2012-01-02/militants-target-kenyan-new-years-revellers/3754464 [Accessed 05/01/2012].

Abdi, A. M. (2005). In Limbo: Dependency, insecurity, and identity amongst Somali Refugees in Dadaab camps. *Refuge: Canada's periodical on refugees,* 22.

Abdi, A. M. (2006). Refugees, Gender-based Violence and Resistance: A Case Study of Somali Refugee Women in Kenya *In:* TASTSOGLOU, E. & DOBROWOLSKY, A. Z. (eds.) *Women, migration, and citizenship: making local, national, and transnational connections.* Aldershot: Ashgate.

Abdul-Raheem, T. (2010). *Speaking Truth to Power: Selected Pan-African Postcards*, Fahamu/Pambazuka Press.

Agier, M. (2008). *On the margins of the world: the refugee experience today*, Polity.

Agier, M. (2011). *Managing the Undesirables*, Polity Press.

Albin-Lackey, C. & Tayler, L. (2010). *Harsh war, harsh peace: abuses by al-Shabaab, the Transitional Federal Government, and AMISOM in Somalia,* New York, Human Rights Watch.

Alborzi, M. R. (2006). *Evaluating the effectiveness of international refugee law: the protection of Iraqi refugees*, M. Nijhoff Publishers.

Aljazeera. (2010). *Somalia rebel groups 'merge'* [Online]. Al Jazeera Available: http://english.aljazeera.net/news/africa/2010/12/20101219202047178447.html [Accessed 28/03/2011].

Aljazeera. (2011). *Two killed in grenade attack on Kenyan church* [Online]. Nairobi Aljazeera. Available: http://www.aljazeera.com/news/africa/2011/11/2011116153633928487.html [Accessed 14/12/2011].

Amnesty International (2007). KENYA. Denied Refuge: The effect of the closure of the Kenya/Somalia border on thousands of Somali asylum-seekers and refugees. AI Index: AFR 32.002.2007 ed.: Amnesty International.

Amnesty International (2008). Routinely targeted: attacks on civilians in Somalia. Amnesty International.

Amnesty International (2010). From Life without Peace to Peace without Life: The Treatment of Somali Refugees and Asylum-seekers in Kenya. Amnesty International

Annan, K. (2005). In larger freedom: towards development, security and human rights for all. United Nations.

Ariyaratne, A. (2003). Buddhism and International Humanitarian Law. *Sri Lanka Journal of International Law,* 15**,** 11.

Arnold-Martinez, M. (2008). Strategies for Ensuring Sustainable Livelihoods in Protracted Refugee Situations: The Dadaab Camps in Kenya. Durham: Duke University.

Astariko, S. (2011). *Karua takes campaign to Garissa* [Online]. Nairobi: The Star. Available: http://www.nairobistar.com/national/national/18810-karua-campaign-in-garissa [Accessed].

Atack, I. (2002). Ethical Objections to Humanitarian Intervention. *Security Dialogue,* 33**,** 279-292.

Autesserre, S. (2010). *The Trouble with the Congo: Local Violence and the Failure of International Peacebuilding*, Cambridge University Press.

Barder, O. (2011). *Should We Pay Less for Vaccines?* [Online]. Washington: Center For Global Development. Available: http://blogs.cgdev.org/globalhealth/category/global-health [Accessed 29/06/2011].

Barnes, C. & Hassan, H. (2007). The Rise and Fall of Mogadishu's Islamic Courts. *Journal of Eastern African Studies,* 1**,** 151-160.

Barnes, T. (2010). *Haiti earthquake relief: Despite tensions, Cuba opens airspace to US flights* [Online]. The Christian Science Monitor. Available: http://www.csmonitor.com/World/Global-News/2010/0115/Haiti-earthquake-relief-Despite-tensions-Cuba-opens-airspace-to-US-flights [Accessed 02/07/2011].

Barnett, M. & Barnett, M. N. (2009). *The international humanitarian order*, Routledge.

Barnett, M. N. (2011). *Empire of Humanity: A History of Humanitarianism*, Cornell University Press.

Barnett, M. N. & Weiss, T. G. (2008). *Humanitarianism in question: politics, power, ethics*, Cornell University Press.

Battersby, P. & Siracusa, J. M. (2009). *Globalization and human security*, Rowman & Littlefield.

Baylis, J., Wirtz, J. J., Cohen, E. A. & Gray, C. S. (2007). *Strategy in the contemporary world: an introduction to strategic studies*, Oxford University Press, USA.

BBC. (2008). *Top UN official killed in Somalia* [Online]. BBC. Available: http://news.bbc.co.uk/2/hi/7492456.stm [Accessed 24/03/2011].

BBC News. (2007). *Kenyans close border with Somalia* [Online]. Available: http://news.bbc.co.uk/2/hi/africa/6227083.stm [Accessed 20/12/2011].

BBC News. (2011a). *Kenyan policeman killed in Dadaab blast near Somalia* [Online]. BBC. Available: http://www.bbc.co.uk/news/world-africa-16247634 [Accessed 27/12/2011].

BBC News. (2011b). *UN Security Council votes to end Libya operations* [Online]. BBC News. Available: http://www.bbc.co.uk/news/world-africa-15481143 [Accessed 28/01/2012].

BBC News Africa. (2011). *Kenya: Grenade attack on church in Garissa kills two* [Online]. BBC. Available: http://www.bbc.co.uk/news/world-africa-15612162 [Accessed 28/12/2011].

Bellamy, A. J. (2009). *Responsibility to protect: the global effort to end mass atrocities*, Polity.

Bellamy, A. J. (2010). The Responsibility to Protect—Five Years On. *Ethics & International Affairs,* 24**,** 143-169.

Bellamy, A. J. & Davies, S. E. (2011). *Global politics and the responsibilty to protect: from words to deeds*, Routledge.

Bellamy, A. J., Williams, P. & Griffin, S. (2009). *Understanding Peacekeeping*, Polity.

Bellamy, C. (1998). *The state of the world's children 1999*, UNICEF.

Berhane, D. (2011). *Azania: The True Objective of Kenya in Somalia* [Online]. Testfa News. Available: http://tesfanews.wordpress.com/2011/11/24/azania-the-true-objective-of-kenya-in-somalia/ [Accessed 29/01/2012].

Berman, N. (2004). *Impossible missions?: German economic, military, and humanitarian efforts in Africa*, University of Nebraska Press.

Berry, R. S. Y. (1999). *Collecting data by in-depth interviewing* [Online]. Available: http://www.leeds.ac.uk/educol/documents/000001172.htm [Accessed].

Betts, A. (2011). *Global migration governance*, Oxford University Press.

BNO News. (2011). *Four injured after gunmen blow up security vehicle in northern Kenya* [Online]. Garissa: Channel 6 News. Available: http://channel6newsonline.com/2011/10/four-injured-after-gunmen-blow-up-security-vehicle-in-northern-kenya/ [Accessed 14/12/2011].

Bocha, G. (2011). *Rift over fourth refugee camp* [Online]. Nairobi: Daily Nation. Available: http://www.nation.co.ke/News/Rift+over+fourth+refugee+camp+/-/1056/1215878/-/8tv2ru/-/ [Accessed 13/12/2011].

Boulden, J. (2001). *Peace enforcement: the United Nations experience in Congo, Somalia, and Bosnia*, Praeger.

Boyle, F. A. (1999). *Foundations of world order: the legalist approach to international relations (1898-1922)*, Duke University Press.

Brems, E. (2001). *Human rights: universality and diversity*, Martinus Nijhoff.

Bring, O. (2011). The Hammarskjöld Approach to International Law. *In:* MELBER, H. (ed.) *Dag Hammarskjöldand and Global Governance.* Sweden: Dag Hammarskjöld Foundation.

Bromley, S. & Smith, M. (2004). Transforming the international order. *In:* BROWN, W., BROMLEY, S. & ATHREYE, S. (eds.) *Ordering the international: history, change and transformation.* London: Pluto Press in association with the Open University.

Brown, M. E. & Rosecrance, R. N. (1999). *The costs of conflict: prevention and cure in the global arena*, Rowman & Littlefield Publishers.

Bruton, B. E. (2010). *Somalia: A New Approach*, Council on Foreign Relations Press.

Bukovac, M. (2010). *Failed States: Unstable Countries in the 21st Century*, Rosen Pub Group.

Burgat, F. (2003). *Face to face with political Islam*, I. B. Tauris.

Burnell, P. J. & Randall, V. (2008). *Politics in the developing world*, Oxford University Press.

Burton Wagacha, J. & Guiney, J. (2008). The Plight of Urban Refugees in Nairobi, Kenya. . *In:* HOLLENBACH, D. (ed.) *Refugee rights: ethics, advocacy, and Africa.* USA: Georgetown University Press.

Campbell, E. H. (2005). Formalizing the informal economy: Somali refugee and migrant trade networks in Nairob. *Global Migration Perspectives.* Geneva: Global Commission on International Migration.

Central Intelligence Agency. (2012). *The World Factbook: Somalia* [Online]. United States: The Central Intelligence Agency. Available: https://www.cia.gov/library/publications/the-world-factbook/geos/so.html [Accessed 02/02/2012].

Chambers, R. & Conway, G. (1992). Sustainable rural livelihoods: practical concepts for the 21st century. *Institute of Development Studies Discussion Paper 296, .* Brighton: Institute of Development Studies.

Chandler, D. (2010). *International Statebuilding*, Routledge.

Author. (2010). Somalia's Al Shabaab to Ally With Al Qaeda *Wall Street Journal*, 2/02/2010.

Chothia, F. (2011). *Could Somali famine deal a fatal blow to al-Shabab?* [Online]. London: BBC. Available: http://www.bbc.co.uk/news/world-africa-14373264 [Accessed 01/11/2011].

Citizenship Rights in Africa Initiative (2011). Kenya: Submission to the Task Force on Citizenship and Related Provisions of the Constitution. Citizenship Rights in Africa Initiative.

Coté, L. (2004). Compliance with the Laws of War. *In:* DOYLE, M. W. & LUCK, E. C. (eds.) *International law and organization: closing the compliance gap.* United States: Rowman & Littlefield Publishers.

Crisp, J. (2000a). Forms and Sources of Violence in Kenyas Refugee Camps. *Refugee Survey Quarterly,* 19**,** 54-70.

Crisp, J. (2000b). A state of insecurity: The political economy of violence in Kenya's refugee camps. *African Affairs,* 99**,** 601-632.

Crisp, J. (2004). The local integration and local settlement of refugees: a conceptual and historical analysis. *New Issues in Refugee Research.* Geneva: UNHCR.

Dadrian, V. N. (2004). *The history of the Armenian genocide: ethnic conflict from the Balkans to Anatolia to the Caucasus*, Berghahn Books.

Dallaire, R. & Beardsley, B. (2005). *Shake hands with the devil: the failure of humanity in Rwanda*, Carroll & Graf.

Damrosch, L. F. (1993). *Enforcing restraint: collective intervention in internal conflicts*, Council on Foreign Relations Press.

Darraj, S. M. (2010). *The Universal Declaration of Human Rights*, Chelsea House Publishers.

De Cordier, B. (2008). The 'Humanitarian Frontline', Development and Relief, and Religion. What context, which threats and which opportunities? Belgium: Conflict Research Group.

De Torrente, N. (2004). Humanitarian action under attack: Reflections on the Iraq war. *Harv. Hum. Rts. J.,* 17**,** 1.

DeCapua, J. (2011). *Ending Use of Child Soldiers in Somalia* [Online]. VOA News. Available: http://www.voanews.com/english/news/africa/decapua-child_soldiers_un_25nov11-134495963.html [Accessed 28/12/2011].

Department of Refugee Affairs. (2011). Nairobi: Government of Kenya. Available: http://www.refugees.go.ke/index.php?option=com_content&view=frontpage&Itemid=81 [Accessed 06/04/2010].

Dictionary.com. *Humanitarianism in Collins English Dictionary, Complete & Unabridged 10th Edition* [Online]. HarperCollins Publishers. Available: http://dictionary.reference.com/browse/humanitarianism [Accessed 21/06/2011].

Doria, J., Gasser, H. P., Bassiouni, M. C. & Blishchenko, I. P. (2009). *The legal regime of the International Criminal Court: essays in honour of Professor Igor Blishchenko : in memoriam Professor Igor Pavlovich Blishchenko (1930-2000)*, Martinus Nijhoff Publishers.

Dube, A. & Koenig, A. (2005). Self-reliance and sustainable livelihoods for refugees in Dadaab and Kakuma camps. Nairobi: UNHCR BO Nairobi.

Duffy, H. (2005). *The "war on terror" and the framework of international law*, Cambridge University Press.

Durch, W. J. (1996). *UN peacekeeping, American politics, and the uncivil wars of the 1990s*, St. Martin's Press.

Economist (2006). Islamists half-ready for holy war. *Economist,* 381**,** 49-50.

Edgar, A. D. (2006). Reduilding War Affected Societies:Implimenting the Responsibility to Protect agenda. *In:* EWALD, U. & TURKOVIĆ, K. (eds.) *Large-scale victimisation as a potential source of terrorist activities: importance of regaining security in post-conflict societies.* Amsterdam: IOS Press.

Education For All: Global Monitoring Report (2011). The hidden crisis: Armed conflict and education. Paris: UNESCO.

Eichstaedt, P. (2010). *Pirate State: Inside Somalia's Terrorism at Sea*, Lawrence Hill Books.

Ellis, S., Kessel, I. & Kessel, W. M. J. (2009). *Movers and shakers: social movements in Africa*, Brill.

Elmi, A. A. (ed.) (2009). *Understanding the Somalia Conflagration: Identity, Islam and Peacebuilding* London: Pluto Press.

Elmi, A. A. (2010). Somalia: System of a down Available: http://english.aljazeera.net/indepth/opinion/2010/10/2010101594852564890.html [Accessed 15/03/2011].

Enghoff, M., Hansen, B., Umar, A., Gildestad, B., Owen, M. & Obara, A. (2010). In Search of Protection and Livelihoods: Socio-economic and Environmental Impacts of Dadaab Refugee Camps on Host Communities. The Royal Danish Embassy in Nairobi, The Royal Norwegian Embassy in Nairobi and The Government of Kenya, Department of Refugee Affairs.

Equality and Human Rights Commission. (2011). *The Human Rights Act* [Online]. Available: http://www.equalityhumanrights.com/human-rights/what-are-human-rights/the-human-rights-act/ [Accessed 09/09/2011].

Esipisu, I. (2011). *A Daily Prayer for Complication-Free Births* [Online]. Inter Press Service Available: http://ipsnews.net/news.asp?idnews=105156 [Accessed 01/12/2011].

Evans, G. (2011a). *Can we stop atrocities without launching an all-out war?* [Online]. Foreign Policy. Available: http://www.foreignpolicy.com/articles/2011/10/18/did_qaddafis_end_justify_the_means?page=0,2 [Accessed 28/01/2012].

Evans, G. J. (2008). *The responsibility to protect: ending mass atrocity crimes once and for all*, Brookings Institution Press.

Evans, M. (2011b). *London teacher takes up job as Somalia's deputy prime minister* [Online]. London: The Telegraph Available: http://www.telegraph.co.uk/news/worldnews/africaandindianocean/somalia/8749976/London-teacher-takes-up-job-as-Somalias-deputy-prime-minister.html [Accessed 01/11/2011].

Eyffinger, A. (2003). Christianity and International Humanitarian Law. *Sri Lanka Journal of International Law,* 15**,** 29.

Falola, T. & Oyebade, A. (2010). *Hot spot: Sub-Saharan Africa*, Greenwood.

Falstrom, D. Z. (2007). Can International Law Survive the 21st Century? Yes: With Patience, Persistence, and a Peek at the Past. *San Diego International Law Journal,* 8**,** 291-343.

Fitzgerald, N. J. (2002). *Somalia: issues, history, and bibliography*, Nova Science Publishers.

Floyer-Acland, R. (2009). Harmonization of refugees incentive workers wages. Dadaab: UNHCR Sub Office Dadaab.

Forsythe, D. P. (2006). *Human rights in international relations*, Cambridge University Press.

Fox, F. (2001). New Humanitarianism: Does It Provide a Moral Banner for the 21st Century? *Disasters,* 25**,** 275.

Fullerton, M. (2001). Failing the Test: Germany Leads Europe in Dismantling Refugee Protection. *Tex. Int'l LJ,* 36**,** 231.

Fullerton, M. (2006). The International and National Protection of Refugees. *In:* CLAUDE, R. P. & WESTON, B. H. (eds.) *Human rights in the world community: issues and action.* Philadelphia: University of Pennsylvania Press.

G4S (2011). Witnessing a Humanitarian Crisis. *G4S International,* 1.

Gettleman, J. (2011). *For Somali Women, Pain of Being a Spoil of War* [Online]. New York: New York Times. Available: http://www.nytimes.com/2011/12/28/world/africa/somalia-faces-alarming-rise-in-rapes-of-women-and-girls.html?pagewanted=1&_r=1&sq=Mass%20Rapes%20Spike%20in%20Somalia&st=cse&scp=1 [Accessed 30/12/2011].

Gitau, G. C. (2011). The GIZ Dadaab Household Energy Project *Improved Cookstove Colloquium* Nairobi: GIZ.

Goodhand, J. & Hulme, D. (1999). From Wars to Complex Political Emergencies: Understanding Conflict and Peace-Building in the New World Disorder. *Third World Quarterly,* 20**,** 13-26.

Goodwin-Gill, G. S. (1995). *Asylum*, Council of Europe Publishing.

Government of Kenya (2001). The Childrens Act. Nairobi: Government of Kenya.

Government of Kenya (2006a). Government of Kenya Refugee Act,. Government of Kenya.

Government of Kenya (2006b). Refugee Act 2006. National Council for Law Reporting.

Government of Kenya (2011a). The Citizenship And Immigration Bill. Nairobi: Government of Kenya.

Government of Kenya (2011b). Draft Refugee Bill 2011. Nairobi: Government of Kenya.

Government of Kenya & UNHCR (2010). Memorandum of Understanding between the Government of Kenya and the United Nations High Commissioner for Refugees on the Security Partnership Project. Nairobi: Government of Kenya and UNHCR.

Government of Kenya & UNHCR (2011). Kenya: Enhanced Security Partnership Project (SPP) 2011-2012. Nairobi: Government of Kenya and UNHCR.

Green, J. & Karolides, N. J. (2005). *The encyclopedia of censorship*, Facts On File.

Grobler-Tanner, C. & Collins, S. (2004). Community Therapeutic Care (CTC): A new approach to managing acute malnutrition in emergencies and beyond. *Food and Nutrition Technical Assistance Project, Academy for Educational Development,* Technical Note No. 8.

Grosse-Kettler, S. (2004). External actors in stateless Somalia: A war economy and its promoters. *Bonn (Germany): Bonn International Center for Conversion.*

Guilloux, A. (2009). *Taiwan, humanitarianism and global governance*, Routledge.

Hathaway, O. A. (2005). The Promise and Limits of the International Law of Torture. *In:* HATHAWAY, O. A. & KOH, H. H. (eds.) *Foundations of international law and politics.* New York: Foundation Press.

Heintze, H. J. & Zwitter, A. (2010). *International Law and Humanitarian Assistance: A Crosscut Through Legal Issues Pertaining to Humanitarianism*, Springer.

Her Majesty's Crown Prosecution Service Inspectorate (2007). Without Consent: A Report on the Joint Review of the Investigation and Prosecution of Rape Offences. London: Her Majesty's Inspectorate of Constabulary.

Hoffman, P. J. & Weiss, T. G. (2006). *Sword & salve: confronting new wars and humanitarian crises*, Rowman & Littlefield.

Horst, C. (2007). *Transnational nomads: how Somalis cope with refugee life in the Dadaab camps of Kenya*, Berghahn Books.

Horst, C. & Elmi, K. (2007). Participation in Sustainable Livelihoods: An Assessment of Socio-Economic Conditions in Dadaab and the Impact of DRC-CARE Interventions. DRC and CARE Kenya.

Housden, M. (2007). *The Holocaust: Events, Motives and Legacy*, Humanitities-Ebooks.

Hudson, G. & Rowlands, S. (2007). *The broadcast journalism handbook*, Pearson Longman.

Human Rights Watch. (2009). *Kenya: Stop Recruitment of Somalis in Refugee Camps* [Online]. Human Rights Watch. Available:

http://www.hrw.org/en/news/2009/10/22/kenya-stop-recruitment-somalis-refugee-camps?tr=y&auid=5531349 [Accessed 06/04/2011].

Human Rights Watch. (2011a). *Kenya: Stop Deporting Somalis Fleeing Conflict: Government Closing Refugee Camps, Forcing People Back Into War-Zone* [Online]. Human Rights Watch. Available: http://www.hrw.org/en/news/2011/03/31/kenya-stop-deporting-somalis-fleeing-conflict [Accessed 31/03/2011].

Human Rights Watch. (2011b). *Libya: Apparent Execution of 53 Gaddafi Supporters* [Online]. Human Rights Watch. Available: http://www.hrw.org/news/2011/10/24/libya-apparent-execution-53-gaddafi-supporters [Accessed 28/01/2012].

Human Rights Watch (2011c). "You Don't Know Who to Blame" War Crimes in Somalia. New York: Human Rights Watch.

Hurd, I. (2010). *International Organizations: Politics, Law, Practice*, Cambridge University Press.

Hurwitz, A. & Hurwitz, A. G. (2009). *The collective responsibility of states to protect refugees*, Oxford University Press.

International Coalition for the Responsibility to Protect (2009). Summary of the Report of the Secretary-General on "Implementing the Responsibility to Protect". New York: International Coalition for the Responsibility to Protect.

International Commission on Intervention and State Sovereignty (2001). The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty. Ottowa: International Development Research Center.

International Committee of the Red Cross (1977). Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I). Geneva: ICRC.

International Committee of the Red Cross. (2003). *International Humanitarian Law and International Human Rights Law: Similarities and differences* [Online]. Available: http://www.ehl.icrc.org/images/resources/pdf/ihl_and_ihrl.pdf [Accessed 16/06/2011].

International Council for Voluntary Agencies (2010). NGOs, Clusters and Other Humanitarian Coordination Mechanisms. *In:* INTERNATIONAL COUNCIL FOR VOLUNTARY AGENCIES (ed.) *Humanitarian Reform: Basic Information Leaflet Series.*

International Federation of the Red Cross and Red Cresent Societies (2011). Emergency appeal Kenya: Population Movement Somali Refugees. Emergency appeal n° MDRKE018, OT-2011-000160-KEN, 19 October 2011 ed.: IFRC.

International Organization for Migration (2004). International Migration Law: Glossary on Migration. Geneva: IOM

IRIN. (2006). *KENYA-SOMALIA: Refugee camps expanded as more Somalis arrive* [Online]. IRIN: Humanitarian News and Analysis Available: http://www.irinnews.org/report.aspx?reportid=61289 [Accessed 22/03/2011 2011].

IRIN. (2011a). *Kenya-Somalia: Border town feels the refugee pressure* [Online]. UN Office for the Coordination of Humanitarian Affairs. Available: http://www.irinnews.org/printreport.aspx?reportid=93611 [Accessed 20/12/2011].

IRIN. (2011b). *Refugees Injured in Dadaab Crackdown* [Online]. All Africa Global Media. Available: http://allafrica.com/stories/201112221196.html [Accessed 31/12/2011].

Ishay, M. (2008). *The History of Human Rights: From Ancient Times to the Globalization Era*, University of California Press.

Jackson, R. & Owens, P. (2005). The Evolution of International Society. *In:* BAYLIS, J., SMITH, S. & OWENS, P. (eds.) *The globalization of world politics: an introduction to international relations.* Third Edition ed.: Oxford University Press.

Jacobs, J. (2007). *The History of "Tikkun Olam"* [Online]. Zeek. Available: http://www.jewishjustice.org/download/section42/The_History_of_Tikkun_Olam_ZEEK.pdf [Accessed 12/08/2011].

Janzen, J., Vitzthum, S. & Somali Studies International Association (2001). *What are Somalia's development perspectives?: science between resignation and hope? : proceedings of the 6th SSIA Congress, Berlin 6-9 December 1996*, Das Arabische Buch.

Juma, M. K. & Suhrke, A. (2002). *Eroding local capacity: international humanitarian action in Africa*, Nordiska Afrikainstitutet.

Kabukuru, W. (2011). *Kenya: Elite Kenyan Special Forces revealed: A Special Investigative Report on Kenya's Special Forces in the Frontline War on Al-Shabaab* [Online]. Lamu: Shout Africa. Available: http://www.shout-africa.com/news/kenya-elite-kenyan-special-forces-revealed/ [Accessed 22/01/2012].

Karanja, S. K. (2008). *Transparency and proportionality in the Schengen information system and border control co-operation*, Martinus Nijhoff Publishers.

Kasaija, A. P. (2010). The UN-led Djibouti peace process for Somalia 2008–2009: Results and problems. *Journal of Contemporary African Studies,* 28**,** 261-282.

Keen, D. (2008). *Complex emergencies*, Polity.

Kenya Police (2012a). The General Service Unit. Nairobi: Government of Kenya.

Kenya Police (2012b). Kenya Police: Vision and Mission. Nairobi: Government of Kenya.

Kessy, F. L. & Tostensen, A. (2008). *Out of poverty: comparative poverty reduction strategies in Eastern and Southern Africa*, Mkuki na Nyota Publishers.

Kippenberg, J. (2008). *A question of life or death: treatment access for children living with HIV in Kenya*, Human Rights Watch.

Kirchmeier, F. (2006). The Right to Development–where do we stand. *Dialogue on Globalization,* 23.

Kroessin, M. (2007). Worlds apart? Muslim donors and international humanitarianism. *Forced Migration Review,* 29**,** 36.

Kuruk, P. (1999). Asylum and the Non-Refoulement of Refugees: The case of the missing shipload of Liberian refugees. *Stanford Journal of International Law,* 35.

Lauren, P. G. (2003). *The evolution of international human rights: visions seen*, University of Pennsylvania Press.

Lindley, A. & Haslie, A. (2011). Unlocking protracted displacement: Somali case study. Oxford: Refugee Studies Centre, University of Oxford.

Loescher, G., Betts, A. & Milner, J. H. S. (2008). *The United Nations High Commissioner for Refugees (UNHCR): the politics and practice of refugee protection into the twenty-first century*, Routledge.

Loescher, G. & Milner, J. (2009). Understanding the Challenge. *Forced Migration Review,* 33.

Long, K. (2011). Permanent Crises? Unlocking the protracted displacement of refugees and internally displaced persons. Oxford: Refugee Studies Centre.

Luck, E. C. (2006). *UN Security Council: practice and promise*, Routledge.

Lutheran World Federation Community Peace and Security Team Manual (2010). Community Peace and Security Team Manual. Dadaab: Lutheran World Federation,.

Lyons, T., Samatar, A. I. & Institution, B. (1995). *Somalia: state collapse, multilateral intervention, and strategies for political reconstruction*, Brookings Institution.

Majtenyi, C. (2011). *Refugee Camp in Kenya Swells to Crisis Point* [Online]. Nairobi: Voice of America News. Available: http://www.voanews.com/english/news/africa/east/Refugee-Camp-in-Kenya-Swells-to-Crisis-Point-122826134.html [Accessed 13/06/2011].

Malanczuk, P. (1993). *Humanitarian intervention and the legitimacy of the use of force*, Het Spinhuis.

Markham, M. (2011). *A Life Free from Violence – The Safe Haven in Dadaab* [Online]. Lutheran World Federation. Available: http://www.lutheranworld.org/lwf/index.php/dadaab-safe-haven.html [Accessed 07/12/2011].

Mbuba, J. M. & Mugambi, F. N. (2011). Approaches to Crime Control and Order Maintenance in Transitional Societies: The Role of Village Headmen, Chiefs, Sub-Chiefs and Administration Police in Rural Kenya. *African Journal of Criminology and Justice Studies,* 4.

McConnell, T. (2011a). *Can Somalia survive as a nation?* [Online]. Global Post International News. Available: http://www.globalpost.com/dispatch/news/regions/africa/111220/somalia-news-can-it-survive-nation [Accessed 24/01/2012].

McConnell, T. (2011b). *Tales of horror as refugees arrive from Somalia* [Online]. GlobalPost – International News. Available: http://www.globalpost.com/dispatch/news/regions/africa/kenya/110808/biden-somalia-kenya-dadaab-famine-aid-al-shabaab [Accessed 01/01/2012].

McConnell, T. (2012). *Kenya News: Al Shabaab sold Doctors Without Borders hostages to pirates?* [Online]. Nairobi: Global Post - International News. Available: http://www.globalpost.com/dispatches/globalpost-blogs/africa-emerges/kenya-news-shabaab-sold-doctors-without-borders-hostages- [Accessed 20/01/2012].

McGregor, S. (2011). *Kenya Faces Somalia Quagmire After U.S., Ethiopian Failures* [Online]. Nairobi: Bloomberg. Available: http://www.businessweek.com/news/2011-10-19/kenya-faces-somalia-quagmire-after-u-s-ethiopian-failures.html [Accessed 17/12/2012].

McGrew, A. (2005). Globalization and Global Politics. *In:* BAYLIS, J., SMITH, S. & OWENS, P. (eds.) *The globalization of world politics: an introduction to international relations.* Third Edition ed.: Oxford University Press.

Menkhaus, K. (2005). Battling terrorism in the Horn of Africa. *In:* ROTBERG, R. I. (ed.). World Peace Foundation, Brookings Institution.

Menkhaus, K. (2007). The Crisis in Somalia: Tragedy in Five Acts. *African Affairs,* 106**,** 357-390.

Menkhaus, K. (2011). A Diplomatic Surge to Stop Somalia's Famine. Washington: Enough:a project of the Center for American Progress to end genocide and crimes against humanity.

Menkhaus, K. (2012). After the Kenyan Intervention in Somalia. Washington: The Enough Project.

Menkhaus, K., Sheikh, H., Joqombe, A. & Johnson, P. (2009). The Search For Peace: A History of Mediation in Somalia since 1988. Interpeace and the Center for Research and Dialogue.

Meron, T. (1991). Common Rights of Mankind in Gentili, Grotius and Suarez. *The American Journal of International Law,* 85**,** 110-116.

Meron, T. (2011). *The Making of International Criminal Justice: The View from the Bench: Selected Speeches*, Oxford University Press.

Merson, M. H., Black, R. E. & Mills, A. (2005). *International public health: diseases, programs, systems, and policies*, Jones and Bartlett Publishers.

Mertus, J. (2009). *The United Nations and human rights: a guide for a new era*, Routledge.

Milne, S. (2011). *If the Libyan war was about saving lives, it was a catastrophic failure* [Online]. The Guardian. Available: http://www.guardian.co.uk/commentisfree/2011/oct/26/libya-war-saving-lives-catastrophic-failure [Accessed 28/01/2012].

Milner, J. & Loescher, G. (2011). Responding to Protracted Refugee Situations: Lessons from a Decade of Discussion. Oxford: Refugee Studies Centre, University of Oxford.

Minear, L. & Weiss, T. G. (1993). *Humanitarian action in times of war: a handbook for practitioners*, Lynne Rienner Publishers.

Mitcham, C. & Muoz, D. (2010). *Humanitarian Engineering*, Morgan & Claypool.

Mockaitis, T. R. (1999). *Peace operations and intrastate conflict: the sword or the olive branch?*, Praeger.

Mogire, E. (2011). *Victims as Security Threats: Refugee Impact on Host State Security in Africa*, Ashgate.

Mohamed Bashir Sheik. 2011. Fire broke out in Hagadera Refugee Camp. *Dadaab Refugee Camps* [Online]. Available from: http://dadabcamps.com/2011/08/19/fire-broke-out-in-hagadera-refugee-camp/ [Accessed 28/11/2011].

Mohamed, M. (2008). *Somalis grow fearful of Islamists* [Online]. BBC News. Available: http://news.bbc.co.uk/2/hi/7722701.stm [Accessed 30/12/2011].

Mohamoud, A. A. (2006). *State collapse and post-conflict development in Africa: the case of Somalia (1960-2001)*, Purdue University Press.

Møller, B. (2008). The Somali conflict: the role of external actors.: Danish Institute for International Studies.

Mulaj, K. (2009). *Violent Non-State Actors in World Politics*, Columbia University Press.

Murphy, S. D. (1996). *Humanitarian intervention: the United Nations in an evolving world order*, University of Pennsylvania Press.

Mutua, A. N. (2011). *Kenyan Government briefing on the refugee and drought situation in the country* [Online]. Nairobi: Government of Kenya. Available: http://reliefweb.int/node/435254 [Accessed 21/12/2011].

Nalla, M. (2010). *Crime and Punishment Around the World: Volume 1, Africa*, ABC-CLIO.

Ndibalema, V. (2008). Mission Report: Dadaab Environmental Programme: 16 – 21 November 2008. Nairobi: UNHCR.

Nebehay, S. (2011). *Cholera breaks out in Kenya's Dadaab refugee camp: UN* [Online]. Geneva: Reuters. Available: http://af.reuters.com/article/topNews/idAFJOE7AE0DR20111115 [Accessed 23/11/2011].

News 24. (2011). *Abdi Gandhi new Azania president* [Online]. News 24.com. Available: http://www.news24.com/Africa/News/Abdi-Gandhi-new-Azania-president-20110403 [Accessed 29/01/2012].

Ngunjiri, P. (1999). *Rival Groups Turn Refugee Camps Into Battle Ground* [Online]. Nairobi: Inter Press Service. Available: http://ipsnews.net/news.asp?idnews=81248 [Accessed 06/12/2011].

Nunow, A. A. (2007). The Impact of Refugees on the Environment: The Case of North Eastern Province *Attaining Development Parity in Northeastern Kenya: - Lessons Learnt From the Past and Prospects for the Future* Nairobi: The Kenya School of Law, Karen, Nairobi

Ochami, D. (2012). *100 days after Kenya military entered Somalia* [Online]. Nairobi: The Standard. Available: http://www.standardmedia.co.ke/InsidePage.php?id=2000050824&cid=4&ttl=100%20days%20after%20Kenya%20military%20entered%20Somalia [Accessed 29/01/2012].

Oluoch, F. & Kimani, M. (2012). *Haji Says No to Kismayu Attack Without Back-Up* [Online]. The East African. Available: http://allafrica.com/stories/201201161036.html [Accessed 29/01/2012].

Ombati, C. (2011a). *Explosion Kills policeman in Dadaab refugee camp* [Online]. Nairobi: The Standard. Available:

http://www.standardmedia.co.ke/politics/InsidePage.php?id=2000047838&cid=4 [Accessed 14/12/2011].

Ombati, C. (2011b). *Two Kenyans, foreign aid workers kidnapped from Dadaab* [Online]. Nairobi: The Standard. Available: http://www.standardmedia.co.ke/InsidePage.php?id=2000044757&cid=4 [Accessed 01/11/2011].

Ombati, C. (2012). *Relocation of Somali refugees from Dadaab to start 'soon'* [Online]. Nairobi: The Standard. Available: http://www.standardmedia.co.ke/InsidePage.php?id=2000050572&cid=4&ttl=Relocation%20of%20Somali%20refugees%20from%20Dadaab%20to%20start%20%E2%80%98soon%E2%80%99 [Accessed 29/01/2012].

One Response. (2011). *Humanitarian Reform and the Global Cluster Approach* [Online]. One Response. Available: http://oneresponse.info/Coordination/ClusterApproach/Pages/Cluster%20Approach.aspx [Accessed 30/08/2011].

Orend, B. (2008). War *In:* ZALTA, E. N. (ed.) *The Stanford Encyclopedia of Philosophy.* http://plato.stanford.edu/archives/fall2008/entries/war/.

Organization of African Unity (1969). Convention Governing the Specific Aspects of Refugee Problems in Africa. Addis Ababa: Organization of African Unity.

Organization of African Unity (1986). African Charter on Human and Peoples' Rights. Nairobi: Organization of African Unity.

Organization of African Unity (1990). African Charter on the Rights and Welfare of the Child Organization of African Unity.

Organization of American States (1978). American Convention on Human Rights. San Jose: Organization of American States.

Osman, A. A. & Souaré, I. K. (2007). *Somalia at the crossroads: challenges and perspectives in reconstituting a failed state*, Adonis & Abbey.

Pambazuka News: Pan African Voices For Freedom and Justice. (2010). *Kenya: A Voice from the voiceless: Dadaab refugee camp* [Online]. Available: http://www.pambazuka.org/en/category/refugees/63737 [Accessed 04/12/2011].

Parekh, B. (1997). Rethinking Humanitarian Intervention. *International Political Science Review / Revue internationale de science politique,* 18**,** 49-69.

Parker, A. (2002). *Hidden in plain view: refugees living without protection in Nairobi and Kampala*, Human Rights Watch.

Parsons, C. (2007). *Mugabe slams Bush 'hypocrisy' on human rights* [Online]. Reuters. Available: http://www.reuters.com/article/2007/09/26/us-un-zimbabwe-mugabe-idUSN2627903020070926 [Accessed 12/09/2011].

Pattison, J. (2010). *Humanitarian intervention and the responsibility to protect: who should intervene?*, Oxford University Press.

Patton, M. Q. (1987). *How to use qualitative methods in evaluation*, Sage Publications.

Pavanello, S., Elhawary, S. & Pantuliano, S. (2010). Hidden and exposed: Urban refugees in Nairobi, Kenya. *Humanitarian Policy Group Working Paper*.

Peterson, S. (2001). *Me Against My Brother: At War in Somalia, Sudan and Rwanda*, Routledge.

Pflanz, M. (2006). *Somali refugees face flood peril* [Online]. london: Telegraph Media Group Limited Available: http://www.telegraph.co.uk/news/1535323/Somali-refugees-face-flood-peril.html [Accessed 04/12/2011].

Pflanz, M. (2011). *Nairobi bomb attacks increase al-Shabaab fears* [Online]. Nairobi: The Telegraph. Available: http://www.telegraph.co.uk/news/worldnews/africaandindianocean/kenya/8846978/Nairobi-bomb-attacks-increase-al-Shabaab-fears.html [Accessed 01/11/2011].

Phillips, M. (2010). *U.S. Team Directs Traffic in Crowded Skies* [Online]. Wall Street Journal. Available: http://online.wsj.com/article/SB10001424052748704541004575011403710933576.html [Accessed 02/07/2010].

Provost, C. & Hamza, M. (2011). *Dadaab refugee camps: 20 years of living in crisis* [Online]. The Guardian. Available: http://www.guardian.co.uk/global-development/2011/mar/24/dadaab-refugee-camps-living-in-crisis [Accessed 04/12/2011].

Rawlence, B. (2009). *"Bring the gun or you'll die": torture, rape, and other serious human rights violations by Kenyan security forces in the Mandera Triangle*, Human Rights Watch.

Reid, R. J. (2011). *Frontiers of Violence in North-east Africa: Genealogies of Conflict Since C.1800*, Oxford University Press.

Reliefweb. (2010). *Kenya: Dadaab Expansion to go ahead* [Online]. Reliefweb. Available: http://www.reliefweb.int/rw/rwb.nsf/db900sid/MYAI-8559S2?OpenDocument [Accessed 24/03/2011].

Rémy, J.-P. (2011). *Kenya develops plan for satellite region of Jubaland on Somali border* [Online]. London: http://www.guardian.co.uk/world/2011/nov/08/somali-fears-in-

kenya-conflicts. Available: http://www.guardian.co.uk/world/2011/nov/08/somali-fears-in-kenya-conflicts [Accessed 29/01/2012].

Reuters. (2011). *NATO takes Libya command, warns over civilians* [Online]. Reuters. Available: http://af.reuters.com/article/topNews/idAFJOE72U0SO20110331 [Accessed 12/10/2011].

Author. (2010). Somali militants say they carried out deadly Uganda World Cup blasts. *The Guardian*, 12/07/2011.

Rieff, D. (2002). *Humanitarianism in Crisis* [Online]. The Council on Foreign Relations Available: http://www.cfr.org/international-peace-and-security/humanitarianism-crisis/p5261 [Accessed 05/07/2011].

Rieff, D. (2003). *A bed for the night: humanitarianism in crisis*, Simon & Schuster.

Roble, M. A. (2010). *Fresh clashes displace 60,000 in Somalia* [Online]. Nairobi: Africa News. Available: http://www.africanews.com/site/Fresh_clashes_displace_60000_in_Somalia/list_messages/35624 [Accessed 05/04/2010].

Roggio, B. (2010). *Hizbul Islam joins Shabaab in Somalia* [Online]. The Long War Journal Available: http://www.longwarjournal.org/archives/2010/12/hizbul_islam_joins_s.php [Accessed 25/03/2011].

Roggio, B. (2011). *Shabaab claims American involved in Mogadishu suicide assault* [Online]. The Long War Journal. Available: http://www.longwarjournal.org/archives/2011/10/shabaab_claims_ameri.php#ixzz1cTo2IjHl [Accessed 01/11/2011].

Rome Statute of the International Criminal Court. (1998). *Rome Statute of the International Criminal Court* [Online]. The Hague: International Criminal Court. Available: http://untreaty.un.org/cod/icc/statute/99_corr/cstatute.htm [Accessed].

Rosenne, S. (1984). *Practice and methods of international law*, Oceana Publications.

Ross, A. (2008). Constructing European Identities. *In:* ROSS, A. C., P. (ed.) *Reflecting on Identities: Research, Practice and Innovation.* London: CiCe.

Ross, W. (2011). *Kenya's incursion into Somalia raises the stakes* [Online]. Nairobi: BBC. Available: http://www.bbc.co.uk/news/world-africa-15337464 [Accessed 17/12/2011].

Rotberg, R. I. (2003). *State failure and state weakness in a time of terror*, World Peace Foundation.

Rotberg, R. I., Foundation, W. P. & Institution, B. (2005). *Battling terrorism in the Horn of Africa*, World Peace Foundation.

Roth, R. (2011). *U.N. Security Council approve no-fly zone in Libya* [Online]. CNN. Available: http://edition.cnn.com/2011/WORLD/africa/03/17/libya.civil.war/index.html?hpt=T2 [Accessed 10/09/2011].

Schabas, W. & Bernaz, N. (2010). *Routledge handbook of international criminal law*, Routledge.

Seregni, J. (2011). *UNHCR reaffirms support for integration of 1972 Burundians in Tanzania* [Online]. Dar es Salam: UNHCR. Available: http://www.unhcr.org/4e5baf2d6.html [Accessed 08/02/2012].

Shabelle Media Network. (2011). *The Bodies of Two Men Found Beheaded in Southern Region* [Online]. All Africa Global Media. Available: http://allafrica.com/stories/201112300945.html [Accessed 30/12/2011].

Shah, A. (2011). *Causes of Poverty* [Online]. Global Issues. Available: http://www.globalissues.org/issue/2/causes-of-poverty [Accessed 03/07/2011].

Author. (2008). Sad end for young refugee. *Toronto Star*, 21/12/2008

Shultz, R. H. & Dew, A. J. (2006). *Insurgents, terrorists, and militias: the warriors of contemporary combat*, Columbia University Press.

Simpson, G. (2009). *From horror to hopelessness: Kenya's forgotten Somali refugee crisis*, Human Rights Watch.

Simpson, G. J. (2010). "Welcome to Kenya": police abuse of Somali refugees. Human Rights Watch.

Sitta, A. (2006). The Role of the Right to Development in the Human Rights Framework for Development. *Paper prepared for the Human Development and Capabilities Approach Association.*

Smith, R. (2007). *Textbook on international human rights*, Oxford University Press.

Spilker, D. (2007). *Spoilers in Somalia: The Self-sustaining Chaos and Its Supporters*, GRIN Verlag GmbH.

Sriram, C. L., Martin-Ortega, O. & Herman, J. (2009). *War, conflict and human rights: theory and practice*, Routledge.

Stacy, H. (2009). *Human rights for the 21st century: sovereignty, civil society, culture*, Stanford University Press.

Steiner, N. (2009). *International migration and citizenship today*, Routledge.

Stockton, N. (1998). In defence of humanitarianism. *Disasters,* 22**,** 352-360.

Tarr'osy, I., Szabó, L. & Hydén, G. (2011). *The African state in a changing global context: breakdowns and transformations,* Berlin, LIT Verlag Münster.

Tellis, W. (1997). Introduction to Case study *The qualitative report,* 3.

Terry, F. (2002). *Condemned to repeat?: the paradox of humanitarian action*, Cornell University Press.

Thakur, R. C. (2006). *The United Nations, peace and security: from collective security to the responsibility to protect*, Cambridge University Press.

The Administration Police (2012). Mandate, Vision, Mission and Core Values of the Administration Police. Nairobi: Government of Kenya.

The Extending Service Delivery Project (2008). Somali Refugee Attitudes, Perceptions, and Knowledge of Reproductive Health, Family Planning, and Gender-Based Violence. Washington DC.

The International Covenant on Civil and Political Rights. (1976). United Nations Assembly Available: http://www2.ohchr.org/english/law/pdf/ccpr.pdf [Accessed 27/06/2011].

The International Criminal Court. (2011). *The States Parties to the Rome Statute* [Online]. The Hague: The International Criminal Court
Available: http://www.icc-cpi.int/Menus/ASP/states+parties/ [Accessed 10/09/2011].

The International Criminal Tribunal for the former Yugoslavia. (2011). *Tribunal convicts Momčilo Perišić for crimes in Bosnia and Herzegovina and Croatia* [Online]. The Hague: ICTY. Available: http://www.icty.org/sid/10793 [Accessed 10/09/2011].

The Rule of Law in Armed Conflicts Project. (2011a). *International Humanitarian Law* [Online]. Geneva: Geneva Academy of International Humanitarian Law and Human Rights. Available: http://www.adh-geneva.ch/RULAC/international_humanitarian_law.php [Accessed 03/09/2011].

The Rule of Law in Armed Conflicts Project. (2011b). *International Refugee Law* [Online]. Geneva: Geneva Academy of International Humanitarian Law and Human Rights. Available: http://www.adh-geneva.ch/RULAC/international_refugee_law.php [Accessed 13/09/2011].

The Telegraph. (2010). *British author Alan Shadrake jailed in Singapore* [Online]. Telegraph Media Group Limited. Available: http://www.telegraph.co.uk/news/worldnews/asia/singapore/8135955/British-author-Alan-Shadrake-jailed-in-Singapore.html [Accessed 13/09/2011].

Author. (2009). Somalian bomber kills at least 22. *The Washington Times*, 4/12/2009.

Transparency International (2011). Corruption Perception Index Berlin: Transparency International, .

Transparency International Kenya (2011). The East African Bribery Index 2011. Nairobi: Transparency International Kenya,.

UNDP International Human Development Indicators. (2011). *Kenya: Human Development Indicators* [Online]. UNDP. Available: http://hdrstats.undp.org/en/countries/profiles/KEN.html [Accessed 05/11/2011].

UNHCR (1950). Statute of the Office of the United Nations High Commissioner for Refugees. Geneva: UNHCR.

UNHCR. (1997). *UNHCR Note on the Principle of Non-Refoulement* [Online]. Geneva: UNHCR. Available: http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=438c6d972 [Accessed 22/09/2011].

UNHCR (2001a). Frequently Asked Questions About the 1951 Convention. *Refugees,* 2.

UNHCR. (2001b). *Protection of refugees in Mass Influx Situations: Overall Protection Framework* [Online]. UNHCR. Available: http://www.unhcr.org/3ae68f3c24.html [Accessed 06/04/2011].

UNHCR (2006). *The state of the world's refugees 2006: human displacement in the new millennium,* Geneva, Oxford University Press.

UNHCR. (2008a). *Opening Statement of Mr. António Guterres, United Nations High Commissioner for Refugees, at the High Commissioner's Dialogue on Protection Challenges: Protracted Refugee Situations, Geneva, 10 December 2008* [Online]. Geneva: UNHCR. Available: http://www.unhcr.org/493fd97e2.html [Accessed 08/02/2012].

UNHCR (2008b). UNHCR Sub Office Dadaab: Information Leaflet Protection. *In:* UNHCR SUB OFFICE DADAAB (ed.).

UNHCR (2009). UNHCR Executive Committee's Conclusion on protracted refugee situations. Geneva: UNHCR.

UNHCR. (2010). *Somali DAFI graduates return to school to teach other refugees in Kenya* [Online]. Geneva: UNHCR. Available: http://www.unhcr.org/4bcdc1009.html [Accessed 13/11/2011].

UNHCR. (2011a). *2011 UNHCR country operations profile - Kenya* [Online]. UNHCR. Available: http://www.unhcr.org/pages/49e483a16.html [Accessed 12/12/2011].

UNHCR. (2011b). *Displaced Somalis cornered by latest fighting* [Online]. ReliefWeb. Available: http://www.reliefweb.int/rw/rwb.nsf/db900sid/SMDL-8EEFWD?OpenDocument&query=dadaab [Accessed 28/03/2011].

UNHCR. (2011c). *Heavy rains hit thousands of displaced Somalis in region* [Online]. Geneva: UNHCR. Available: http://www.unhcr.org/4eb3e09c9.html [Accessed 11/11/2011].

UNHCR (2011d). Refugees and Asylum Seekers in Kenya: Statistical summary as of 30 November 2011. Nairobi: UNHCR.

UNHCR. (2011e). *A Roof Over their Heads* [Online]. UNHCR. Available: http://www.unhcr.org/pages/49c3646cf2.html [Accessed 01/07/2011].

UNHCR (2011f). Statistical summary as of 30 November 2011:Refugees and Asylum Seekers in Kenya. Nairobi: UNHCR.

UNHCR. (2011g). *UNHCR Global Trends 2010* [Online]. Geneva: UNHCR. Available: http://www.unhcr.org/4dfa11499.pdf [Accessed 21/09/2011].

UNHCR & Inter-Parliamentary Union (2001). *Refugee protection: a guide to international refugee law,* Geneva, Inter-Parliamentary Union.

UNHCR Sub-Office Dadaab (9th December 2011). Kenya - Refugee Operation Briefing Notes. Dadaab: UNHCR.

UNHCR Sub Office Dadaab (30 November 2011). Camp Population Statistics by Country of Origin, Sex and Age Group. Dadaab: UNHCR.

UNHCR Sub Office Dadaab (2009a). Resettlement Information Pamphlet for Refugees in the Camps in Dadaab, Kenya. UNHCR.

UNHCR Sub Office Dadaab (2009b). UNHCR Emergency Assistance Programme for Somali Refugees in Dadaab, Kenya:. UNHCR.

UNHCR Sub Office Dadaab (2010). Improving Maternal Care in Dadaab Refugee camps, Kenya. *Field Brief June 2010.* UNHCR.

UNHCR Sub Office Dadaab (2011a). Briefing Note on Dadaab Refugee Camp 21st July 2011. Dadaab: UNHCR.

UNHCR Sub Office Dadaab (2011b). Briefing Note on Education; Dadaab Refugee Camps; Version September 2011. UNHCR

UNHCR Sub Office Dadaab (2011c). Briefing Note on the Health Sectors; Dadaab Refugee Camps; October 2011. UNHCR.

UNHCR Sub Office Dadaab (2011d). Dadaab Refugee Operation Briefing Note, October 2011.

UNHCR Sub Office Dadaab (2011e). Dadaab Refugee Operation Briefing Note, September 2011. UNHCR.

UNHCR Sub Office Dadaab (2011f). Situation Report: Dadaab Refugee Camps: 9 November 2011. UNHCR.

UNHCR Sub Office Dadaab Situation Report (23 - 29 October 2009). Situation Report. UNHCR.

UNICEF (2007). *The State of the World's Children 2008: Child Survival*, UNICEF.

UNICEF. (2011). *Situation Report 02/11/2011 - Horn of Africa Crisis Kenya* [Online]. Nairobi: UNICEF. Available: http://reliefweb.int/sites/reliefweb.int/files/resources/UNICEF%20Kenya%20HoA%20Crisis%20SitRep%20%2316-%2026%20Oct%20-%203%20Nov%202011.pdf [Accessed 16/11/2011].

United Nations (1945). Charter of the United Nations and Statute of the International Court of Justice. San Francisco: United Nations.

United Nations (1948a). Convention on the Prevention and Punishment of the Crime of Genocide. Paris: United Nations.

United Nations (1948b). United declaration of Human Rights. New York: United Nations Department of Public Information.

United Nations (1951). Convention relating to the Status of Refugees New York: United Nations

United Nations (1967). United Nations Declarations on Territorial Asylum. New York: United Nations.

United Nations (1976a). International Covenant on Civil and Political Rights. New York: United Nations.

United Nations (1976b). The International Covenant on Economic, Social and Cultural Rights New York: United Nations.

United Nations (1986). Declaration on the Right to Development *In:* GENERAL ASSEMBLY RESOLUTION 41/128 (ed.). New York: United Nations.

United Nations (1987). Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. New York: United Nations.

United Nations Development Programme. (2011). *What are the Millennium Development Goals?* [Online]. United Nations Development Programme. Available: http://www.undp.org/mdg/basics.shtml [Accessed 29/11/2011].

United Nations General Assembly (1956). General Assembly Resolution 998 (ES-I). New York: UNGA.

United Nations General Assembly Resolution 2625 (XXV) (1970). Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. New York: United Nations.

United Nations High-level Panel on Threats Challenges and Change (2004). A More Secure World: Our Shared Responsibility. New York.

United Nations News Center. (2011). *Two killed as Kenyan police try to quell riot in packed refugee camp* [Online]. United Nations Available: http://www.un.org/apps/news/story.asp?NewsID=38913 [Accessed 16/11/2011].

United Nations Office of the Special Adviser on the Prevention of Genocide. (2012). *Mission Statement* [Online]. United Nations Available: http://www.un.org/en/preventgenocide/adviser/ [Accessed 05/02/2012].

United Nations Security Council Resolution 688 (1991). United Nations Security Council Resolution 688. New York: United Nations.

United Nations Security Council Resolution 794 (1992). United Nations Security Council Resolution 794 (Granting the Secretary-General Discretion in the Further Employment of Personnel of the United Nations Operation in Somalis), S.C. res 794, 47 U.N. SCOR at 63, U.N. Doc. S/RES/794 (1992). New York: United Nations.

United Nations Security Council Resolution 1296 (2000). United Nations Security Council Resolution 1296. New York: United Nations.

United Nations Security Council Resolution 1674 (2006). United Nations Security Council Resolution 1674. New York: United Nations.

University of Texas Libraries. (2011). *Map of Kenya* [Online]. Austin. Available: http://www.lib.utexas.edu/maps/africa/kenya.gif [Accessed 11/11/11].

UNOCHA. (2009). *Consolidated Appeal for Somalia 2009 : Exective Summary* [Online]. UNOCHA. Available: http://ochaonline.un.org/humanitarianappeal/webpage.asp?Page=1712 [Accessed 24/03/2011].

Valk Mayerick, T. (2008). *Somali refugees suffer as Dadaab camp populations swell to 230,000* [Online]. UNHCR. Available: http://www.unhcr.org/4950ef401.html [Accessed 31/03/2011].

Verdirame, G. (1999). Human Rights and Refugees: The Case of Kenya. *Journal of Refugee Studies,* 12**,** 54-77.

Verdirame, G., Bankier, D. & Harrell-Bond, B. E. (2005). *Rights in exile: Janus-faced humanitarianism*, Berghahn Books.

Waardenburg, J. J. (2002). *Islam: historical, social, and political perspectives*, Walter de Gruyter.

Walker, P. (2008). *Humanitarian Success!* [Online]. Available: http://sites.tufts.edu/gettinghumanitarianaidright/2008/03/01/humanitarian-success/ [Accessed 29/06/2011].

Walzer, M. (2006). *Just and unjust wars: a moral argument with historical illustrations*, BasicBooks.

Warah, R. (2011). *Dadaab refugee camp poses a huge threat to Kenya's national security* [Online]. Nairobi: The Daily Nation. Available: http://www.nation.co.ke/oped/Opinion/-/440808/1260294/-/mrqq5wz/-/ [Accessed 27/10/2011].

Weiss, T. G. (2005). *Military-civilian interactions: humanitarian crises and the responsibility to protect*, Rowman & Littlefield.

Weiss, T. G. (2007). *Humanitarian intervention: ideas in action*, Polity Press.

Weiss, T. G. & Thakur, R. C. (2010). *Global governance and the UN: an unfinished journey*, Indiana University Press.

Weissbrodt, D. & Hortreiter, I. (1999). The Principle of Non-Refoulement: Article 3 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in Comparison with the Non-Refoulement provisions of other international human rights treaties. *Buffulo Human Rights Law Review,* 5.

Welsh, J., Thielking, C. J. & MacFarlane, S. N. (2006). The Responsibility to Protect: Assessing the Report of the International Comission of State Sovereignty *In:* THAKUR, E. R., COOPER, A. F. & ENGLISH, J. (eds.) *International Commission And The Power Of Ideas.* India: Academic Foundation.

Western, J. & Goldstein, J. S. (2011). Humanitarian Intervention Comes of Age. *Foreign Affairs,* 90**,** 48-59.

WikiLeaks Cable reference id: #09NAIROBI1552. (2009). *Cable reference id: #09NAIROBI1552* [Online]. WikiLeaks. Available: http://www.cablegatesearch.net/cable.php?id=09NAIROBI1552&q=jubaland%20kismayo [Accessed 29/01/2012].

WikiLeaks Cable reference id: #10NAIROBI147. (2010). *Cable reference id: #10NAIROBI147* [Online]. WikiLeaks. Available: http://www.cablegatesearch.net/cable.php?id=10NAIROBI147&q=jubaland%20kismayo [Accessed 29/01/2012].

WikiLeaks Cable reference id: #10NAIROBI159. (2010). *Cable reference id: #10NAIROBI159* [Online]. WikiLeaks. Available: http://www.cablegatesearch.net/cable.php?id=10NAIROBI159&q=jubaland%20kismayo [Accessed].

WikiLeaks Cable reference id: #10NAIROBI181. (2010). *Cable reference id: #10NAIROBI181* [Online]. WikiLeaks. Available: http://www.cablegatesearch.net/cable.php?id=10NAIROBI181&q=jubaland [Accessed 29/01/2012].

Williams, S. (2011). *Famine in Africa: inside Dadaab, the world's largest refugee camp* [Online]. London The Telegraph. Available: http://www.telegraph.co.uk/journalists/sally-williams/8762161/Famine-in-Africa-inside-Dadaab-the-worlds-largest-refugee-camp.html [Accessed 16/01/2012].

World Food Programme. (2012). *Kenya: WFP Activities* [Online]. World Food Programme. Available: http://www.wfp.org/countries/Kenya/Operations [Accessed 15/01/2012].

Wright, R. (2000). *Nonzero: the logic of human destiny*, Pantheon Books.

XINHUA. (2012). *Aid agencies review security at Dadaab following wave of murders* [Online]. Nairobi: Daily Nation. Available: http://www.nation.co.ke/News/Aid+agencies+review+security+at+Dadaab+following+wave+of+murders/-/1056/1299528/-/item/1/-/3c2nfhz/-/index.html [Accessed 05/01/2012].

Yin, R. K. (1984). *Case study research: design and methods*, Sage Publications.

Yussuf, D. & Ali, N. (2011). *Bomb destroys Kenya police car in refugee camp* [Online]. Garissa: Reuters. Available: http://www.reuters.com/article/2011/11/15/us-kenya-somalia-blast-idUSTRE7AE1AG20111115 [Accessed 14/12/2011].

Zadock, A. (2011). *Police to Wait Longer for Pay Hike* [Online]. Nairobi Daily Nation. Available: http://allafrica.com/stories/201107220140.html [Accessed 23/01/2012].

Zieck, M. (2010). *UNHCR's Parallel Universe : Marking the Contours of a Problem*, Amsterdam University Press.