Mixed Migration in Kenya:

The scale of movement and associated protection risks

mixed migration research series

explaining people on the move

RMMS Regional Mixed Migration Secretariat

2 Study

June 2013

Mixed Migration in Kenya:
The scale of movement and associated protection risks

This is the second of a series of studies focusing on different aspects of mixed migration associated with the Horn of Africa and Yemen region.

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The Regional Mixed Migration Secretariat (RMMS).
Formed in 2011 and based in Nairobi, the overall objective of the RMMS is to support agencies, institutions and fora in the Horn of Africa and Yemen sub-region to improve the management of protection and assistance to people in mixed migration flows in the Horn of Africa and across the Gulf of Aden and Red Sea in Yemen. The co-founders and Steering Committee members for the RMMS include UNHCR, IOM, Danish Refugee Council (DRC), INTERSOS and the Yemen Mixed Migration Task Force. The RMMS is therefore a regional hub aiming to provide support and coordination, analysis and research, information, data management and advocacy. It acts as an independent agency, hosted by the DRC, to stimulate forward thinking and policy development in relation to mixed migration. Its over-arching focus and emphasis is on human rights, protection and assistance.

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contents

Glossary

Selected definitions from the International Organistion for Migration's Glossary on Migration 2004. (Definitions used here copied without editing: Full Glossary found at http://publications.iom.int/bookstore/free/IML_1_EN.pdf)

asylum seekers
Persons seeking to be admitted into a country as refugees and awaiting decision on their application for refugee status under relevant international and national instruments. In case of a negative decision, they must leave the country and may be expelled, as may any alien in an irregular situation, unless permission to stay is provided on humanitarian or other related grounds.

internal migration
A movement of people from one area of a country to another for the purpose or with the effect of establishing a new residence. This migration may be temporary or permanent. Internal migrants move but remain within their country of origin (e.g. rural to urban migration). *See also de facto refugees, internally displaced persons, international migration, rural-rural migrants, rural-urban migrants, urban-rural migrants, urban migrants*

internally displaced persons/ IDPs
Persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border *(Guiding Principles on Internal Displacement, UN Doc E/CN.4/1998/53/Add.2.). See also displaced person, externally displaced persons*

irregular migrant
Someone who, owing to illegal entry or the expiry of his or her visa, lacks legal status in a transit or host country. The term applies to migrants who infringe a country's admission rules and any other person not authorized to remain in the host country (also called clan-destine/ illegal/undocumented migrant or migrant in an irregular situation). *See also clan-destine migration, documented migrant, illegal entry, irregular migration, undocumented alien*

irregular migration
Movement that takes place outside the regulatory norms of the sending, transit and receiving countries. There is no clear or universally accepted definition of irregular migration. From the perspective of destination countries it is illegal entry, stay or work in a country, meaning that the migrant does not have the necessary authorization or documents required under immigration regulations to enter, reside or work in a given country. From the perspective of the sending country, the irregularity is for example seen in cases in which a person crosses an international boundary without a valid passport or travel document or does not fulfil the administrative requirements for leaving the country. There is, however, a tendency to restrict the use of the term "illegal migration" to cases of smuggling of mi-grants and trafficking in persons. *See also clandestine migration, irregular migrant, regular migration, undocumented alien*

mixed flows
Complex population movements including refugees, asylum seekers, economic migrants and other migrants.

Palermo Protocols
Supplementary protocols to the Convention against Transnational Organized Crime (2000): Protocol Against the Smuggling of Migrants by Land, Sea and Air; Protocol to Prevent, Sup-press and Punish Trafficking in Persons, Especially Women and Children; and Protocol against the Manufacturing of and Trafficking in Illicit Firearms, Ammunition and Related Materials.

refugee (mandate)
A person who meets the criteria of the UNHCR Statute and qualifies for the protection of the United Nations provided by the High Commissioner, regardless of whether or not s/he is in a country that is a party to the Convention relating to the Status of Refugees, 1951 or the 1967 Protocol relating to the Status of Refugees, or whether or not s/he has been recognized by the host country as a refugee under either of these instruments.
See also refugee (recognized)

refugee (recognized)
A person, who "owing to well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinions, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country" (Convention relating to the Status of Refugees, Art. 1A(2), 1951 as modified by the 1967 Protocol). See also asylum seekers, de facto refugees, externally displaced persons, refugee, refugees in orbit, refugees in transit

refugee status determination
A process (conducted by UNHCR and/or States) to determine whether an individual should be recognized as a refugee in accordance with national and international law.

regular migration
Migration that occurs through recognized, legal channels. See also clandestine migration, irregular migration

smuggler (of people)
An intermediary who is moving people in furtherance of a contract with them, in order to illegally transport them across an internationally recognized State border. See also smuggling, trafficking

smuggling
The procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident (Art. 3(a), UN Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, 2000). Smuggling contrary to trafficking does not require an element of exploitation, coercion, or violation of human rights. See also illegal entry, trafficking

trafficking in persons
The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation (Art. 3(a), UN Protocol to Prevent, Suppress and Punish trafficking in Persons, Especially Women and Children, Supplementing the UN Convention Against Organized Crime, 2000). See also abduction, coercion, exploitation, fraud, smuggling, trafficker

1.0 Summary

summary

Mixed Migration in Kenya

Kenya is a critical hub in the region and attracts a large flow of mixed migration. Predominantly a country of destination and transit for smuggled migrants, it hosts the largest refugee population of Somalis in the world - more than half a million - and a high number of Ethiopians and South Sudanese in the two camp complexes of Dadaab and Kakuma. In addition, it also hosts a sizeable number of IDPs.

This report provides an overview of each of the main groups within mixed migration flows in Kenya: smuggled migrants, irregular migrants, refugees and asylum seekers, trafficked migrants and IDPs. For each of these groups, the risks and protection issues as well as the response to these flows, from both government and non-state actors, are discussed. A number of knowledge, policy and legal gaps in protection and assistance are also identified. This section summarises the main findings, clustered around these three categories.

Knowledge gaps

Rejected asylum seekers: In the first quarter of 2013, 1,357 asylum (up to April 2013) claims were rejected. However, not much is known about what happens to applicants following refusal: no functioning systems are in place to track them, nor are there effective repatriation mechanisms to deport them to their country of origin. It is assumed that many stay in Kenya, either in the refugee camps or in urban areas, as long as possible or until detected by authorities. There is little knowledge on where they live, how they make a living or the protection risks they face.

Migrants in detention: In recent years, it has been estimated that hundreds of irregular migrants have been arrested and detained in Kenya. Every month there are incidents of arrests, raids and detention (and deportation) of groups of migrants reported as side news in the media. In 2011, the Nairobi-based NGO Legal Resources Foundation conducted a study which identified 726 foreigners in the prison system in Kenya.[1] According to a representative of the organisation, 'unfortunately there are no ready statistics of migrants in Kenyan prisons as there is no deliberate attempt to categorise foreigners in the Kenyan judicial system'.[2] Migrants detained in Nairobi are held at Kamiti and Langata prisons. There are few but scattered press reports on where migrants are arrested and the location, duration and conditions of their detention.

Irregular migrants: Irregular migration refers to movement that takes place outside the regulatory norms of the sending, transit and destination countries. The exact numbers and composition of irregular and transit migrants in Kenya is not known. The latest reliable estimate on the number of irregular migrants transiting through the country, back in 2009, estimated that up to 20,000 Somali and Ethiopian male migrants were smuggled through Kenya annually: the figure may have changed considerably since then. Again, information gaps exist on how many migrants enter every year and their routes, modes of travel and duration of stay, as well as the risks involved and fees demanded to facilitate their smuggling.

'Unfortunately there are no ready statistics of migrants in Kenyan prisons as there is no deliberate attempt to categorise foreigners in the Kenyan judicial system'

1 Internal report, not published.
2 RMMS meeting with Lenson Njogu, Legal Resources Foundation (LRF) November 2012.

Legal and policy gaps

Lack of legal channels for migration: There are few channels for regular labour migration in Kenya. As a result, migrants who do not have protection concerns relating to persecution in their country of origin may end up in the asylum process as a means of regularising their stay. Migrants may also utilise the services of smugglers to facilitate entry into Kenya, as well as onward movement to third countries and beyond. Enhancing and facilitating regular (temporary or circular) migration – for example, in the context of the EAC Common Market Protocol - could reduce abuse of the asylum process and the demand for smuggling services.

Screening at the border: Kenya officially closed the border with Somalia near Liboi in 2007, together with screening centres located at the border, citing security concerns. Nevertheless, in the years that followed, hundreds of thousands of refugees/asylum seekers entered the country from Somalia. Consequently, due to the lack of proper screening mechanisms, the categorisation of migrants entering Kenya is not well documented. From a security and health perspective, operational screening centres with the capacity to identify and categorise migrants in their respective groups would serve to ensure they are directed to appropriate assistance channels, while capturing data on new arrivals.

Trafficking in persons: Though the Counter-Trafficking in Persons Act became operational in October 2012, law enforcement officials such as judges, police, prosecutors, immigration and children officers still lack adequate capacity to implement it effectively. Advocacy and capacity building activities targeting both Government and civil society actors are therefore required, both to enhance assistance to victims of trafficking and increase the prosecution of perpetrators.

The 'IDP Act' provides a comprehensive approach to addressing internal displacement caused by conflict, violence, natural disasters and development projects, irrespective of the location and tribal affiliation of the IDPs themselves.

IDPs: On the last day of 2012, Kenya's new Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act was signed by the President. The 'IDP Act' provides a comprehensive approach to addressing internal displacement caused by conflict, violence, natural disasters and development projects, irrespective of the location and tribal affiliation of the IDPs themselves. As with the Counter-Trafficking in Persons Act, however, effective implementation is dependent on the existence of an appropriate advocacy strategy. In particular, Kenya must demonstrate its commitment to the challenge of internal displacement within its borders by becoming signatory to the African Union Convention on the Protection of and Assistance to IDPs .

Assistance/protection gaps

Unaccompanied minors: Unaccompanied minors (UAMs) have been identified both in Kakuma (mostly South Sudanese children) and in Nairobi. The South Sudanese probably enter Kenya to escape conflict and poor service provision, while hoping to pursue educational opportunities in Kakuma. Little is known about the volume of this vulnerable group of migrants, but they face various protection challenges. The Department of Children Services, international organisations and civil society actors occasionally identify UAMs and direct them to appropriate assistance. Shelter provision and related services, however, remain a challenge.

Smuggled migrants: Smuggled migrants face many risks and if intercepted by law enforcement authorities in Kenya may be charged with being

unlawfully present in the country. The smuggler who facilitates the movement, on the other hand, often evades punishment or, if prosecuted, receives a short prison sentence with the alternative of a fine.

Urban refugees: A large number of urban refugees are still present in Kenya, (officially approximately 52,000) many of whom struggle to ensure a basic living. In addition to the hardships faced by the urban poor in general, they face harassment by officials and increasing xenophobia by the host community. This was especially evident in the wake of the (temporarily halted) December 2012 directive by the Kenyan government, ordering all urban refugees to move to the refugee camps and the subsequent suspension of many assistance activities by humanitarian agencies.

Multiple detention: Migrants in Kenya often face multiple detention. This can occur if they are arrested several times during their journey - due to lack of proper documentation, for example - or when they are released from prison only to end up again in a police cell because no system is in place to deport them after their sentence. More effective repatriation mechanisms are therefore required. Furthermore, migrants often do not understand the charges against them and as a result may languish in jail for months without being sentenced. Multiple detentions also occur between countries: most states in the region deport migrants to the nearest point of entry where, after crossing the border, they are arrested again. Consequently, better coordination between countries is needed to prevent this.

summary

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2.0 Introduction

introduction

General overview of mixed migration

The phenomenon of mixed migration[3] reflects the tendency of an increasing number of people to migrate, despite greater risk, in search of a better future in more affluent parts of the globalised world. It also indicates that people are on the move for a combination of reasons that are fundamentally related to safeguarding physical and economic security. Conceptually, mixed migration includes:

- ***Irregular migrants:*** Migrants dislodged by a real and/or perceived inability to thrive (economic migrants) or motivated by aspirations, a desire to unite with other family members or some other factor.
- ***Refugees and asylum seekers*** (forced migrants): Migrants in search of asylum from conflict or persecution in their country of origin.
- ***Victims of trafficking (involuntary migrants)***: Internal and foreign migrants coerced or deceived into servitude, forced labour or sexual exploitation.
- ***Stateless persons:*** Migrants without recognised citizenship, placing them in a limbo between different national borders.
- ***Unaccompanied minors and separated children and other vulnerable persons on the move:*** Migrant children without protection or assistance, in a state of acute vulnerability.

The Mixed Migration nomenclature does not normally include Internally Displaced People (IDPs), but RMMS monitors and tracks IDPs in the Horn of Africa region as part of the larger group of 'displaced', in recognition that today's IDPs are often tomorrow's migrants (forced, involuntary or otherwise).

Migration is closely linked to livelihood problems caused by complex issues such as persecution, political turmoil, armed conflict, poverty and environmental problems such as climate change, population pressure and natural disasters.

Therefore, migration is closely linked to livelihood problems caused by complex issues such as persecution, political turmoil, armed conflict, poverty and environmental problems such as climate change, population pressure and natural disasters. In addition, social issues and emerging 'cultures of migration' in certain countries may create compelling push and pull factors affecting the decision to move.

Mixed migration flows in Kenya

Migration issues in East Africa today are complex and challenging, including a large population of refugees, Internally Displaced Persons (IDPs), labour migrants and irregular migrants.[4] Kenya in particular attracts a large volume of mixed migration flows as it differs from most other countries in the region, with a significantly better poverty rating (0.229) and Human Development Index score (0.509 ranking 143 out of 187 countries) than most of its neighbours.[5] With a population of 41.6 million, Kenya is also far less populated than Ethiopia, for example.

As a consequence, Kenya is predominantly a country of destination and transit and a critical hub for mixed migration in the region. The highly porous borders it shares with Somalia, Ethiopia and Southern Sudan have

3 The International Organisation for Migration (IOM) describes mixed migration as consisting of complex population movements including refugees, asylum seekers, economic migrants and other migrants (IOM, 2004, p. 42). The United Nations High Commissioner for Refugees (UNHCR), on the other hand, describes it as people travelling in an irregular manner along similar routes, using similar means of travel, but for different reasons (UNHCR, 2011, p. 8).

4 Bosco, 2010, p. 9.

5 UNDP, 2011a.

long served as convenient entry and exit points for migration flows, and continue to do so whether the borders are officially open or closed.

Kenya has the largest refugee population of Somalis in the world (over half a million) as well as a high number of Ethiopians and South Sudanese in the two camp complexes of Dadaab and Kakuma. Nairobi also hosts a significant population of refugees, with official figures of over 52,000. In 2011, there was a dramatic rise of refugees from Somalia fleeing drought and famine, compounded by conflict and the limited access of humanitarian actors to affected areas. According to UNHCR statistics, the current total estimated population of refugees and asylum seekers in Kenya is 594,556 (as of end of April, 2013).

Kenya's economy has been booming for a long time, in the process attracting economic migrants from neighbouring countries. Substantial numbers of Tanzanians and Ugandans are known to have migrated to Kenya in search of greater economic opportunities.

Kenya is also a country of internal forced migration with thousands of IDPs still displaced following the 2007-8 post-election violence or as a result of environmental and development factors. Relative to the size of the economy, Kenya (together with Pakistan and DRC) also has the largest number of forced migrants refugees and IDPs in the world.[8]

As a regional hub for mixed migration, Kenya also serves as a centre for smuggling. Many Ethiopians and Somalis enter as irregular migrants and settle in parts of Nairobi with the intention of looking for work and or moving on to other countries. As the 2009 IOM report stated, "As opportunities to immigrate legally are severely limited, migrants increasingly resort to illegal entry and unauthorised stays, and ever-larger numbers use the services of traffickers and smugglers to evade the system, compounding their vulnerability to exploitation and ill-treatment."

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Regular economic migrants

Finally, there are two aspects of migration into and out of Kenya that could be included in this study but are tangential to the main protection and legal concerns of the main groups featuring in sections 3.1-3.5 in this report. These migratory groups are regular economic migrants, either entering or leaving from Kenya. Both groups have their own protection risks and vulnerability, although not much is known about these migrants groups in terms of numbers, flows, etc. In this introduction some main findings with regard to these two groups are shortly discussed.

Regular economic migrants entering Kenya

Kenya's economy has been booming for a long time, in the process attracting economic migrants from neighbouring countries. Substantial numbers of Tanzanians and Ugandans are known to have migrated to Kenya in search of greater economic opportunities.[9] However, not much is known about the scale of this economic migration into Kenya as up-to-date labour market information is limited and there is no one-stop database that also includes figures on economic/labour migration.[10] In 2010, the Population Division of the United Nations Department of Economic and Social Affairs (UN DESA) estimated the stock of international migrants residing in Kenya to be 817,747 (around 2% of the population.)[11] This figure, however, includes all international migrants and it is not clear how many of them are regular economic migrants. In July 2012, it was estimated

6 UNDP, 2011a.
7 IOM, 2009.
8 IFRC, 2012.
9 The top source countries of origin of international migrants in Kenya are all neighbouring countries: Uganda, Tanzania, Sudan, Somalia and Ethiopia. World Bank, 2012
10 EAC, 2011.
11 ACP, 2010, p.4.

that at least 26,000 persons were given work permits in Kenya since 2007, of which 14,000 were active by April 2012.[12]

Migrant women in Kenya

As there is not much known about economic/labour migrants in Kenya, the same is true for the challenges they face. The Federation of Women Lawyers Kenya (FIDA) conducted a study on internal and international female migrant workers in 2010. The biggest difficulty migrant women working in Nairobi's informal sector faced was officially sanctioned marginalisation and discrimination in the form of sporadic arrests, confiscation of goods, lack of access to infrastructure and services, over-taxation, physical and sexual abuse, and a lack of legal protection and respect of rights by the government[13]. Securing assistance from law enforcement officers can also be very difficult, as some are themselves complicit in the mistreatment of migrants. To avoid harassment or secure services, migrant women often have to pay bribes to officials.

Migrant children

Another vulnerable group of migrant workers are children. In 2005, it was estimated that 773,969 children aged 5-17 were in child labour.[14] According to the UNESCO, around 1,000,000 children between 5 and 17 are out of school.[15]

The International Labour Organisation (ILO)'s International Programme on the Elimination of Child Labour (IPEC) and Child Helpline International (CHI) conducted a recent study on the labour situation of migrant children in particular, conducted by analysing recorded child labour cases from the child helpline.[16] Childline Kenya registered a total number of 564 child labour cases in the period from 2008 to 2010:[17] approximately one-fifth concerned child migrants. Most were internal Kenyan migrants, while some were from Uganda and Tanzania. One third was suspected to have been trafficked.

To avoid harassment or secure services, migrant women often have to pay bribes to officials.

12 Business Daily, 2012.
13 Maranga and Laiboni, 2010, p.6.
14 ILO/CHI, 2012, p.9.
15 UNESCO, 2012.
16 Child labourers were most often reported to be engaged in domestic work, followed by agricultural work (such as herding, farming, gardening or fishing), unspecified work, manual labour, commerce, service work in restaurants, stores or hotels and begging. The majority (9 out of 10) migrant girls performed domestic work. ILO/CHI, 2012, pp.7 and 10.
17 ILO/CHI, 2012, p.9.
18 ILO/CHI, 2012, p.5.
19 ILO/CHI, 2012, p.6.

The extreme vulnerability of migrant child labourers

Though child labour always involves a high risk of abuse, exploitation and hardship, the dangers are particularly acute for young migrants. The ILO/CHI study provides a shocking picture of the particular vulnerabilities of working migrant children. Their findings included the following:

Lack of pay: A substantially higher proportion of migrant girls (13%) in child labour did not receive any pay compared to non-migrant girls (5%). Violence: Among boys in child labour, the proportion of migrants experiencing violence (18%) was higher than among non-migrants (14%).

Hunger and malnutrition: 10% of the migrant girls in child labour were denied food compared to 6% of the non-migrant girls in child labour. 18% of migrant boys were denied food compared to 2% of non-migrant boys.[18]

Bonded servitude: 7% of the migrant girls in child labour were bonded, as opposed to none of the non-migrant girls. Among the boys in child labour, 9% of migrant boys were bonded compared to 4% of the non-migrants.[19]

Some categories of work permits were eliminated to prevent low skilled migrants from entering the country, although some professional visa categories such as lawyers were also scrapped.

While instruments such as the East African Community's Common Market Protocol (see below) have established the principle of free movement between Kenya and neighbouring countries in the region, in practice the current context of migration policy has served to undermine these achievements.

In June 2012, for instance, the Kenyan Government imposed strict work restrictions. Work permits are now only granted for persons over 35 years old with an annual salary exceeding USD 24,000. Some categories of work permits were eliminated to prevent low skilled migrants from entering the country, although some professional visa categories such as lawyers were also scrapped.

Although work permits for citizens from the East African Community (EAC) were abolished with the launch of the EAC Common Market Protocol in July 2010, Kenya has tried to retain a tight grip on the inflow of labour from other EAC countries. To date, Kenya has only scrapped work permit fees for Rwandans.[20]

20 Business Daily, 2012.
21 Bosco, 2010 p.2.
22 Bosco, 2010, p.14-15. The protocol guarantees a number of labour rights, including free movement, non-discrimination, collective bargaining and social security, in line with the national laws of the host country.
23 ACP, 2010, p.6.

The East African Community and the Common Market Protocol

The three founding members of the East African Community (EAC) - Kenya, Tanzania and Uganda - were later joined by Rwanda and Burundi in 2007 to make a five-member regional economic bloc. Article 104 of the Treaty establishing the EAC clearly refers to free movement of people: "Partner States agree to adopt measures to achieve the free movement of persons, labour and services and to ensure the enjoyment of the right of establishment and residence of their citizens within the community".[21] The bloc therefore provides the basis for an open regime of free labour movement in the region. Furthermore, the EAC Common Market Protocol guarantees the free movement of workers, who are citizens of the other Partner States, within their territories. It provides that the Partner States shall ensure non-discrimination of the workers of the other Partner States, based on their nationalities, in relation to employment, remuneration and other working conditions.[22] However, Kenya as well as other EAC Member States still need to amend their national legislations before full application of the protocol.[23]

Harmonising migration policies and mainstreaming migration in the Common Market Protocol

It is likely to be a while before all the EAC member states fully adhere to free movement of labour. Many, afraid that their labour markets will be flooded, have adopted a protectionist approach to migration. Nevertheless, there has been some progress towards freer movement of labour, with countries trying to harmonise all the labour migration policies in the region through extended negotiations.[24] Among other initiatives, IOM is enhancing the capacity of the EAC to support the mainstreaming of migration issues in the operationalisation and implementation of the Common Market Protocol[25]. In Kenya, for example, it runs a project to strengthen the capabilities of the Ministry of Labour to exploit the opportunities of labour migration in Kenya.[26]

One positive milestone towards a more regionalised approach to migration management was the Regional Conference on Refugee Protection and International Migration: *Mixed Movements and Irregular Migration from the East and Horn of Africa and Great Lakes Region to Southern Africa,* hosted on 6 and 7 September 2010 by the Government of the United Republic of Tanzania with the support of UNHCR and IOM. The action plan that was developed as a follow up to the conference included several proposed legislative reforms and policy reviews with regard to legal migration.[27]

Regular economic migrants leaving Kenya

A substantial volume of Kenyan labour has migrated out of the country to seek employment opportunities elsewhere. The exact numbers vary, however, depending on the source and the definitions used. For example, according to data from the Centre on Migration, Globalisation and Poverty

The majority of Kenyan emigrants, except for those in the Middle East, are professionals, technicians and business people.

24 Interview with IOM, March 14, 2013

25 The project also aims to contribute to "the development of a coherent approach towards labour migration policy through the establishment of an inter-ministerial task force on labour migration; technical assistance in the development of best practices for engaging in bilateral and multilateral labour migration agreements; the design and establishment of return and reintegration mechanisms for Kenyan labour migrants; training on global best practices for labour migration; and development of a labour migration training manual." IOM, 2011a

26 IOM, 2011b, p.24.

27 "Implement the guidelines of the 2005 Multilateral ILO Framework on Labour Migration; implement regularisation programs for long-staying irregular migrants; integrate migration into national development policies and poverty reduction strategies to enhance the development impact of migration; license and regulate employment agencies in countries of origin and destination to avoid exploitation of potential migrants; and formulate national migration policies in accordance with the African Union continental migration policy frameworks." UNHCR and IOM, 2010a, p.1-4; UNHCR and IOM, 2010b.

at Sussex University, the number of Kenyan emigrants was around 912,890 in 2005, with more than half of Kenyan emigrants living in Europe and North America, followed by South-South migration within Africa and to other developing countries.[28] The World Bank, on the other hand, estimated the number of Kenyan emigrants in 2010 to be approximately 457,100, or 1.1% of the total Kenyan population[29]. The Kenyan government puts the total number of Kenyans in the diaspora - a distinct category to its emigrants, as it also includes generations of Kenyans born abroad - at three million.[30]

More than 40 legal female labour migrants stranded in Saudi Arabia were returned to Kenya after government intervention.

On the African continent, most Kenyans migrate to Tanzania, Uganda, South Africa, Lesotho, Botswana and Nigeria.[31] Others seek work in the Middle East, particularly the Gulf States: each year, recruitment agencies organise visas for an average of 17,000 Kenyans to work in Saudi Arabia.[32] Others have moved to the UK and other European countries to search for better opportunities, as well as North America: with 85,000 expatriates, Kenya is among the top countries of origin of African immigrants in the United States.[33] The majority of Kenyan emigrants, except for those in the Middle East, are professionals, technicians and business people.[34]

Abuse and exploitation in the Gulf States

The majority of Kenyan emigrants are highly skilled professionals, business people or students who do not face any major threats while migrating. However, this is not the case for a significant number of the more than 40,000 Kenyan migrants who work in the Middle East, specifically in Saudi Arabia, the UAE and Qatar. These low-skilled Kenyan emigrants face a number of risks, including labour exploitation, trafficking and smuggling. In 2012, there were a number of newspaper accounts of violence and abuse against Kenyan domestic workers working in the Middle East.

- ***July 2012, Riyadh, Saudi Arabia:*** The local media reported that some 80 Kenyans were stranded and starving in a transitional detention camp. According to the article, most of these Kenyans had gone to Saudi Arabia to work as domestic help. Some were promised other jobs, but found themselves employed as maids upon arrival.
- ***October 2012, Saudi Arabia:*** More than 40 legal female labour migrants stranded in Saudi Arabia were returned to Kenya after government intervention. The group, who left Kenya with hopes of securing employment in the Middle East, called on the government to rescue them. They had been living under poor conditions with no food, no proper sleeping place or basic requirements. According to the Permanent Secretary of the Ministry of Foreign Affairs, more than 200 Kenyans had sought help from the embassy after falling out with their employers between January and April 2012.

Agencies based in Nairobi are known to recruit young Kenyans with a promise of better pay. Press reports indicate that upon arrival, their passports are confiscated and they are then allegedly forced into domestic servitude. There are accounts of serious abuse and rights violations,

28 Cited in ACP, 2010, p.5.
29 World Bank, 2012.
30 Republic of Kenya, 2011.
31 ICMPD, 2008, p.49; Ratha, et al 2011
32 Daily Nation, 2012b.
33 Ratha, et al, 2011.
34 Shitundu, 2006, p.6.

including sexual harassment, violence, torture, starvation and other forms of cruel and degrading treatment. It is not clear how many people have been affected by these activities. Though these migrants travel to the Gulf States as regular labour migrants, their subsequent experiences amount to de facto trafficking.

Kenyan response to regular emigration

The legislation and guidelines on migration out of Kenya are not well established. However, like some other African countries such as Ethiopia and Senegal, Kenya has undertaken efforts to assist potential emigrants by providing information on migration opportunities through pre-departure orientation seminars and counselling them about the risks and potential abuses involved.[35]

To date the response from international or local NGOs has been limited, with IOM being the exception. IOM works with the Government of Kenya in providing pre-departure orientation for migrant workers and facilitating labour export from Kenya: for example, since entering into a memorandum of understanding (MOU) with the Youth Enterprise Development Fund (YEDF) in 2008, it has provided preparatory training to more than 2,700 unskilled and semi-skilled migrant workers destined for the Middle East, UAE, Afghanistan and the Gulf States. Following this successful cooperation, the Government of Kenya has renewed its commitment to work with IOM in providing pre-departure orientation for migrant workers from Kenya by signing a MOU on 15 August 2012.[36]

However, though these mechanisms are in place, migrants are not obliged to follow a pre-departure course with IOM. On the other hand, labour migrants to the Gulf States are required to have their contract attested by the Labour Department. Nevertheless, some migrants try to avoid the check by using unreliable agents. IOM also has no presence in Saudi Arabia and so is not in a position to oversee repatriations to Kenya.

Kenya's ban on labour migration to the Gulf

Following these reports of abuse, in 2012, the Kenyan government imposed a ban on its citizens travelling to the Gulf countries to work as domestic and other blue-collar labourers. It seems however, that the ban on migrants seeking domestic work and blue collar jobs in Saudi Arabia and Oman has pushed agencies to direct migrants to Qatar as an alternative.[38]
According to IOM, after the ban a number of Kenyans left to work in the Gulf States by using other capitals in the region, such as Dar es Salaam, as a departure point.

"Banning is not the right thing to do. People will still go. The solution lies in forms of regular and circular migration."

Interview with IOM, March 14, 2013

By November 2012, the policy had been reverted. As with other examples of restrictive legislation, this demonstrates that prohibitive approaches to migration management are rarely sufficient in themselves to resolve the complex drivers of irregular movement.

35 Ratha, 2011, p.33.
36 IOM, 2012.
37 Kenya MMTF, 2012b.

2.1 Objectives of the study and methodology

objectives of the study and methodology

This publication is the second in a series of studies by the RMMS on specific mixed migration issues in the Horn of Africa and Yemen and focuses on **mixed migration in Kenya.** The study is also the first main deliverable of the Kenyan Mixed Migration Task Force (MMTF), which was founded in 2012. The Kenya MMTF is co-chaired by UNCHR and IOM and attended by international agencies and civil society actors in Nairobi concerned with migration and migrant protection issues.[38]

The purpose of the Kenya MMTF is to develop a rights-based strategy to ensure an effectively coordinated response to the protection and humanitarian needs of migrants, trafficked persons, refugees and asylum seekers entering or transiting Kenya. In the first phase of the Kenyan MMTF, participating agencies shared information and data on mixed migration in Kenya. The RMMS then consolidated this information as a starting point to the present report.

The purpose of the Kenya MMTF is to develop a rights-based strategy to ensure an effectively coordinated response to the protection and humanitarian needs of migrants, trafficked persons, refugees and asylum seekers entering or transiting Kenya.

The study is based on extensive literature research and interviews with key stakeholders in Nairobi, conducted by an external consultant in April 2013. As an RMMS study, the data, country profiles, monthly reports and press listings collected monthly by the RMMS since September 2011 are used extensively in this report.[39] It aims to provide, for the first time, a full and comprehensive overview of mixed migration in Kenya. While there is a large amount of information available on refugees and asylum seekers in Kenya, stocktaking by the Kenya MMTF revealed a significant knowledge gap on the scope of the problem of mixed migration in the country, especially with regard to data on economic migrants, failed asylum seekers, unaccompanied minors, trafficking and border management.[40] It is therefore hoped that this report will highlight the available information and ongoing uncertainties relating to less studied and documented migrant groups.

38 These are: Awareness Against Human Trafficking (HAART); Danish Refugee Council (DRC) Regional Office; Danish Refugee Council (DRC) Kenya Office; Heshima Kenya; International Organization for Migration (IOM); International Rescue Committee (IRC); Kituo Cha Sheria; Kenya National Commission on Human Rights (KNHCR); Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals and Allied Workers (KUDHEIHA); Médecins Sans Frontières-Holland (MSF-Holland); Refugee Consortium of Kenya (RCK); Regional Mixed Migration Secretariat (RMMS); United Nations High Commissioner for Refugees (UNHCR); United Nations Office on Drugs and Crime (UNODC).

39 See annex 1 for a list of respondents.

40 RMMS data and texts from country profiles and monthly reports are used freely and frequently throughout this report, without explicit references.

3 Mixed Migration in Kenya

3.1 Smuggled migrants

smuggled migrants

Overview

People who are trafficked internally and internationally, and those who are smuggled across borders, all form part of Kenya's mixed migration flows. However, it is useful to distinguish between trafficking and smuggling as the terms are often used interchangeably when in fact there are important differences between them. Migrant smuggling[41] is an important component of mixed migration flows through Kenya.[42] Given Kenya's geographical location in the region, permeable borders and relatively ineffectual efforts to control borders and regulate migrant movement, its role as a point of transit for both the Northern and Southern routes is of high importance. In addition, corruption makes Kenya a popular transit country for smugglers. Kenya is perceived to be one of the most corrupt countries in the world, ranking 139th on a list of 178 countries in 2012.[43]

They cross into the country on foot, by vehicle or by sea, either independently or facilitated by smugglers and brokers.

Somalis, Ethiopians and to some extent Southern Sudanese, Eritreans and Congolese, who come from neighbouring countries, take advantage of Kenya's porous borders. They cross into the country on foot, by vehicle or by sea, either independently or facilitated by smugglers and brokers. There is, however, no accurate data available on the number of those transiting through Kenya, either smuggled or trafficked. In 2009 IOM estimated that up to 20,000 Somali and Ethiopian male migrants were smuggled to South Africa, mostly via Kenya, every year.[44] That figure may have changed considerably since then. More up-to-date research is therefore needed on this issue.

Smuggling routes

Once in Kenya, there are several routes that migrants may take through the country. For Somalis and Ethiopians, the overland journey from the Horn of Africa to Southern Africa tends to begin in Kenya. The Southern route through Kenya is one of the three main smuggling routes in/from the Horn of Africa, besides the Eastern route to Yemen and the Gulf States and the Western route towards Libya and Europe. Those migrants aiming for the Gulf and Europe do not normally transit Kenya, although there may be those that first come to Kenya and decide to move onto those locations later.

In Kenya, Nairobi is the major hub for the migrant smuggling business, where migrants can obtain the false documentation necessary for creating new identities or visas.

Both in the Dadaab and Kakuma refugee camps and in Nairobi, there are well-established smuggling networks. Refugees are able to travel out of Dadaab camp, with or without movement passes: some then pay organised smugglers to transport them to Nairobi, either by covert routes or with the collusion of bribed police officers. Some refugees reportedly pay public officials or police to escort them.[45]

In Kenya, Nairobi is the major hub for the migrant smuggling business, where migrants can obtain the false documentation necessary for creating

41 Article 3 of the 'Smuggling of Migrants Protocol' defines smuggling as: "the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a state party of which the person is not a national". UNODC, 2010, p.4.
42 For a comprehensive account of migrant smuggling in the Horn of Africa and Yemen, see the recent RMMS publication on this subject.
43 Transparency International, 2012.
44 Horwood, 2009.
45 RCK, 2012, p.74.

new identities or visas. There is an experienced network of brokers, specialising in assisting Somalis, to organise their departure from Kenya to another destination.[46] The International Peace Institute (IPI) labelled migrant smuggling and women/children trafficking networks – mainly Somali and Kenyan - as one of the three most prominent groups of African criminal networks in East Africa.[47]

The next destination for those heading South is often Tanzania.[48] Both vehicles and boats are used to reach the country. If the coastal route is used, many of the smuggled Somalis and Ethiopians pass through Mombasa - another hub for migrant smuggling in Kenya. They then move on by boat in groups of 100 or more, operated by smugglers from Mombasa, typically to the Tanzanian coastal town of Mtwara where they are dropped off and have to trek through thick forest towards Mozambique.[49]

Alleged corruption of national officials is one of the main forces driving the regional international smuggling business: without their complicity, the industry would not be able to function the way it does.

Smuggling networks

According to the IPI, there are between five and ten small networks of mainly Somali and Kenyans, dominating the business in Kenya. Each network is headed by a *Mukhali*, normally a respected figure in the community, who operates from within a legitimate business. Many different actors - recruitment agents, truck drivers and transporters, boat owners, providers of forged and stolen documents, border guards, immigration and refugee officials, members of the police and military - are involved in migrant smuggling and risks are effectively spread through the network.[50]

These networks also have links with networks in other countries or regions, such as Mozambique, Zimbabwe, South Africa, Europe and the Arab countries, highlighting the transnational character of these operations.[51]Most Somalis migrants and urban refugees, and a large number of irregular Ethiopian migrants based in Nairobi live in the Eastleigh area of the city. This is also where various smugglers, brokers and their agents reside. Safe houses for smuggled Somalis, as well as clandestine offices where forgeries and travel documents are made, are also located in Eastleigh.[52]

Corruption

The alleged corruption of national officials is one of the main forces driving the regional international smuggling business: without their complicity, the industry would not be able to function the way it does.[53] 34.6% of respondents in Kenya's National Corruption Perception Survey mentioned police officers as demanding bribes to offer services, followed by Immigration Officers (14.3%).[54]

A large proportion of the migrants interviewed in IOM's research suggested that "the officials involved in complicity and corruption are not chance opportunists succumbing to occasional bribes, but should be considered

46 Moret, Baglione and Efionayi-Mader, 2006, p.40.
47 Gastrow, 2011.
48 In 2008, the TMTF recorded a total of 74,215 "officially identified" irregular arrivals in Tanzania, suggesting that the actual figure "could run into hundreds of thousands of persons". Tanzanian Ministerial Task Force on Irregular Migration into and through Tanzania.
49 IRIN, 2011.
50 ICMPD, 2007; MMTF, 2008.
51 Gastrow, 2010.
52 Horwood, 2009, p.53.
53 Ibid, p.9.
54 EACC/DPS, 2012, p.11

part of the overall illegal and abusive enterprise".[55] Several other studies confirm that corrupt police, airport officials and customs officers facilitate smuggling and trafficking in Kenya.

> *"The smuggling and trafficking networks and organisations transcend all sectors, the ticket bureaus, the check-in desks, the immigration officers."*
>
> Airport immigration officer in Kenya.[56]

smuggled migrants

Economics

Based on information from a variety of sources in IOM's 2009 research, the annual revenue from smuggling Ethiopians and Somalis along the Southern route, all the way to South Africa, was estimated to be approximately USD 40 million. As the IOM study provides the most comprehensive account of the economics of the smuggling business along the Southern route, this figure features in most other reports as well: for example, in the IPI study on organised crime in East Africa.[57] However, it is not clear how much of this can be attributed solely to the Kenyan smuggling business, as migrant smuggling is an inherently transnational business. Moreover, the actual value could be greater if all additional costs, such as for bribes and fake passports, are taken into account.

Risks and protection issues

In some cases smuggling may be regarded, albeit from the perspective of the migrants, as genuine assistance. In that case, the smuggler acts as a sort of travel agent, making it possible for migrants to cross certain borders and arrive safely in their country of destination. The majority of smuggled migrants, however, face serious human rights abuses at the hands of smugglers - and levels of violence seem to be rising. The Southern route through Kenya, towards South Africa, seems just as difficult and dangerous as other smuggling routes from the Horn of Africa, and imposes a great deal of hardship on migrants, exposing them to a variety of rights violations and protection risks.[58] Refugees and irregular migrants moving with the 'aid' of smugglers report rough handling, abandonment, lack of food and water or medical support, confinement, beatings, drowning, sexual attacks, extortion, detention, robbery, kidnapping and death.[59] Smuggled migrants may also transmute into victims of trafficking at the hands of smugglers or criminals who take advantage of their irregular legal status in the country of destination. As such, the definitions and differences are increasingly becoming blurred.

A complicating factor is that victims of migrant smuggling are also irregular migrants. As a result, some governments regard them as criminals whose legal or human rights need not be protected or upheld. Furthermore, as migrants are often determined to reach their final destination, any intervention to rescue, save or repatriate them may be seen to interfere with their ultimate goal. This makes the protection of smuggled migrants even more difficult.[60]

Before and after crossing the border, migrants with few resources often make long journeys on foot through harsh climates. Besides the threat of violence or abuse by smugglers, many migrants crossing the border

> *"The Kenya border management is a bit problematic. We never know who is coming, who is leaving. If borders are not well managed, anyone can sneak into the country. That imposes a big challenge to the asylum environment in Kenya. For example, the issue of arms being transported into Kenya. The first suspect is the refugee or asylum seeker, as they are the most common and known group of migrants in Kenya. When crimes are submitted, the first suspect are the refugees. So we need some form of tight security control along the border, not to narrow the asylum space, but to make sure that the people who are coming in are the right people."*
>
> Interview with IRC, March 21, 2013

55 Horwood, 2009, p.9.
56 Ibid, p.44.
57 Gastrow, 2010.
58 UNHCR and IOM, 2010.
59 Horwood, 2009, p.139.
60 Ibid, p.9.

experience harassment or extortion by the Kenyan police. Apart from cases of bribery, some irregular migrants face detention and deportation, but the numbers overwhelm the Kenyan authorities and they struggle to control the migration issue.

In the absence of sufficient protection of refugees, direct abuse and violence by Kenya's security apparatus against refugees can also occur.[61] In a recent study by the Refugee Consortium of Kenya (RCK), 27% of Somali asylum seekers who had crossed the border since the beginning of 2012 and met police on the road to Dadaab reported arrest, threats and extortion.[62] Some individuals also reported violence and rape of women by the police.[63] In addition, the camps at Dadaab continued to be the scene of insecurity, violence (including gender-based) and protection concerns, partly due to the Al Shabaab presence in the camps.[64]

The widespread police abuses compel asylum seekers to travel on small paths away from the main Liboi-Dadaab road where gangs can readily prey upon them, stealing their belongings and raping women.

Somali asylum seekers crossing into Kenya are also vulnerable to common criminals. The widespread police abuses compel asylum seekers to travel on small paths away from the main Liboi-Dadaab road where gangs can readily prey upon them, stealing their belongings and raping women.[65]

"Three of us, a man, a young girl about ten years old, and I, ran in one direction and two gunmen chased us and caught me. They were not wearing uniforms and had what I know were AK 47s. They spoke English and Somali. Both of them hit me with the butt of their guns in my lower abdomen and then they both raped me. They took everything I had and then they left me."

Somali woman, Ifo camp, March 9, 2010.[66]

"I encountered many different problems coming over the border from Somalia, but the most painful was the moment when we were attacked by bandits, and all the girls in my group were raped. I was one of them. There was nothing we could do about it. Later we found our way to the hospital in Hagadera camp and got some medication."

Female respondent who arrived in Hagadera in early 2011. [67]

However, for those few Kenyans who are smuggled to South Africa, the experiences are totally different from those of Somalis and Ethiopians. They are not subjected to notable hardships or abuse, although it may be necessary for them to bribe officials when crossing borders.[68]

Response

Government response

The highly porous borders with Somalia, Ethiopia and Southern Sudan are convenient entry and exit points for migration flows, even when officially they are closed. However, the Kenyan military operation in South-Central Somalia in the latter part of 2011 and throughout 2012 has resulted in tightened border controls and a resulting decrease in the number of Somalis crossing into Kenya in 2012. Refugee registration was also severely curtailed in 2012.

61 RMMS, 2013.
62 RCK, 2012, p.88.
63 Human Rights Watch, 2010, p.25.
64 RCK, 2012, p.88.
65 Human Rights Watch, 2010, p.44.
66 Human Rights Wa.tch, 2010, p.44.
67 RCK, 2012, p.32.
68 Horwood, 2009, p.67.

Though Kenya has ratified the Protocol against the *Smuggling of Migrants by Land, Sea and Air,* not much is known about active actions by authorities to prosecute migrant smugglers. Smuggled migrants typically face the greatest protection needs and moving clandestinely lack even basic legal protection as they move clandestinely through the country.

"Kenya only has a counter trafficking act. But what about smuggling? The legislation should also cover smuggling. That is a gap in the legal framework."

Interview with RCK, March 15, 2013

"Migrant smuggling is the biggest problem: there is no specific legislation on smuggling. The smuggler goes free. The smuggled migrant gets criminalised, because he/she is an irregular migrant."

Interview with IOM, March 14, 2013

smuggled migrants

As discussed earlier, the Kenyan government is struggling with the large numbers of irregular migrants and refugees. Consequently, in December 2012, following a series of terrorist incidents in Nairobi and other major Kenyan towns, the government instructed all refugees living in urban areas to return to the camps. The attacks fuelled tensions between the refugee population and the host communities, resulting in widespread insecurity and xenophobic attacks against refugees as well as increased police harassment, intimidation and extortion. To what extent they will continue to return to Somalia or move elsewhere, with or without the 'assistance' of migrant smugglers, remains to be seen.

The government has also tried to implement stricter border controls or even officially close the border near Liboi between Somalia and Kenya. Stricter border controls, however, commonly lead to more demand for smugglers, as more migrants have to turn to illicit means to cross borders. Given the adaptability of smugglers, routes may be diversified or displaced and new or more sophisticated methods developed to avoid detection.[69] In the process, migrants may be exposed to greater physical and psychological dangers.[70] Effectively fighting migrant smuggling therefore requires a broader approach to migration management beyond border controls alone. Many countries in the region lack adequate capacity in this area, due in large part to a lack of coherence between ministries and states. To improve migration management, existing institutional structures must be revised: this requires substantive regional cooperation between countries of origin, transit and destination.[71]

"The Kenya border management is a bit problematic. We never know who is coming, who is leaving. If borders are not well managed, anyone can sneak into the country. That imposes a big challenge to the asylum environment in Kenya. For example, the issue of arms being transported into Kenya: the first suspect is the refugee or asylum seeker, as they are

"People sometimes end up in the asylum system. Then after a long time, they get rejected. Or they have an asylum seekers pass, which was until recently a pretty good document to kind of maintain your stay in Kenya. At least, it gives you a legal coverage, a justification of why you are in Kenya."

Interview with UNHCR, March 14, 2013

"After the time in jail, the prison officer takes them back to immigration. Immigration does not have cells. So they bring them to the police. The police wait for immigration to carry out the repatriation, which they only do for high profile cases. Coordination is not there. Sometimes they stay in detection facilities for quite a longer period then their sentence."

Interview with RCK, March 15, 2013

69 Spijkerboer, 2009; Koser, 2008; UNDP, 2009; UNODC, 2011.
70 Spijkerboer, 2009, p.131.
71 Johnson, Drechsler and Gagnon, 2008. To this end, IOM runs several projects to strengthen the migration management capabilities of the Kenyan government, such as the 'Enhancing Migration Management Through Capacity Building, Coordination and Promoting Safety in Kenya' program. This is in line with the action plan developed at the Regional Conference on Refugee Protection and International Migration: Mixed Movements and Irregular Migration from the East and Horn of Africa and Great Lakes Region in Dar es Salaam in 2010. It aims to strengthen the capability of the Government of Kenya to better address the ongoing challenge of ir-regular migration and mixed migration from the Horn of Africa. The intervention further aims to sensitise and train government authorities on aspects of irregular migration, and to tackle organised crimes such as human trafficking and smuggling, terrorism and other security concerns, with a special focus on the coastline of Ken-ya. IOM, 2011b, p.23.

the most common and known group of migrants in Kenya. When crimes are submitted, the first suspects are the refugees. So we need some form of tight security control along the border, not to narrow the asylum space, but to make sure that the people who are coming in are the right people."

Interview with the International Rescue Committee (IRC), March 21, 2013

3.2 Irregular economic migrants

Overview

Kenya attracts heterogeneous migration flows due to its location, relatively developed infrastructure, good air and land connections, large migrant communities and well-connected smuggling networks. For these reasons, Kenya is not only a country of destination but also, increasingly, a country of transit[72].

irregular economic migrants

Kenya's land border stretches some 3,477 km, in a region long marked by insecurity, while its coastline extends for 536 km, including the strategically important harbour of Mombasa - the largest cargo-handling port on Africa's East coast.[73] In particular, the open and porous borders between Somalia and Kenya, some 700 km in total, enable thousands of asylum seekers and irregular migrants to enter Kenya.[74] Most transit migrants are of Somali, Eritrean or Ethiopian origin, fleeing political insecurity in their home countries.[75] They often use Kenya as a transit country: according to intelligence services, Kenya in general and Nairobi in particular have become important illegal migration hubs towards Europe and beyond.

They often use Kenya as a transit country: according to intelligence services, Kenya in general and Nairobi in particular have become important illegal migration hubs towards Europe and beyond.

Numbers

Kenya is an import transit country for irregular migrants. However, as irregular migration refers to movement that takes places outside the regulatory norms of the sending, transit and destination countries, the exact numbers and composition of irregular (transit) migrants are not known – not even, some respondents suggest, to the Government of Kenya. One of the most authoritative estimates available, in a 2009 study commissioned by IOM, suggested that up to 20,000 Somali and Ethiopian male migrants were smuggled to South Africa, mostly via Kenya, every year.[76] However, since then the figure is likely to have changed considerably[77].

Reportedly, the number of irregular economic migrants entering Kenya is on the rise, a reflection of the growing aspiration of many in the region to find a better life outside their country. It also reflects, however, the fact that most of its borders remain porous and unmanageable due to size, geography and lack of resources, as well as the failure of structures and controls to manage them effectively. Finally, it reflects the extent to which public officials may be colluding with and facilitating smugglers, traffickers and individuals seeking to bend or break national laws.[78]

Reportedly, the number of irregular economic migrants entering Kenya is on the rise, a reflection of the growing aspiration of many in the region to find a better life outside their country.

72 ICMPD, 2008.
73 The land border posts with Somalia are Liboi and Mandera. Uganda and Kenya have Busia, Malaba, Lwak-hakha and Suam as common border posts. The border to Tanzania may be crossed in Isebania, Namanga, Loitokitok, Taveta and Lunga Lunga. Border crossing points to Ethiopia are Moyale and Mandera and Sudan can be entered via Lokichogio. The following airports can be used for entry, exit and transit: Jomo Kenyatta International Airport, Moi International Airport, Wilson Airport, Eldoret Airport, Kisumu Airport, Malindi Air-port, Garrisa Airport and Lokichogio Airport. ICMPD, 2008, p.59-60.
74 Horwood, 2009, p.55.
75 ICMPD, 2008, p.49.
76 Horwood, 2009.
77 Anecdotal evidence from field representatives suggest that the scale of mixed migration through the country is considerable. According to the Assistant Director of Immigration Services, every month the department is returning approximately 200 persons to Ethiopia. (RMMS direct contact)
78 Horwood, 2009, p.17.

The growing presence of Asian migrants in Kenya

Besides migrants from within the region, evidence suggests that an increasing number of Chinese and other Asian nationals are also entering Kenya irregularly in addition to the multi-generational presence of Asians already living in Kenya and Kenyan nationals of Asian origin. For instance, groups of Pakistani, Bangladeshi and Indian migrants are reportedly now present in the country:

"They remain very much underground, but you see them in shops, factories. The government cannot do much about it. The Ministry of Labour has maybe 100 or less labour inspectors. There is a lack of capacity to inspect".

Interview with IOM, March 14, 2013

Recent detections include a group of Pakistanis heading to South Africa and some Nepalese stranded in a house in Kenya, intending to move on to the UK. Finally, there have been recent reports of Sri Lankans based in Kenya as irregular migrants, working in so-called '3D' - dirty, dangerous and demeaning - employment.

Modes of transport and routes

Irregular migrants enter and transit through Kenya using a variety of means, depending on their resources and local conditions at the time of travel:

Air: A number of transit migrants in Kenya undertake part of their journey by air, either travelling overland to Nairobi and then flying a subsequent stretch of the journey or flying in to Nairobi and then continuing the journey overland from there. Kenyan passports are available for a price, which enables further air travel.[79]

This movement of irregular migrants through countries typically involves travel in the dark, cramped living conditions and concealment in woods or so-called safe houses.

Land: Many migrants enter and leave Kenya at the many land border crossings. This movement of irregular migrants through countries typically involves travel in the dark, cramped living conditions and concealment in woods or so-called safe houses[80]. Irregular transit migration is characterised by constantly changing routes. Recently, for example, Ethiopians were arrested in unusual places like Meru and Nanyuki.

Sea: Many irregular migrants travel by boat from the ports of Mogadishu and Kismayo in Somalia to the major transit point of Mombasa in Kenya. From there they board another boat, to the Shimoni and Funzi islands in Southern Kenya or straight to Tanzania or Mozambique. Irregular migrants normally avoid the ferry at Likoni in Mombasa, which connects Kenya's North and South coast. Instead, often 'guided' by smugglers, they use the mangrove forest and travel at dusk through the so-called 'panya routes'[81] to avoid detection at police road blocks. They travel to the coast where dhows are waiting to take them to Tanga or Bagamayo in Tanzania.[82]

Using the asylum system to enter and stay in Kenya

According to UNHCR, there are no credible mechanisms for regular migration. In the absence of clear and accessible legal channels, people may choose to apply for asylum and undergo Refugee Status Determination (RSD) with UNHCR to register as an asylum seeker with the Government of Kenya. If clear legal routes to access work permits and regularise their

79 Horwood, 2009, p.42.
80 Ibid, p.67.
81 The unregulated maze of tracks and unofficial routes connecting rural Kenya.
82 Horwood, 2009, p.48.

stay existed, a significant number of economic migrants who end up in the asylum system may not have sought asylum as they do not always necessarily have a protection claim.[83]

Repatriation

There are no effective mechanisms in place for repatriation of irregular migrants from Kenya. According to RCK, the most important reason for a lack of effective repatriation is the lack of coordination, both domestically and internationally. Within Kenya, for instance, there is no clear division of responsibility and cooperation between different agencies:

irregular economic migrants

Coordination across the region is also negligible. Each country that arrests an irregular migrant takes them to the nearest point of entry they came through, from where they have to continue. This means that migrants deported from South Africa, for example, cross a large number of countries on their way back and face the risk of detention in each of them.

There is also a lack of capacity and resources for transportation. Furthermore, even if people are deported across the border, the practical effectiveness is questionable: "Even if they are repatriated, they cross the border, wait for a few hours and come back."[84]

Risks and protection issues

Thousands of irregular migrants risk arrest, detention, deportation/ refoulement, robbery by criminals and harassment by police officers while transiting through Kenya. As the opportunities to migrate legally are limited, many use the services of smugglers to evade the system, which makes them vulnerable to exploitation.

Arrests and detention

In recent years there have been many reports of migrants being arrested. Below are some recent examples:

- ***November 2011, Mombasa****: Police arrested a total of 122 migrants in two days of simultaneous raids. The Ethiopians and Somalis were arrested at Maungu along the Nairobi-Mombasa highway. Police suspect the immigrants were waiting to be ferried to an unknown destination. The illegal immigrants could not communicate in English or Swahili.*[85]

- ***June 2012, Sigona, Kikuyu District:*** *80 foreigners, including 24 illegal immigrants, were arrested while travelling along the Nairobi-Nakuru highway. The group included 51 Somalis, 9 Kenyans, 10 Congolese, 2 South Sudanese and 7 Ethiopians, among them 18 women and 45 children.*[86]

- ***June 2012, Kenya:*** *Police arrested 39 Ethiopians and 3 Somalis who were jailed in Tanzania for some two months before being sent back to Kenya. The three Somalis submitted documents proving that they were registered in Dadaab refugee camp. Reportedly, the*

Thousands of irregular migrants risk arrest, detention, deportation/ refoulement, robbery by criminals and harassment by police officers while transiting through Kenya.

83 For example, UNHCR has noticed a large number of single men between 25 and 40 in the asylum system. Many of these may indeed need protection, but the profile of the caseload suggests the presence of mixed migration flows, which include economic migrants who use the asylum system. UNHCR warns that the pres-ence within the asylum system of a significant number of applicants that actually do not require protection undermines the image and credibility of genuine refugees. Interview with UNHCR, March 14, 2013.

84 Interview with RCK, March 15, 2013.

85 The Star, 2011.

86 Ibid.

group were on their way to South Africa in search of employment opportunities when they were apprehended by the Tanzanian authorities. The Kenyan courts have ruled that the Ethiopians will be sent back to their home country.

- ***July 2012, Nairobi:*** *This was shortly followed by the arrest of 133 foreigners in Nairobi (81 Somalis, 47 Ethiopians, 2 Pakistanis, 2 Sudanese and 1 Briton) who the Kenyan authorities claimed were in the country illegally. They further suspect some in-tended to 'commit crimes'.*[87]

Irregular migrants might be arrested and imprisoned for six months in Tanzania before being taken to the border with Kenya, to the point where they entered. Once in Kenya, they may be arrested again, taken to court and detained for another six months.

Up to 500 Ethiopian migrants are arrested in Kenya every month while trying to transit to Southern African countries. According to UNHCR, it is common among Ethiopians to state they are not seeking asylum but are in Kenya for economic reasons because of the risk of protracted detention for suspected asylum seekers: "What would normally happen with these people is that they would somehow happen to end up in some kind of greater or shorter period of detention. There is a lack of working mechanisms to address their needs, to repatriate them to Ethiopia. They would end up for a couple of months somewhere in jail."

Interview with UNHCR, March 14, 2013

Data on the number of migrants in detention is limited, however, especially for crucial areas of the country such as the North Eastern Province, where it is likely that many irregular migrants are detected while, or shortly after, crossing the Somali-Kenya border. Evidence suggests that a significant number of migrants are being held in Kenyan prisons[88]. The detention of children is a particular concern:

Most Ethiopians enter Kenya as they are in transit to South Africa. They typically leave Ethiopia not because of persecution, but because of a lack of opportunities and marginalisation from not being part of a majority ethnic group. Those who get arrested are often released soon, as prisons are full and authorities do not know where to take them. Following release, they become stranded in Kenya.[89]

Multiple detentions

A further protection challenge is the situation of multiple detentions. According to RCK, irregular migrants might be arrested and imprisoned for six months in Tanzania before being taken to the border with Kenya, to the point where they entered. Once in Kenya, they may be arrested again, taken to court and detained for another six months. These multiple detentions reportedly occur often and present a serious challenge for migrants in the region: "There is a lack of coordination and information sharing between the countries in terms of addressing the same issue."[90]

Lack of interpreters and understanding

Finally, there is a lack of adequately trained interpreters in court. As a result, migrants may not even understand the charges against them. Furthermore,

87 RMMS, 2012, Monthly Summary July 2012.

88 In 2011, the Legal Resource foundation found that 726 migrants were in prison among 35,000 prisoners in Kenya. In November 2012, UNHCR found that 90 migrants were held in a Mombasa prison. According to RCK, in the first quarter of 2013 37 irregular migrants, mostly Ethiopians, ended up in prison.

89 RCK reported that authorities often do not know where to take migrants or lack the resources to sustain them. Consequently, some are simply released. The Ethiopian consulate asked IOM to assist in returning ir-regular Ethiopian migrants: however, as IOM explained in the interview for this report, securing funding from donors proved difficult.

90 Interview with RCK, March 15, 2013.

the police are not able to conduct proper interviews with migrants to assess whether they entered the country as an economic migrant or asylum seeker. This can lead to migrants being categorised indiscriminately as economic migrants, even those who left their country of origin because of a real threat of persecution: "There is a lack of understanding among police and other law enforcement officers of the distinction between an economic migrant and an asylum seeker."[91]

irregular economic migrants

"There is a lack of understanding among police and other law enforcement officers of the distinction between an economic migrant and an asylum seeker."

Response

Transit migration is mainly clandestine. Overall, little is known about this flow of mixed migration in Kenya and there seems to be little response, except for the arrest of detected irregular migrants by the Kenyan authorities and some agencies specializing in legal defence and detention issues, such as the Legal Resource Foundation and Kituo cha Sheria, who engage with irregular migrants on occasion.

In the summer of 2012, Kenyan authorities announced the 'Fagia Wageni' ('Do away with/ get rid of the foreigners') operation, intended to round up illegal migrants in the country. The Kenyan authorities subsequently carried out two raids on migrants in Eastleigh, Nairobi. UNHCR and partners estimate that approximately 100 migrants were arrested and brought before the court.[92]

91 Interview with RCK, March 15, 2013.
92 RMMS. 2012. Monthly Summary July 2012.

3.3 Refugees and asylum seekers

Overview

refugees and asylum seekers

Kenya's porous borders, strategic location in the Horn of Africa and relatively stable regime make it an attractive country of destination for large numbers of refugees and asylum seekers. Kenya is considered a pillar of stability in contrast to surrounding countries in the region that have experienced sporadic or protracted conflict in the past few decades. Since the early 1990s Kenya has witnessed an influx of Somalis, Ethiopians and South Sudanese escaping conflict, drought and famine. Somalis are considered prima facie refugees while South Sudanese received similar consideration in the past.

There is already a wealth of information available on refugees and asylum seekers in Kenya, and especially in the two largest refugee camps, Kakuma and Dadaad. The principal authority responsible for the management of refugees in Kenya is the Department of Refugee Affairs (DRA). UNHCR works closely with the DRA to strengthen their refugee management structures. Kenya passed a Refugee Act in 2006, following a long consultative process, subsequently reviewed to bring it into line with the 2010 Constitution. A Refugee Bill, currently under discussion, should be passed in the near future.

Somalis are considered prima facie refugees while South Sudanese received similar consideration in the past.

As this report is on mixed migration in Kenya, this section is more focussed on the movement and flow of refugees in and out of these camps than the situation of refugees who have been residing in these camps for a protracted period.

Refugees and asylum seekers in Kenya

Kenya now hosts one of the largest Somali refugee populations in the world - 508,654 out of a total of 1,025,346 Somali refugees in the region - together with 1,166 Somali asylum seekers.[93] As Somalis are granted prima facie refugee status, with the exception of those from Somaliland and Puntland, the number of Somali asylum seekers is relatively small.

In 2011 there was a large influx of over 150,000 Somalis into Kenya due to famine and insecurity, raising the total number of Somali refugees from around 353,000 at the beginning of the year to approximately 520,000 by the end: an increase of 47%. This followed a substantial volume of Somali arrivals in 2010 - the previous highest annual influx - when 74,000 refugees entered the country. Partly due to increased security measures along the border, related to the Kenyan intervention as part of the AMISON forces in Somalia, as well as the suspension of registration of refugees in Dadaab in October 2011, 2012 saw much lower numbers (around 18,000) of refugees coming into the country.

This trend seems to be continuing in 2013. The Somali influx from January 2013 to May 17, 2013 into Kenya amounted to just 549 persons, slightly more than the number of Somali refugees coming into Uganda (200) and significantly less than the volume entering Ethiopia (7,229) and Yemen (2673) during the same period.[94] There were fewer arrivals in Nairobi and other urban centres in Kenya because of a government directive to enforce a refugee encampment policy.

93 As of February, 2013. UNHCR, 2013c.
94 As of May 2013, UNHCR, 2013d.

As of April 2013, the total number of refugees in Kenya was 547,612 with an additional 46,944 asylum seekers. Besides Somalis, the main groups are Ethiopians and South Sudanese, with significantly fewer numbers of refugees from DR Congo, Sudan, Eritrea, Rwanda, Burundi and Uganda.

The two main destinations for refugees are the Dadaab and Kakuma refugee camps, with 454,098 (96% Somali) and 105,576 (47% Somali) inhabitants respectively.

Table 1: Refugees and asylum seekers in Kenya, as of 30th April 2013[96]

Country of origin	Refugees	Asylum seekers
Somalia	492,105	1,090
Ethiopia	23,031	8,690
South Sudan	17,582	22,495
DR Congo	6,579	6,424
Sudan	3,363	3,668
Rwanda	1,313	205
Burundi	1,509	3,444
Eritrea	1,437	393
Uganda	602	444
Other	91	91
Total	**547,612**	**46,944**

Main (initial) destinations: Dadaab, Kakuma and urban areas

The two main destinations for refugees are the Dadaab and Kakuma refugee camps, with 454,098 (96% Somali) and 105,576 (47% Somali) inhabitants respectively. In addition a substantial number of refugees settle in urban areas. As many do so irregularly, the precise numbers are unknown. However, in the first quarter of 2013 UNHCR statistics indicate that there were 52,473 refugees and asylum seekers in Nairobi.[95]

Movement in and out of Dadaab

Suspension of registration: Dadaab is the world's largest refugee complex, comprising five different camps. In October 2011, in response to insecurity, Kenya's DRA suspended registration of new arrivals in Dadaab. According to UNHCR, regular day to day registration has still not been reinstated. However, on occasion efforts have been made to address the registration gap. The government is currently making efforts to resume registration in Dadaab, in particular following the directive on December 18 , 2012 requiring all refugees to return to the camps[96]. This also ceased, with immediate effect, registration and service provision to refugees in urban areas.

Limited return to Somalia: In the third quarter of 2012, there was a slight decrease in the population of Dadaab due to a small number of Somali refugees returning to their home villages. These were not permanent returnees but rather persons temporarily visiting Somalia to check on property and assess the security situation before returning to the camp.[97]

Relocation to Kakuma camp: A limited number of Somali refugees also moved spontaneously from Dadaab to the other large refugee camp, Kakuma, in North West Kenya. In late 2011 and early 2012, 5,000 registered

95 UNHCR, 2013c
96 Interview with UNHCR, March 14, 2013.
97 IRIN, 2012a.

Somalis relocated from Dadaab to Kakuma while 3,500 new arrivals were also registered.[98] There has also been organised relocation of refugees from Dadaab to Kakuma. In September 2009, a group of 13,000 Somalis were relocated in an effort to ease the congestion in the Dadaab camp, which was originally in-tended to only host up to 90,000 people. This move was justified by the fact that a significant portion of South Sudanese refugees had voluntarily repatriated following the attainment of peace in their homeland.[99]

Movement in and out of Kakuma

Changing composition of camp population: For a long time, the majority (around 70%) of refugees in Kakuma were South Sudanese with a significant minority (about 20%) of Somalis, while Ethiopians, Rwandese, Burundians, Congolese, Ethiopians, Eritreans and Ugandans made up the remaining 10%. However, the Somali community has now grown and a large number of South Sudanese have also repatriated. Consequently, as of December 2012, the Somali community comprised 46.5% of the camp population, while the South Sudanese comprised 31.8%.

Renewed influx from South Sudanese into Kakuma: Until recently, the population of Kakuma had been thinning out as South Sudanese were returning home following the 2005 Comprehensive Peace Agreement (CPA). Nevertheless, the current population (111,170, as of April 2013) still exceeds the original capacity of 100,000. Moreover, the decreasing trend has recently been reversed. According to UNHCR, the biggest jump in the refugee population in 2012 occurred in Kakuma, where 13,000 new arrivals, mostly from South Sudan, were registered between January and August. The camp is now filling once more, with over 3,000 arrivals in November and December 2012. This is primarily due to intertribal clashes within South Sudan and to a lesser ex-tent the renewal of conflict between Sudan and South Sudan.

Influx of unaccompanied minors from South Sudan in Kakuma: According to UNHCR, the inflow from South Sudan consists of a large number of unaccompanied minors. Though conflict represents the primary driver, the lack of basic facilities and services also contributes to this migration. It is speculated that some parents send their children to Kakuma because educating them in a refugee camp is a cheaper option. There are also suggestions that sometimes these movements are facilitated by certain NGOs or churches.

"This is happening. The parents go to fight, for example, and they are not able to protect their children. They put them in trucks and pick-ups and they are brought to Kakuma where they get education. It is purely for education and protection."

Interview with RCK, March 15, 2013

Lack of capacity in Kakuma: Due to these significant inflows, Kakuma is rapidly running out of space while resources and sanitation services are stretched to their limit. A recent Daily Nation article reported that congestion at the camp has forced some refugees to move into neighbouring villages, and the underground water level within the refugee camp has fallen due to the sinking of several boreholes. Massive destruction of the ecosystem

98 Kakuma is an alternative location for Somali refugees who do not wish to remain in the Dadaab camps because they cannot be registered or for reasons of insecurity and lack of protection and assistance. Conse-quently, they consider the long and strenuous journey worthwhile. RCK, 2012, p.75-76.

99 RCK, 2012, p.76.

has also occurred as a result of the in-creased demand for firewood. This has sparked tension between the refugees/asylum seekers and the host community over natural resources.

Consequently, there are ongoing discussions between UNHCR and the Kenyan government to establish a second camp near the original site. The location would be an area called Kalobeiyei, about 15.5 miles from the Kakuma refugee camp, a site with the capacity to host about 100,000 refugees.

Onward movement from the refugee camps

Resettlement in a third country: Although most refugees end up based in one of the refugee camps for years, many aim to move on eventually. In a 2012 survey, RCK found that a minority of refugees in the camp (14%) would be willing to repatriate to Somalia. Most, however, dream of resettlement to a third country: a solution for only a few thousand every year.[100] The number of resettlement cases from Kenya and seems to be decreasing. Between 2007 and 2011 there were between 7,000 and 11,000 resettlement submissions annually, while 2012 witnessed just 3,239 submissions, with Somalia and Ethiopia as the major countries of origin and the US, Canada, the UK and Sweden as the major resettlement countries.[101]

Historically, UNHCR was not able to invest time and resources into urban refugees. It was also thought that this might encourage refugees to leave camps, putting even more pressure on overcrowded urban areas.

Urban refugees

Relocation in urban areas: Another option for refugees is to move towards urban areas in Kenya. The insecurity and poor protection in Dadaab causes many refugees with the necessary resources to leave the camps. Although they often have to deal with discrimination and police harassment, both on the way to urban areas and once they have settled in the city, Somalis still find ways to sustain themselves economically and to integrate.[102] For instance, a significant number of South Sudanese refugees and asylum seekers, some originally from Kakuma, reside in Eldoret and Kitale as well as parts of Nairobi. Many Somalis also reside in urban areas along the coast.

The exact number of urban refugees in Kenya is unknown. The Government of Kenya stopped registering refugees in urban areas in line with its December 2012 directive to en-force a refugee encampment policy.[103] According to UNHCR, as of April 2013, there were 52,107 refugees in Nairobi[104]. Other urban areas with substantial numbers of urban refugees are Eldoret, Kitale and Mombasa.

Migration of refugees to urban areas reflects a combination of both push and pull factors. Firstly, the situation in the camps has become increasingly difficult. At the same time, until it recently revised its position towards urban refugees through the 18th December 2012 directive, the Kenyan government supported UNHCR's urban refugee policy as the best way forward for those refugees able to sustain themselves and participate in the development of their communities. The policy underlines the perspective that cities are legitimate places for refugees to reside and exercise their rights.

Historically, UNHCR was not able to invest time and resources into urban refugees. It was also thought that this might encourage refugees to leave the camps, putting even more pressure on overcrowded urban areas. Since

100 RCK, 2012, p.11.
101 UNHCR, 2013c.
102 RCK, 2012, p.11.
103 RMMS, 2013a.
104 UNHCR, 2013c

early 2000, however, UNHCR has taken a more proactive approach and has sought partnerships with local governments and organisations to provide them with services and assistance. In 2009, UNCHR adopted a global policy on urban refugees which officially endorsed their work in Nairobi.

Authorities such as the Department of Refugee Affairs (DRA) have also been registering and documenting refugees in Nairobi and other towns since March 2011. As such, it can be deduced that DRA recognises de facto the legitimacy of refugees and asylum seekers in urban centres. The activities in Nairobi were used as a pilot for implementation of the global UNHCR policy, and as a result the relationship with and understanding of the growing urban refugee population has significantly improved.[105] Nevertheless, refugees - Somali in particular - still face many difficulties adapting to urban life and their continued marginalisation, as well as the risk of detection and abuse by authorities.[106]

Fuelling illegality: the impact of Kenya's encampment policy on irregular migration

With its official encampment policy, the Kenyan government tries to restrict movement of refugees out of Dadaab camps to urban locations (though the Refugees Act of 2006 does allow the DRA to issue movement passes to specific refugees or asylum seekers with valid reasons to travel outside of the designated area for a limited period of time).[107] All the same, the practical effectiveness of these restrictions is limited. Evidence suggests that a significant proportion of residents leave the camp on occasions.[108]

'Camp to urban' and secondary migration are in fact common among refugees, as indicated by the 'matatus' that shuttle between Dadaab and Nairobi. A significant number of Somali refugees migrate temporarily from Northern camps to Nairobi's Eastleigh district, indicating circular movement between Dadaab and Nairobi.[109] Refugees are thus able to travel out of Dadaab camp, with or without movement passes. Some pay organised smugglers to transport them to Nairobi, either by covert routes or with the collusion of bribed police officers. Some refugees reported that they paid public officials or police to escort them along these routes.[110]

An unfortunate side effect, then, of the unlawful restriction on freedom of movement of refugees/asylum seekers is that it has stimulated an imperfect and even corrupt system for obtaining permission to move. Many refugees, having left the camp without the necessary documentation, are exposed to the risk of police harassment and extortion: it has allegedly become an institutionalised practice among police in various points along the route to identify, stop and extort money from refugees on the move.[111]

Nevertheless, refugees - Somali in particular - still face many difficulties adapting to urban life and their continued marginalisation, as well as the risk of detection and abuse by authorities.

Return of refugees to Somalia

During 2012 about 5,000 individuals left Dadaab and returned to Somalia.[112] During January 2013, another 6,300 Somalis – mostly from Kenya, including migrants from urban areas - also returned to their home country.[113] The reasons for return not only included 'push' factors within

105 RCK, 2012, p.77.
106 Ibid, p.78.
107 Ibid, p.73.
108 39% of the longer-term residents of the camp interviewed by RCK in its 2012 survey said that they had left the camp at least once. This figure does not even reflect the numbers who left for destinations such as Nairobi, Eldoret, Kitale and Mombasa and never returned to the camp.RCK, 2012, p.73.
109 Sturridge, 2011.
110 RCK, 2012, p.74.
111 Ibid, p.74.
112 Ibid, p.86.
113 RMMS Monthly Summary January.

Kenya - poor security in the camps, the more hostile environment towards Somalis in general and the enforcement of the encampment policy towards urban refugees by the Kenyan government - but also the 'pull' of a more stable, although still fragile, security situation in Mogadishu. Nevertheless, the opportunities for a massive voluntary repatriation from the Dadaab camps to areas of South Central Somalia are still very limited. Moreover, it is not clear whether the returns are permanent relocations, go-and-see visits, or short-term trips for purposes of harvesting, planting and checking property.[114]

This movement does not necessarily represent a lasting reduction of the Somali refugee population in Kenya. According to UNHCR, the returnees to Mogadishu are mainly from the business community or people receiving remittances from overseas: it is possible that many of them were not registered with the government or UNHCR in Kenya as refugees. Furthermore, Somali refugees and asylum seekers may engage in circular movement between various locations in Somalia and urban/camp settings in Kenya. Consequently, many of them may later choose to return to Nairobi if conditions improve, particularly with regard to their security and freedom from harassment or extortion.

"It might be that people left for a short while. The security situation in Nairobi deteriorated; a lot of pressure has been put on Somali refugees by the effects of the Government Directive; approaching elections were also cause for concern. People may have left as a precautionary measure."

Interview with UNHCR, March 14, 2013

Rejected asylum seekers

The situation of rejected asylum seekers has been identified as one of the major mixed migration knowledge gaps in Kenya. Little is known about what happens to them following refusal, in part because of the lack of a formal response:

Somali refugees and asylum seekers may engage in circular movement between various locations in Somalia and urban/camp settings in Kenya.

"There is no response there. They may be rejected by UNHCR, as UNHCR handles the RSD in Kenya on behalf of all refugees, while working with the DRA to progressively and gradually hand over that responsibility. After that nothing happens. People continue to stay where they are."

Interview with UNHCR, March 14, 2013

The majority of the camp-based asylum seekers remain there if the application is refused. However, the fate of urban asylum seekers following refusal is unknown: it is in fact difficult to establish what happens to rejected asylum seekers. Though the Refugee Act of 2006 stipulates that they have to leave Kenya within 90 days, the majority remain in the country as long as possible[115].

"As long as they are not arrested, most continue to stay. A small number goes to Uganda to try and seek asylum. But the majority stays in the country, until detected by law enforcement officers".

Interview with RCK, March 15, 2013

UNHCR and IOM have prepared a joint proposal to seek funding for

114 RCK, 2012, p.86.

115 There are also reports of refugees from DR Congo who, having left Kenya after their second rejection, then subsequently return to make a new appeal. However, with UNHCR double registration is not possible due to the use of a finger printing facility to verify all new arrivals against existing records in their database.

the establishment of an Assisted Voluntary Return (AVR) programme to facilitate the return of pending and failed asylum seekers to their countries of origin.

The 'disappearance' of applicants during the asylum process

Another development, highlighted by UNHCR, is that a considerable number of refugees do not come to collect their documents (the Mandate Refugee Certificate issued by UNHCR) or fail to present themselves for the first instance RSD or appeals interview. These numbers while not large, are nevertheless growing. UNHCR is unaware of the reasons behind this, though various explanations have been advanced. The procedure takes too long, in particular in the camps where people sometimes have to wait for 18 months before their interview date.[116] Nairobi also has a long waiting period on the review of the first instance RSD interview: as a consequence, people may decide to move on or simply forget their appointment date. In addition, as the asylum climate in Kenya has deteriorated, many asylum seekers may have been encouraged to relocate elsewhere.

People may also come to Kenya with the idea of moving on to a third country, but choose to register in the meantime with UNHCR to secure legal residency in the country[117]. This allows them to stay in the country while their claim is being determined. For migrants with the intention of reaching South Africa, but who lack the money to cover the entire route, Kenya provides a rest stop as they seek means of financing the next step of their journey by earning some money or waiting for remittances to be sent from overseas. This reflects the lack of a legal and administrative framework for regular migration.[118]

Risks and protection issues

The risks for refugees and asylum seekers entering Kenya are numerous and include harassment and arrest by police, violence by criminal gangs, gender and sexual based violence (GSBV), trafficking, the threat of *refoulement* and Al Shabaab recruitment in and around the Dadaab refugee camp as well as the sprawling Eastleigh suburb in Nairobi. This section describes the risks on the road to the refugee camps, within the camps and in urban areas.

On the road

On 3 January 2007, Kenya officially closed the border between Kenya and Somalia at Liboi, along the main route from Somalia to Dadaab. Shortly thereafter, Amnesty International documented human rights violations resulting from and related to the border closure. Amnesty called on the Kenyan authorities to reopen the border and ensure respect for international refugee protection law, but this did not happen.[119] Since then, the 682 km long border has remained officially closed.[120] The abuses suffered by refugees range from killings by armed groups, looting and theft of personal property, to torture and rape at the hands of different armed groups.[121] In some cases, the border closure has given police the opportunity to send

For migrants with the intention of reaching South Africa, but who lack the money to cover the entire route, Kenya provides a rest stop as they seek means of financing the next step of their journey by earning some money or waiting for remittances to be sent from overseas.

116 In Dadaab, inhabited by mostly Somalis, the majority of residents are in fact recognised as prima facie refugees and so do not have to undergo an extended RSD process. Unlike the situation in Dadaab, however, many asylum seekers in Kakuma have to wait for protracted periods of time for their RSD interviews and de-cisions.
117 For example, the Mandate Refugee Certificate (MRC) issued by UNHCR or an asylum seeker's pass from DRA. Once they are recognised as refugees, they receive a Refugee Certificate / Refugee Identity Card.
118 Interview with UNHCR, March 14, 2013
119 Amnesty International, 2007, p.2.
120 RCK, 2012, p.33.
121 Amnesty International, 2007, p.9-10.

back groups to Somalia, breaching the fundamental principle of *non-refoulement*.[122] There have also been reports of harassment of refugees by the police in areas near the border.[123]

Another consequence of the border closure is that it takes refugees - whose influx has neither halted nor abated – much longer to reach Dadaab refugee camp. 61% of the respondents who had crossed the border since early 2011 in RCK's 2012 survey said that it had taken them two weeks or longer to get from the border to Dadaab. As a direct result of this, high numbers of children died within their first 24 hours in the camps in July and August 2011. Many of these children could have been saved, if they had received nutritional and health assistance at the border, and had been able to benefit from the transportation services that UNHCR and IOM stood ready to provide.[124]

It is unlikely that the border will be opened any time soon as the government wishes to maintain control over it for security reasons.

It is unlikely that the border will be opened any time soon as the government wishes to maintain control over it for security reasons. Nevertheless, in practice the border closure simply means that new arrivals are not documented. More important, then, than officially opening the border is the reestablishment of the screening centres. Many of those who moving on from the camps may face multiple arrests because of a lack of documentation, such as a movement pass.

"They get arrested and are charged with unlawful presence. They are reported to the DRA and classified as asylum seekers. But they can be stopped several times. No one will give you anything, no documentation. Often they are arrested several times. There is no communication between DRA's offices."

Interview with RCK, March 15, 2013

In the camps

In 2011 and 2012 the security situation in Dadaab deteriorated. Recent research by RCK showed that, across the four camps, 14% of respondents said that they had been exposed to GBV of one form or another. Another 31% said they knew of somebody else who had had such an experience. The majority (56%) of the respondents reported that they felt unsafe in the Daadab refugee complex: the primary security concerns among them were the increase in bombs and IEDs in the camps (23%), the presence of Al Shabaab elements (13%) and the perception that the police presence in the camps was insufficient (10%). However, another 11% considered the police themselves as a threat to the security of the camp population.[125]

The perception that the police can themselves pose a threat to refugees has been confirmed by other research.

The perception that the police can themselves pose a threat to refugees has been confirmed by other research. Human Rights Watch has documented a pattern of violent and indiscriminate responses by the Kenyan military and police to suspected militant attacks between November 2011 and March 2012. These involved arbitrary round-ups of large numbers of ethnic Somali Kenyans and Somali refugees, some of whom were subjected to severe mistreatment.[126] More recently, in December 2012, three explosions killed two police officers and triggered a brutal crackdown. Police officers descended on refugees' homes and market stalls, and over the next four days beat refugees, many of whom had to seek medical attention. There were allegations that police raped at least one refugee woman, and

122 RCK, 2012, p.38.
123 Ibid, p.36.
124 Ibid, p.34.
125 Ibid, p.10.
126 Human Rights Watch, 2012, p.1.

attempted to rape others. They also looted shops and stole money from refugees.[127] A member of parliament from Dadaab, Farah Maalim, told Human Rights Watch that the police "looted 38 million Kenyan shillings (about USD 450,000) worth of money and goods in a matter of hours."[128]

In the escalating conflict between Kenyan security forces and Al-Shabaab, refugees find themselves victimised by both sides. In January 2012, it was reported that several community leaders left Dadaab, fearing for their safety after the killing of two of their colleagues. The deaths came after an agreement by refugee leaders to start patrols in Dadaab following several roadside bombings. Police blamed the attacks on Al-Shabaab. One of the locals was quoted:

"It is not safe anymore to work as a leader during this critical situation. If you don't work with the police, the police will crack down, but if we cooperate, Al-Shabaab will target us".[129]

In urban areas

In November 2012 military and civilians in Garrisa town clashed, resulting in soldiers destroying a major market that was the source of livelihood for over 40,000 residents. The incident occurred after two army officers were killed in the town by suspected Al-Shabaab militants, causing the military to retaliate. In the same month, there were a series of deadly attacks in the Nairobi suburb Eastleigh, a neighbourhood largely inhabited by Kenyans of Somali origin, Somali refugees and Ethiopian immigrants. An attack on a passenger vehicle killed 10 persons and injured 25 others. This led to serious confrontations between the local community and persons of Somali origin, as well as widespread looting of shops and businesses in the area.

Since the beginning of 2012 there have been 24 serious grenade attacks targeting individuals in churches, mosques and public transport in major cities and towns in Kenya. This has fuelled increased tension between the local community and refugees, in particular towards the Somali minority, who are increasingly perceived as linked to extremism and insecurity.[130]Following these incidents, the Kenyan police have conducted massive police operations detaining and targeting illegal migrants. As a result, it has been estimated that close to 5,000 migrants left Nairobi and returned to Daadab or crossed the border into Somalia following the insecurity.[131] Almost 600 migrants were arrested and charged in November and early December in relation to the terrorist attacks. Accusations appear to be largely unfounded or indiscriminate. According to the local community, the migrant population were aiding and abetting Al Shabaab militants and sympathisers who were behind the deadly attacks. However, accusing migrants and refugees of disorder, health problems, crime and other social tensions or vices is a common practice in Kenya and elsewhere: it is important to note that no refugee or asylum seeker has been investigated or charged in relation to the security incidents in Eastleigh.

On December 18th 2012 the Commissioner of Refugee Affairs, in coordination with the Ministry of Internal Security and Public Administration, sought to reinforce a pre-existing encampment policy by issuing a directive requiring all refugees living in urban areas to return to refugee camps.

The securitisation of Kenya's new encampment policy

On December 18th 2012 the Commissioner of Refugee Affairs, in coordination with the Ministry of Internal Security and Public Administration, sought to reinforce a pre-existing encampment policy by issuing a directive

127 Human Rights Watch, 2012, p.40-41.
128 Human Rights Watch, 2012, p.40-41.
129 Reliefweb, 2012.
130 RCK, 2012, p.88.
131 IRIN, 2012d.

requiring all refugees living in urban areas to return to refugee camps[132]: Somalis were ordered to return to Dadaab and all other nationalities to Kakuma with immediate effect. The directive issued in December immediately suspended all registration and service provision to refugees and asylum seekers in urban areas.[133] UNHCR and all other agencies were also required to halt their assistance in urban areas and transfer it to the camps.

The directive has had a direct impact on the protection environment for refugees and asylum seekers: more generalised incidents of insecurity and harassment by police and criminal gangs have been documented since the directive was announced, including door to door house raids, arbitrary arrests and the extortion of money.

This new policy was heavily motivated by security concerns and the increasing tensions between refugee and host communities following the attacks. In the process, the protection and wellbeing of refugees and asylum seekers became a secondary concern. A leaked letter from the Ministry of Internal Security addressed to the Ministry of State for Special Programmes indicated that refugees would be moved to the camps in the Northern part of the country and then onward to Somalia.

The directive has had a direct impact on the protection environment for refugees and asylum seekers: more generalised incidents of insecurity and harassment by police and criminal gangs have been documented since the directive was announced, including door to door house raids, arbitrary arrests and the extortion of money. A recent IRIN article reported that community leaders, who have been in Nairobi for years, were feeling helpless since the directive.

"They regularly experience abuse, mainly extortion by security forces who detain them and ask for bribes since the directive. The bribes have gone up from about 500 shillings (USD 5.70) to 40,000 (USD 458), 60,000 (USD 687) and even up to 100,000 (USD 1145)."[134]

The encampment policy has effectively empowered Kenyan security services to unleash a wave of abuse against refugees. Refugees International has described incidents of refugees being hit in the face and large amounts of money and property taken from them. Many stories have also been collected of refugees being forced to pay bribes of up to USD 2,200 to secure the release of family members from police custody.[135] It has also impacted on the ability of refugees to move freely.

"There has been a lot of police harassment. The police did not understand which documentation refugees should have, they did not understand whether they are supposed to be moving around or not. That was a major problem for refugees, to the point where they could not just walk around freely."

Interview with IRC, March 21, 2013

Since the directive was issued, there have been three allegations of rape against members of security services. Identity documents, issued by UNHCR and the Kenyan government were reportedly disregarded, confiscated or destroyed by security services, effectively leaving refugees/asylum seekers with little or no legal protection. As a result of their weakened status, refugees are also less able to rely on police assistance:

132 Though according to UNHCR statistics there are between 52,000 and 56,000 registered urban refugees, it is estimated that the number of non-registered asylum seekers and undocumented refugees is over four times this figure.
133 Refugee International, 2013.
134 IRIN, 2013b.
135 Refugee International, 2013.

"We had one case that was reported. One of the premises was broken in to, items being stolen. When the refugee went to report this to the police, the police said: well, the government has been saying you should go back to the camp and therefore we cannot assist you."

Interview with IRC, March 21, 2013

According to a report released on the 29th May 2013, Human Right Watch claimed Kenyan police in Nairobi tortured, raped, and otherwise abused and arbitrarily detained at least 1,000 refugees between mid-November 2012 and late January 2013. They called on Kenyan authorities to open an independent public investigation, and the United Nations refugee agency – which they claimed had not spoken publicly about the abuses – should document and publicly report on any future abuses against refugees.[136] Many observers believe that the large Somali refugee/asylum seeker community is the intended primary target of the directive. However, the directive has also had a negative impact on refugees of other nationalities, who are now facing increasing xenophobia, limited protection and reduced asylum space in urban areas. For instance, Refugee International has recorded stories of Congolese being forced off public minibuses by operators who said they were "not supposed to be in Kenya anymore".[137] The directive has also had a great impact on the secondary movement of people with or without protection needs.

"In the aftermath of the directive, people have been on the move. To what extent, or where? We do not know. Few cases of self-relocations to Tanzania and Uganda were reported. If the government will implement the directive, from the signals we are getting from the refugee population at this time and when things were harsh, they say: we will not go to the camps. No, we move on."

Interview with UNHCR, March 14, 2013

The court is yet to rule on the constitutionality of the Directive and whether Kenya is in conflict with its international obligations

Current state of encampment policy

The government planned to start relocating urban refugees on 21 January 2013, according to a leaked letter from the Ministry of Internal Security to the Ministry of Special Programmes. However, the directive was stayed by the High Court of Kenya on 23 January, following a petition filed by Kituo cha Sheria, a legal aid organisation in Nairobi advocating for the rights of refugees. The court is yet to rule on the constitutionality of the Directive and whether Kenya is in conflict with its international obligations[138]: in the meantime, a conservatory order is in place restraining the government from implementing the directive. Abuses by security services are reported to have reduced to some extent since the suspension of the directive[139].

The announcement nevertheless had an effect on urban refugees. Besides the situation described in the previous section, some refugees opted to leave the country and return to Somalia or Kampala. UNHCR has not recorded increased movement to the camps, although they admitted it was difficult to monitor such movement because migrants may just move back to Dadaab and rejoin their families. Similarly, Kakuma has not witnessed the return of urban refugees. According to UNHCR, there was less pressure on other nationalities to leave urban areas compared to that placed on Somali refugees.[140]

136 Human Rights Watch 2013c.
137 Refugee International , 2013.
138 The order was extended to 21 March 2013 and then 5 April, when the matter is scheduled for mention and further direction. RMMS, 2013d.
139 Refugee International, 2013.
140 Interview with UNHCR, March 14, 2013.

Since the High Court proceedings were instituted, the situation in refugee hosting areas, especially those populated by Somalis and asylum seekers, has stabilised. Nevertheless, it will take time to recover former levels of refugee protection:

"At this point in time, things are more or less back in terms of provision of services. But in terms of registration, documentation, personal security... People don't have access to registration, to documentation. We still receive reports of instances of harassment, bribery, distortion of financial means from refugees. It will take quite a long time to rebuild the program to what it was by the end of 2012, irrespective of the outcome of what the court will decide."

Interview with UNHCR, March 14, 2013

"Urban refugees are a section of migrants that are seriously misunderstood, both by the government and the donor community. Urban refugees are real, they are there in thousands of numbers. And they are in serious need."

For instance, schools were reportedly not yet aware of the court order to stop relocations: according to a RCK representative, "schools were saying to refugee children: what are you doing here, you should be in the camps".[141] The issue has since been addressed and most refugee children are going back to school. Nevertheless, the Somali school population has been decreasing since December 2012 and numbers were still reducing in March 2013.

The directive has also left a vacuum in the protection context for refugees and asylum seekers, made worse by the high level of uncertainty. Previously, the DRA operated offices in five Kenyan cities to register refugees: Nairobi, Mombasa, Nakuru, Isiolo and Malindi. While the DRA's capacity building was ongoing in terms of the quality of registration and procedural standards, there was nevertheless acceptance by the government that refugees should be allowed to reside in urban areas and be assured relevant documentation pending recognition. The environment has since changed and it may be a while before it is restored: according to one UNHCR representative, "it will take years to come back to that kind of situation".[142] This has made the need for a positive government response, respecting the rights and protection needs of refugees, all the more urgent.

"We need to do a lot of advocacy to the government. To help them realise that some of the problems they attribute to refugees are actually part of the system. Having reception points, then we would be aware of who comes in and gets out of Kenya, who needs to be given asylum and who needs to be deported. That would help in addressing refugee issues in total. And not only refugees, also economic migrants. For us, we come from the perspective of human rights. For them, they come from a perspective of national security. If we are able to merge the two, then we reach a common ground."

Interview with IRC, March 21, 2013

According to the International Rescue Committee IRC, there is a general lack of understanding about protection and assistance of urban refugees. IRC works with partners in the Urban Refugee Protection Network and operates a number of protection and reception centres in Kenya, for example in Nairobi's Eastleigh area, where IRC has served over 4,000 refugees since 2011.

141 Interview with RCK, March 15, 2013.
142 Interview with UNHCR, March 14 2013.

"Urban refugees are a section of migrants that are seriously misunderstood, both by the government and the donor community. Urban refugees are real, they are there in thousands of numbers. And they are in serious need. When we are talking about urbanisation, why do we exclude refugees?"

Interview with IRC, March 21, 2013

Funding for projects focused on urban refugees is also a challenge, particularly as donors are more focused on funding emergency projects and the refugee camps. Moreover, as IRC's urban projects also incorporate the host community, their programmes may not always fit neatly into donor refugee-focused strategies. The key issue in programming for urban refugees is development and integration, rather than short term or emergency assistance, and this is reflected in IRC's work:

"Part of what we do in the urban centres is on development and having durable solution. Helping refugees integrate in the local community."

Interview IRC, March 21, 2013

Unaccompanied and separated migrant children in Nairobi

One important area of concern is the many unaccompanied and separated migrant children in Nairobi[143]. Though the situation is not as drastic as in Kakuma, there is nevertheless a steady flow of unaccompanied children from South Sudan and DR Congo. 498 unaccompanied and 201 separated children are registered in the UNHCR database: UNHCR and partners have initiated the BIA (450) and BID (80) processes for a number of children.[144] However, the true extent of the problem in Nairobi is likely to be higher, given that many separated children may not be registered. In addition, UNHCR only recently begun to capture the vulnerability of this category of migrants in their data collection. The situation of these migrants may have become more aggravated following the government directive to suspend registration and provision of services to refugees/asylum seekers in urban areas.

"We track unaccompanied children with partners to the extent possible. But we do not have a resource to systematically follow up on these cases. The majority of the partners, both implementing and operational, would focus on unaccompanied and to some extent on separated children, but not in a systematic way. There is a gap in terms of assistance and protection delivery."

Interview with UNHCR, March 14, 2013

Migrants can languish in jail for between three to eight months without being charged because they do not understand the language and thus do not understand the charges against them.

According to the Legal Resource Foundation, an organisation that provides legal aid to prisoners, migrants have a particularly difficult time when they are arrested without documentation. Migrants can languish in jail for between three to eight months without being charged because they do not understand the language and thus do not understand the charges against them.[145]

Kituo cha Sheria, a NGO established by a group of lawyers focusing on justice and the human rights of poor marginalised people, received 93

143 Interview with UNHCR, March 14, 2013.

144 The Best Interest Assessment (BIA) is a case management tool used by UNHCR and partners to identify and address the immediate needs of the child. A Best Interest Determination (BID) is a tool that builds on the BIA in certain circumstances, for instance, when withdrawing a child from their care giver as a result of abuse, or where avenues for family reunification are being pursued. UNHCR Branch Office Nairobi, May 2013.

145 RMMS, 2013b.

cases of arbitrary arrest of asylum seekers and refugees charged with unlawful presence between January and June 2012. Among them, 73 were discharged: the others, mainly Ethiopians, remained in detention because they identified themselves as economic migrants and not asylum seekers. In recent months there have been several arrests of migrants. For example, in September 2012 UNHCR reported that 17 migrants were held at a police station in Nairobi industrial area for more than 3 months, prior to deportation, with no beds, food and inadequate facilities.[146]

Following the various arrests of migrants, and their subsequent arraignment in court, UNHCR intervenes and secures the release of those who were registered as asylum seekers or recognised refugees, predominantly Somalis.

The 2011 Refugees Bill - the legislation replacing the Refugees Act 2006 - is currently under consideration. The Commission for the Implementation of the Constitution (CIC) has been leading the process and several partners have been actively involved in consultations relating to the bill.

Response

Institutional and legal framework

In November 2006, the Refugees Act 2006 was passed by Parliament, and in December 2006 received presidential assent. The Act commenced on 15 May 2007 and has since determined the government response, at least officially, to refugee matters. The Act provides a number of important functions, including:

- ***Formal control:*** It allowed the Kenyan government to formally assume overall responsibility for the management of refugee matters through the creation of an institutional framework, including the administrative processes on RSD.

- ***An overarching framework:*** The law was also to serve as a guide to all stakeholders on how to deal with refugee matters in Kenya.

- ***Classification:*** In its definition of a refugee, the Refugees Act categorises refugees as either statutory or prima facie. With regard to statutory refugees, the Act adopts the definition from the 1951 Convention with the addition of sex as a ground for persecution. The definition of a prima facie refugee follows the expanded refugee definition under Article I (2) of the 1969 OAU Convention.

- ***Institutional coordination:*** The Act established the Department of Refugee Affairs (DRA) within the Ministry of State for Immigration and Registration of Persons and replaced the Refugee Secretariat which had been set up under the Ministry of Home Affairs. The DRA is headed by a Commissioner of Refugees and is charged with overall responsibility for all administration, coordination and management of refugee matters.[147]

Despite the formal framework of the 2006 Refugees Act, Kenya's practice in this area, in particular towards Somali refugees, has not always been in line with the law. According to RCK, there are some key aspects of the law which have not been put into policy or practice, and are therefore limiting the practical protection of refugees. Examples are restrictions on the rights of refugees to movement and place of residence, the closure of the Somalia/Kenya border and the current suspension of registration in the

146 Information from the Kenya Mixed Migration Task Force (KMMTF), 2012..
147 RCK, 2012, p.21

Dadaab camps.[148] More-over, Kenya applied measures which are contrary to the conventions and to the law. For example, in July 1993, Kenyan government authorities in Mandera forced back across the border about 1,300 Somali refugees at gunpoint. Nevertheless, such *refoulement* is not widely reported.[149]

There are also continued gaps in the capacity and autonomy of the DRA.[150] Though targeted training of law enforcement officials as well as officers from the DRA has been conducted, the DRA requires substantive restructuring to include a sound middle management structure for effective decision making. At present, the DRA is managed 'top down' within a very hierarchical structure.

Another important gap with regard to refugees is their difficulties in securing legal employment. IRC has advocated with government agencies on this issue: by law, refugees are entitled to work permits without payment.

"It is provided in law, that refugees can get access to a work permit with any payment. But what we realised is that refugees do not access this right, because of a lack of information."

Interview with IRC, March 21, 2013

The 2011 Refugees Bill - the legislation replacing the Refugees Act 2006 - is currently under consideration. The Commission for the Implementation of the Constitution (CIC) has been leading the process and several partners have been actively involved in consultations relating to the bill. According to RCK, the first draft was far from satisfactory: it subsequently went through a second stakeholder consultation in the last quarter of 2012. This is expected to be presented to and passed by the 11th parliament, which was officially opened in April 2013.

Nevertheless, even now the bill includes a number of proposed changes that refugee advocates see as potentially restrictive to the current asylum climate.[151] One concern is the changed time line for arriving asylum seekers to present themselves to relevant authorities: previously the stipulation was within 30 days, but in the new bill it is proposed that new arrivals must present themselves as soon as possible, and without unreasonable delay. This leaves too much room for interpretation by the individual case officer[152].

The draft Bill also threatens to restrict the rights of refugees and asylum seekers in the country.[153] This is especially the case with regard to movement and place of residence. Currently, the place of issue is indicated in the refugee identity document: under the new bill, this will be the refugee's place of residence. Given the already serious restrictions on movement and the abuse of many refugees in the exercise of this freedom, the provision may further limit their rights.[154]

"The 2011 Refugee Bill is worse than the 2006 Refugee Act. The gains that have been made are negated by the 2011 Bill, especially in terms of employment. There is now the Citizenship and Immigration Act and The

148 RCK, 2012, p. 88.
149 See Okoth-Obbo G., 2011, as cited in: RCK, 2012, p.26.
150 RCK, 2012, p.10.
151 RCK, 2012, p.30.
152 Interview with RCK, March 15, 2013.
153 RCK, 2012, p.10.
154 RCK, 2012, p.31.

Foreign Nationals Management Service Act that negates some of the gains of the Refugee Act. They are conflicting. The Citizenship and Immigration Act does not talk about refugees, but about foreigners, which includes refugees. If they are defined as foreigners they might not be allowed to access some of the rights that were in the 2006 Act."

Interview with IRC, March 21, 2013

Non-state actors' response

Various agencies, such as UNHCR, Human Rights Watch, Refugee International and Kituo cha Sheria, have raised concerns about the impact of the encampment policy on protection and human rights of urban refugees. Human Rights Watch has argued that the plan violates free movement rights. It would almost certainly involve unlawful forced eviction of tens of thousands of refugees from their lodgings in the cities.[155] UNHCR, having sought to be allowed to file its brief as Amicus Curiae (friend of the court), had its request granted by the High Court of Kenya. It has since submitted a brief to the court that reflects on the directive from the perspective of regional and international refugee protection law, particularly the 1951 Refugee Convention and its 1969 Protocol.[156]

One positive response is the weekly coordination meetings set up by the Urban Refugee Protection Network to exchange information, monitor and ensure interventions for urban based refugees and asylum seekers. Within the context of this mechanism, chaired by UNHCR and embracing national and international organisations working with urban refugees, appropriate measures for intervention have been crafted and executed.

Many different agencies work on refugee/migrants assistance in Kenya, each with its own focus corresponding to its mandate or mission. Besides UNHCR, which plays a leading role, other international organizations such as IOM, international NGO's such as International Rescue Committee, Norwegian Refugee Council, and Danish Refugee Council as well as local NGO's such as Kituo cha Sheria (focusing on refugee rights). Despite being overwhelmed by the numbers of refugees/migrants needing assistance agencies provide those they can with assistance including legal aid and representation, livelihood opportunities, micro-finance, medical assistance, shelter, education, safe houses and family reunification.

155 Human Rights Watch, 2013b.
156 RI, 2013.

3.4 Trafficked migrants

Overview

trafficked migrants

According to the US State Department's *Trafficking in Persons Report 2012*, Kenya is a source, transit, and destination country for men, women, and children subjected to forced labour and sex trafficking.[157] Internal trafficking within Kenya is reportedly more prevalent than international trafficking of Kenyans outwards or other nationalities inwards.

People who are trafficked internally and internationally, and those who are smuggled across borders, all form part of Kenya's mixed migration flows. However, it is useful to distinguish between trafficking and smuggling as the terms are often used interchangeably when in fact there are important differences between them.[158] According to UNODC, there are three basic differences between trafficking and smuggling.[159] These relate to the transnational characteristics of the two activities, the source of profit the exploitation of the person through some form of labour or modern day slavery in the case of trafficking, facilitating the passage of the migrant in the case of smuggling - and the role of coercion and deceit (though explicitly present in trafficking, smuggling normally begins through consensual agreement between the smuggler and the migrant 'client'). In addition, smuggled migrants always cross borders irregularly or without proper documentation. Trafficked persons, on the other hand, may migrate regularly and possess for a time the necessary legal status to remain in their countries of destination.

Trafficked and smuggled migrants may face similar mistreatment, abuse and coercion, however, particularly during their journey. Increasingly, smuggled migrants are treated as exploitable commodities by smugglers, certain state authorities and criminals. They may also transmute into victims of trafficking at the hands of smugglers or criminals who take advantage of their irregular legal status in the country of destination. As such, the definitions and differences are increasingly becoming blurred, as was described in the section on smuggling.[160] UNODC illustrates this as follows: some trafficked migrants may start their journey by agreeing to be smuggled into a country, but then find themselves deceived, coerced or forced into an exploitative situation later in the process.[161]

According to the US State Department's Trafficking in Persons Report 2012, Kenya is a source, transit, and destination country for men, women, and children subjected to forced labour and sex trafficking.

157 US Department of State, 2012, p.205.

158 The United Nations Convention Against Transnational Organised Crime, in force since 2003, is the main international instrument addressing international criminal activities. The Convention has two protocols: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Palermo Protocol) and the Protocol Against the Smuggling of Migrants by Land, Sea and Air. These Protocols provide the internationally recognised definition of trafficking and smuggling respectively. Human trafficking is de-fined as: "[T]he recruitment, transportation, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation." Smuggling, according to the Protocol, "shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident".

159 UNODC, 2010.

160 For a more detailed account, see the recent RMMS publication on migrant smuggling in the Horn of Africa and Yemen.

161 UNODC, 2010.

There is reportedly a growing demand for children for commercial sexual exploitation and sex tourism in Kenya.

Smuggling or trafficking? The three important distinctions

Exploitation: The primary source of profit for traffickers in persons is exploitation, while smugglers do not generally intend to exploit the smuggled migrant after having enabled him or her to irregularly enter or stay in a country. The relationship between smuggler and smuggled migrant usually ends after the procurement of illegal entry or residence and smugglers are often paid in advance. In contrast, in trafficking the exploitation phase may last several years.

Illegal entry or residence: Smuggling of migrants always has a transnational dimension involving at least two countries. The objective is always to facilitate illegal entry or stay from Country A into Country B. Trafficking in persons may also involve this, but not always. Transportation can also occur in a legal way and trafficking often occurs within the home country of the victim, without crossing borders.

Victimisation: Smuggling does not necessarily involve the victimisation of the smuggled migrant and it generally involves the consent of the smuggled migrant. Trafficking in persons is always a crime against a person. Victims of trafficking have either never consented or, if they have initially consented, this was through deception, intimidation or the other means traffickers use to gain control. However, it is important to note that during the smuggling process other crimes are often committed against smuggled migrants, such as violence or crimes endangering their lives.

Trafficking of children within Kenya

The practice of what would can be classified by international standards as 'child trafficking' within Kenya is widespread and deeply rooted in some communities. Traffickers gain poor families' trust through familial, ethnic, or religious ties, then falsely offer to raise and educate children in towns or to place adults in lucrative employment. Kenyan children are forced to labour in domestic service, agriculture, fishing, cattle herding, street vending, begging, and the sale of illicit brews. Children are also exploited in the Eastern qat cultivation areas, near Nyanza's gold mines and in prostitution throughout Kenya, including in the coastal sex tourism industry.[162] There is reportedly a growing demand for children for commercial sexual exploitation and sex tourism in Kenya.[163]

Migration to urban areas for employment has led to the breakdown of nuclear and extended family systems, putting children at particular risk of exploitation. In addition, approximately 1.8 million children in Kenya are orphans - 90,000 of them due to the HIV/AIDS epidemic. These children must fend for themselves and are easy prey for traffickers.[164]

Trafficking even goes beyond children: there are reports of babies being trafficked. A trafficker arrested in September 2010 was transporting ten children: five boys and five girls aged between ten months and ten years.[165]

Trafficking into Kenya

East Africa witnesses significant cross-border movement for domestic labour, both male and female, and prostitution. Women are trafficked

162 US Department of State, 2012, p.205.
163 Solidarity Center, 2007, p.13.
164 Solidarity Center, 2007, p.13.
165 Gastrow, 2011, p.6.

from Burundi and Rwanda to Kenya's coastal areas for exploitation in the growing sex tourism industry. Some of them work in massage parlours, where they are coerced into bonded labour in prostitution for provision of "escort services."[166] Children from Burundi, Ethiopia, Somalia, South Sudan, Tanzania, and Uganda are subjected to forced labour and prostitution in Kenya:[167] refugee children from Ethiopia and Somalia are particularly vulnerable to trafficking.[168]

trafficked migrants

According to the IPI, Mombasa and the Eastleigh district in Nairobi constitute East Africa's hub for the smuggling of migrants as well as for the trafficking of women and children for prostitution, the sex industry, and other forms of forced labour. In 2011 this practice continued to grow in Kenya and it was estimated that on average 50 girls, mainly from Somalia, were being trafficked every week from North Eastern Kenya to Nairobi. In Mombasa, young girls between the age of ten and fifteen were being sold into virtual slavery in the sex industry at a fee of about USD 600.[169]

Vehicles transporting qat to Somalia return to Kenya carrying Somali girls and women who often end up in brothels in Nairobi or Mombasa. Both women and beach boys as young as fourteen pimp children in coastal areas and receive commissions as high as USD 240 from tourists for each girl secured.[170] Kenya also serves as a transit route for Ethiopian women trafficked to Europe and the Middle East, Somalis trafficked to South Africa, Chinese women trafficked for sexual exploitation and Bangladeshis trafficked for forced labour.[171]

Trafficking out of Kenya

Trafficking often begins with voluntary migration on the part of the victim, though usually on a false pretext and through the manipulation of a trafficking ring. Kenyan men, women, and children migrate to other East African nations, South Sudan, Europe, the United States, and the Middle East in search of employment, where they are at times exploited in domestic servitude, massage parlours, brothels or forced manual labour, including in the construction industry.[172]

In a 2008 IOM study, 86% of the Kenyans interviewed said a person or organisation persuaded them to go by making promises. A small number mentioned force or the threat of force (5%) or family arrangement (9%).

Most of the Kenyan trafficking victims seem to be lured by the promise of good jobs.[173] In a 2008 IOM study, 86% of the Kenyans interviewed said a person or organisation persuaded them to go by making promises. A small number mentioned force or the threat of force (5%) or family arrangement (9%).[174] Interviewees in a study by the Solidarity Center told of traffickers or their agents luring them with offers of marriage and job opportunities that disappeared once the victims arrived at their destinations, where they were forced into unpaid labour and/or prostitution and often sexually abused.[175]

We heard of Kenyan women who were recruited to work in export processing zone factories in Uganda, which were flourishing with the

166 Solidarity Center, 2007, p.9.
167 US Department of State, 2012, p.205.
168 Tostensen, Stokke, Trygged, and Halvorsen, 2011, p.134.
169 Gastrow, 2011, p.6.
170 US Department of State, 2012, p.205.
171 IOM, 2008, p.14.
172 US Department of State, 2012, p.205. The main destination countries for Kenyan trafficking victims are Australia, Europe, the Americas (the United States, Canada, and, to a limited extent, Latin America), other African countries outside East Africa (Botswana and South Africa), and the Middle East/Gulf countries. The main destinations in Europe are the United Kingdom, Italy, Portugal, Spain, the Netherlands, and Germany. The main destinations in the Middle East include Kuwait, Saudi Arabia, United Arab Emirates (UAE), Lebanon, and Bahrain. Solidarity Center, 2007, p.9.
173 Solidarity Center, 2007, p.5.
174 IOM, 2008, p.44.
175 Solidarity Center, 2007, p.5.

implementation of the African Growth and Opportunity Act (AGOA). Once in Uganda, many of these women were vulnerable to being trafficked for forced and other exploitative labour, including the sex trade. The women were particularly defenceless because of their migrant status and often left feeling hopeless. With the lack of adequate labour law protections in Uganda, they had little recourse. Anecdotal evidence indicates they endured confiscation of their passports, confinement, physical violence, sexual assault, and debt bondage.[176]

Some Kenyan migrants who travel to the Gulf States as regular labour migrants end up in exploitative working conditions in what is effectively de facto trafficking.

Trafficking of Kenyans to the Gulf States has received particular attention recently. In 2012, the Kenyan media published several reports and accounts of Kenyans being effectively trafficked to Gulf States with the promise of well-paying jobs, mostly in the domestic sector. Once they arrive, however, victims were subjected to cruel and degrading treatment, long working hours and a salary far lower than originally promised. There have also been accounts of gay and bisexual Kenyan men being lured from universities with promises of overseas jobs, then forced into prostitution in Qatar.[177]

As described in the introduction, some Kenyan migrants who travel to the Gulf States as regular labour migrants end up in exploitative working conditions in what is effectively de facto trafficking. An international human trafficking ring is reportedly working with employees of some embassies in Kenya to recruit unsuspecting Kenyans into forced labour in the Middle East.[178] Kenyans are lured by placing advertisements for well-paying job opportunities in the UAE, Saudi Arabia, Qatar or Kuwait in local newspapers. Young men and women, some of them university graduates, apply for the jobs and pay travel and contract processing fees, only to be recruited as domestic workers and labourers.[179]

Determining the difference between smuggling and trafficking

Smuggling and trafficking, while distinct practices, have become increasingly blurred. As a result, classification of individual cases can be problematic. The Solidarity Center and International Catholic Migration Commission (ICMC) have therefore developed a tool, based on the UN Protocol, for analyzing individual cases to determine whether or not they constitute trafficking. For a situation to be trafficking, it must have one of the elements within each of the three criteria of process, means and goal:[178]
Process: *recruitment, transportation, referring, harbouring, receiving*
Means: *threat, coercion, abduction, fraud, deceit, deception, abuse of power*
Goal: *prostitution, pornography, violence or sexual exploitation, forced labour, involuntary servitude, debt bondage (with unfair wages), slavery or similar practices*

Kenyans duped into abusive employment in Saudi Arabia and other Gulf States therefore represent clear cases of human trafficking. Crucially, there is recruitment *(process)*, deception *(means)* and exploitation, forced labour or involuntary servitude *(goal)*.

Risks and protection issues
While protection issues regularly occur with all forms of irregular migration, the risks and intimidation suffered by victims of trafficking are constant

176 Solidarity Center, 2007, p.2.
177 US Department of State, 2012, p.205.
178 For instance, there have been reports that officials at the Saudi Arabian embassy in Nairobi allegedly collude with recruitment agents to place Kenyans into situations of forced labour in Saudi Arabia. US Department of State, 2012, p.205.
179 Daily Nation, 2012a.
180 Solidarity Center, 2007, p.6.

and especially acute. Human rights abuse, child labour, sexual exploitation, modern slavery and even torture are intrinsically related to the condition of being trafficked.

Trafficking has a devastating impact on victims that remains with them long after their trafficking experience. Each stage of the process, from recruitment and transit to destination and return, carries a range of associated physical and psychological risks. These include substance abuse as a means of coping with their situation or as a result of coercion by the trafficker, beatings, sexually transmitted diseases (STDs), rape, diseases, accidents, denial of food, physical abuse, inhumane treatment, depression and trauma.[181] Victims in some instances have been repeatedly sold and exploited. Many do not have legal status to remain in their countries of destination and may be treated like criminals upon detection by relevant authorities. In addition, they experience difficulties in reintegration upon return to their country of origin. Some victims face stigmatisation for having nothing to show for their stay away from home, and the degrading acts they may have engaged in under the control of their traffickers.

trafficked migrants

Response

Counter-Trafficking in Persons Act

The Kenyan government passed the Counter-Trafficking in Persons Bill in 2010, with stringent punishments for those involved in such crimes. Furthermore, the Sexual Offences Act 2006 prohibits child sex tourism and prostitution, although these have not been widely used by lawyers. Civil society organisations (CSOs) lobbied extensively for the trafficking bill. However, the first draft was not in line with the Palermo protocol: this was subsequently revised by IOM, the government and CSOs. It finally became operational in October 2012, though implementation challenges remain:

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"Judges, police, prosecutors, etc. are not trained to use it yet. There have been hardly any convictions. The law is comprehensive. But having a law is one thing, implementing it is another. The biggest challenge now is that the people who have to use it, understand what is it is. They should be made to understand it, through training."

Interview with IOM, March 14, 2013

"Implementation of the act itself has not really taken place. No matter what type of case, as long as you are a foreigner, the police always fall back on immigration laws, on unlawful presence. The act is not really implemented."

Interview with RCK, March 15, 2012

181 IOM, 2008, p.63.

Protection of children

According to the US Department of State, Kenya is making significant efforts against trafficking and has taken steps to enact comprehensive anti-trafficking legislation. It has also developed programs to help victims, both in term of physiological rehabilitation and in the provision of legal representation, especially with regard to children. During the reporting period of the 2012 TIP report, the government's children's officers continued efforts to identify and protect child trafficking victims throughout the country.[182]

A study commissioned by SIDA, the Swedish International Development Cooperation Agency, concluded that the legal and policy framework with regard to child rights in Kenya has improved tremendously in recent years.

A study commissioned by SIDA, the Swedish International Development Cooperation Agency, concluded that the legal and policy framework with regard to child rights in Kenya has improved tremendously in recent years. Although not attributable to the interventions of specific donors, the report concluded that the donor community had contributed significantly to that achievement, in conjunction with the government of Kenya and Kenyan civil society organisations.[183]

A number of other developments have also indicated an ongoing commitment to victim assistance and the prosecution of traffickers, including the continued operation of a child trafficking helpline, limited repatriation of victims of domestic servitudes from Saudi Arabia and the conviction of two foreign paedophiles.[184]

Gaps in fighting trafficking

Although the government successfully prosecuted two cases of trafficking in the past year, given the high volume of migration and alleged trafficking that takes place in its territory, this represents only a small portion of the offenders operating in the country. The government also held few child trafficking offenders accountable for their crimes, in comparison to the significant number of child trafficking victims identified.[185]

Official corruption makes it easy for trafficking agents and unsuspecting victims to obtain travel documents, including registration of false marriages to aid acquisition of passports.

As a result, despite passing the *Counter-Trafficking in Persons Bill*, the Government of Kenya has been placed on the US Department of State's Tier 2 Watch List: it judged that Kenya has not shown evidence of increasing efforts to combat human trafficking, nor does it fully comply with the minimum standards for its elimination. The government's efforts remain uncoordinated and lack strong oversight, creating an environment conducive to trafficking.[186]

In particular, Kenya has yet to take tangible action against the complicity of law enforcement personnel in trafficking.[187] Official corruption makes it easy for trafficking agents and unsuspecting victims to obtain travel documents, including registration of false marriages to aid acquisition of passports.[188] The Office of the Registrar of Societies also inconsistently registers employment bureaus, which contribute to human trafficking by advertising fake jobs.

182 US Department of State, 2012, p.205.
183 Tostensen, Stokke, Trygged, and Halvorsen, 2011, p.152.
184 US Department of State, 2012, p.205.
185 US Department of State, 2012, p.205.
186 These shortcomings include the government's failure "to fully enact its anti-trafficking law's implementing regulations, finalise its national plan of action, take tangible action against trafficking complicity among law enforcement officials, provide shelter and other protective services for adult victims, take concrete action against alleged incidences of child sex tourism, monitor the work of overseas labour recruitment agencies, or provide adequate anti-trafficking training to its officials, including diplomats, police, labour inspectors, and children's officers." US Department of State, 2012, p.205.
187 US Department of State, 2012, p.205.
188 Solidarity Center, 2007, p.13.

A non-governmental response to human trafficking – IOM's approach

Several NGOs, such as HAART and Heshima, work with victims of trafficking. IOM has a department working on anti-trafficking. Since 2005, IOM has been managing a project, 'Countering Human Trafficking in Kenya', consisting of capacity building, awareness raising and assistance to victims.[187] The project has six components:

Legislation: An anti-trafficking bill was tabled in parliament as a private member's bill and passed by parliament in July 2010.

Awareness: Knowledge and understanding about trafficking was initially low. It has improved, however, as a result of deliberate efforts at the institutional level to train relevant actors and engage in community outreach activities in different parts of the country.

Policy development: The project contributed to the preparation of the National Plan of Action, which was drafted in 2007.

Coordination: A counter-trafficking network has been set up, comprising government institutions, CSOs and community-based organisations.

Direct assistance: Up to 20 cases (half of them children between 13 and 17 years of age) were provided with a range of services, including shelter, medical care, psycho-social support, vocational training and family reunification.

Capacity building: IOM helped increase the capabilities of the Government of Kenya in managing its labour migration practices in order to prevent labour-related trafficking.[188]

Another IOM project is focused on enhancing protection and assistance for vulnerable women, girls and boys among IDPs, pastoralist and peri-urban migrant communities. The project consists of information dissemination, psychosocial assistance and capacity-building of national institutions.[189]

189 Tostensen, Stokke, Trygged, and Halvorsen, 2011, p.134
190 Tostensen, Stokke, Trygged, and Halvorsen, 2011, p.134-135.
191 IOM, 2011b, p.22.

3.5 Internally Displaced People (IDPs)

internally displaced people (IDPS)

Overview

Kenya hosts the seventh-largest IDP population in Africa.[192] According to the Internal Displacement Monitoring Centre (IDMC), however, it lacks efficient and disaggregated data collection systems and a comprehensive profiling of IDPs has not been conducted. As a result, there is a lack of reliable information on IDPs.[193] UNHCR estimates the number in Kenya to be 300,000 as of April 2013.[194] The Institute for Security Studies (ISS) and the Internal Displacement Monitoring Center (IDMC) reported in 2012 that between 200,000 and 400,000 people are displaced in Northern Kenya alone, due to conflict between pastoralist communities.[195] UN OCHA estimated that 118,000 people had been newly displaced by inter-communal conflict in Kenya during 2012 (see below).[196]

Internally Displaced People (IDPs) differ from other groups in mixed migration flows in that they, at least initially, do not cross international borders. However, the Kenyan MMTF agreed that IDPs should be included when considering mixed migration in Kenya as they face numerous protection risks and are usually tomorrow's external migrants.[197] In one example alone, an estimated 640 Kenyan households fled to Uganda's Kiryandogo Settlement Scheme following the 2007/2008 post-election violence, with about 1500 individuals awaiting ongoing tripartite negotiations.

The root drivers of displacement are complex and cannot readily be reduced to a single cause or trigger. Furthermore, the line between 'voluntary' migration and 'forced' displacement is often blurred.

Although IDPs are located in different parts of Kenya, Nairobi has been a place of refuge for displaced populations from other areas of the country. Moreover, there has been forced displacement within the city itself during the post-election violence in 2007 and 2008.[198] However, there is no accurate data on the number of IDPs currently residing in Nairobi, due to the lack of a conducive legal and policy environment resulting in poor profiling of IDPs. It is difficult to monitor, but findings from the Overseas Development Institute, ODI's Humanitarian Policy Group suggest it is happening on a significant scale. Intra-urban displacement is primarily related to political and ethnic violence and forced evictions.[199]

Reasons for displacement

The root drivers of displacement are complex and cannot readily be reduced to a single cause or trigger. Furthermore, the line between 'voluntary' migration and 'forced' displacement is often blurred. Displacement is rather a function of an interplay of different factors, compounded by endemic corruption, poor governance and weak rule of law.[200] For example, land development projects may displace large groups of people and as a consequence fuel conflict as they resettle in an area occupied by another tribe.

Conflict

According to the IDMC, conflict and violence causing forced displacement are on the rise in Kenya. In 2012, over 116,000 persons were displaced as a result of inter-communal violence in the country.[201] According to the UN Office for the Coordination of Humanitarian Affairs (OCHA), over 182

192 Metcalfe, Pavanello, and Mishra, 2012, p.5.
193 IDMC, 2012, p.5.
194 UNHCR, 2012.
195 Sheekh, Atta-Asamoah, and Sharamo, 2012, p.5.
196 IDMC, 2012, p.5.
197 Kenya Mixed Migration Taskforce, 2012a.
198 Metcalfe, Pavanello, and Mishra, 2012, p.1.
199 Metcalfe, Pavanello, and Mishra, 2012, p.6-7.
200 Metcalfe, Pavanello, and Mishra, 2012, p.5.
201 IDMC, 2012, p.1.

people have been killed and 34,417 displaced by inter-communal violence in the Tana River County since August 2012. Inter-communal violence also occurred in Eastern, North East, Rift Valley and Coast provinces.[202] Similarly, the Kenya Red Cross reports that some 13,500 people have been displaced and 30,000 affected during September 2012 alone.[203]

The ISS/IDMC study provides some examples on conflicts in 2011 and 2012 causing forced displacement.

- ***November 2009, Isiolo district:*** Hundreds of families were displaced from their homes following an armed attack that left 11 people dead. Hundreds of livestock were stolen in these raids, which also affected women's livelihoods and disrupted children's learning.
- ***December 2009, Turkana East district:*** Armed bandits from the Pokot tribe raided a village in the Turkana East district, resulting in three deaths and the displacement of hundreds of people.
- ***October 2011, Isiolo district:*** Conflict between the Borana and Samburu displaced over 3,000 people and led to closure of schools. The fighting also led to loss of life.

As mentioned above, the ISS/IDMC study estimates that there are between 200,000 and 400,000 displaced people in Northern Kenya. Violence, inter-ethnic conflict over pasture and water resources, cross-border raids, cattle rustling and drought are displacing pastoralist communities in Northern Kenya (Isiolo, Tana River, Moyale, Mandera and Wajir counties).[204]

There are also reports of government interference in conflicts, causing further displacement. In late 2009 hundreds of people, especially women, were displaced in Northern Kenya during a government operation aimed at disarming pastoralists.

There are also reports of government interference in conflicts, causing further displacement. In late 2009 hundreds of people, especially women, were displaced in Northern Kenya during a government operation aimed at disarming pastoralists. According to the ISS/IDMC study, the operation was characterised by human rights violations which affected a number of communities. The Kenya National Commission on Human Rights (KNCHR) accused government security personnel of using excessive force, leading to loss of life and other human rights violations, including arbitrary displacement.[205]

More recently, in January 2013, 1,200 families were evicted by the government from their homes in the Mau Forest. Over 100 of these families live in Pipeline, a camp for IDPs in the Rift Valley Province city of Nakuru: conditions are reportedly harsh, with tents worn out and irregular food rations for IDPs.[206]

Political causes and Post Election Violence (PEV)

Kenya has had successive groups of IDPs since the 1992, 1997 and 2007 elections. It is however difficult to ascertain the exact number of IDPs in the country, partly due to political reasons, as it is a sensitive and divisive issue. The 2007/8 PEV triggered massive displacement – an estimated 600,000 people - that is still not resolved.[207] A substantial number of those forced from their homes by the conflict have still not been able to return: according to the DRC, as much as 10,000-30,000 people. Land issues reportedly

202 UN OHCHR, 2013.
203 Cited in RMMS, 2012, Monthly Summary September 2012.
204 Sheekh, Atta-Asamoah, and Sharamo, 2012, p.5.
205 Sheekh, Atta-Asamoah, and Sharamo, 2012, p.7.
206 IRIN, 2013a
207 Sheekh, Atta-Asamoah, and Sharamo, 2012, p.5.

played a role in the violence. Politicians and local elites are known to have used emotive land disputes to mobilise people to resort to violence. This was the case during the 1992, 1997 and 2007/08 presidential elections.[208]

According to UNHCR, those IDPs who remained in displacement since the 2007/08 PEV can be categorised into three groups:

internally displaced people (IDPS)

- *IDPs who have formed self-help groups and bought their own land*, choosing not to return to their place of origin.
- *IDPs who have returned to their general area of origin but continue to live in 'transit sites'*[209] because they are waiting to be rehoused or for assistance to build their own homes: some may feel safer living in transit sites than in their original communities.
- *IDPs who have sought safety in urban areas*, residing with host communities (with clan members and relatives) or renting accommodation.[210]

It is important to note that some IDPs formed self-help groups to mobilise the acquisition of the parcels of land they presently occupy as they await relocation by the government, due to the commercial and subsistence unsustainability of these plots. In addition, some formerly displaced persons have returned to their places of pre-displacement but continue to live in IDP-like situations due to poor resettlement programmes that failed to fully provide basic services and infrastructure.

Politics and the threat of displacement – the 2013 General Election

In recent years, most notably the aftermath of the 2007 election, political troubles have displaced thousands of people across Kenya. In the run-up to the March 4 2013 election, the United Nations Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani, called on the Kenyan Government and the international community to significantly scale up efforts to prevent further internal displacement. According to the Special Rapporteur, there were new risks of communal violence with the devolution of certain powers and representation to units of Devolved Government in some of the Counties, under the new Constitution: power struggles over political representation at the local level had already resulted in new instances of displacement.[210] Fortunately, the election process was peaceful. Grievances were channelled through the formal court process and a president inaugurated in April 2013.

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Development

Land development projects for agriculture, mining or business development can also result in displacement. As described earlier, since August 2012, there has been escalating tension in Tana River District along the Tana River Delta, with the Pokomo and Oroma communities involved in counter attacks against each other. The clashes have been reported to be a struggle for grazing lands, but there have also been indications that multinational companies interested in the region's large agricultural and mining prospects could be involved in fuelling the violence.

Another major project in Kenya is the Lamu Port and Southern Sudan-Ethiopia Transport Corridor (LAPSSET): this includes the construction

208 Sheekh, Atta-Asamoah, and Sharamo, 2012 , p.5
209 The total number in this category is relatively small: at present, there are only 11 recognised transit sites.
210 UNHCR, 2010.

of a port in Lamu's Manda Bay, a standard-gauge railway line to Juba, oil pipelines to South Sudan and Ethiopia, an oil refinery, three airports and three resort locations in the Kenyan towns of Isiolo and Lamu and at the shores of Lake Turkana. Critics fear the project will uproot tens of thousands of people in Lamu District and degrade the marine environments that are essential to local livelihoods. According to the Ministry of Lands, some 60,000 people will be displaced.[211]

Environmental causes

Environmental conditions can also trigger large population movements. According to the IDMC, tens of thousands have been displaced as a result of natural disasters in Kenya, mainly the yearly floods caused by heavy rains.

Environmental conditions can also trigger large population movements. According to the IDMC, tens of thousands have been displaced as a result of natural disasters in Kenya, mainly the yearly floods caused by heavy rains.[212] Landslides in some parts of the Rift Valley province, and food security leading to drought in 2011 and 2012, have also led to displacement. Floods also displaced around 100,000 people in the first few months of 2012. The worst affected areas in 2012 were Nyanza province, parts of Rift Valley and Coast provinces and the Greater Metropolitan area of Nairobi.[213] Additionally, in September 2012 thousands of people were displaced in parts of Kenya's Rift Valley Province as floodwaters submerged houses and schools and destroyed crops.[214]

Risks and protection issues

IDPs face many risks, in particular the absence of livelihood opportunities, shelter, healthcare and basic security. Furthermore, many IDPs have to deal with unresolved housing, land and property issues (HLP). These challenges are outlined in more detail below. Some IDPs may face the risk of further displacement, largely from forced evictions, so prolonging their psychological trauma, particularly for those displaced by PEV.[215]

Inadequate basic services

Lack of shelter: In the absence of adequate shelter assistance, many IDPs are still living in tattered tents or under tarpaulins, in camps or on farms years after displacement. These living conditions leave them exposed to the elements, resulting in asthma or pneumonia. Inadequate sanitation is also a problem. Even IDPs who have received shelter assistance complain that the housing offered is poorly sized and insecure.[216]

Inadequate access to healthcare: Access to health facilities is often inadequate for IDPs. Many live far away from the nearest clinic and are unable to afford the costs of transportation. Others do not have the resources to pay for the medical care itself. As forced displacement is often a traumatic experience, the need for psycho-social support has also been highlighted.[217]

Insecurity and GBV: The living conditions of IDPs can increase the risk of rape and robbery, especially among female-headed households. According to the National Protection Working Group on Internal Displacement (PWGID), IDPs are exposed to high levels of gender-based violence (GBV). However, the lack of an adequate information management system means that accurate statistics on this issue are not available.[218]

211 IRIN, 2012c.
212 Sheekh, Atta-Asamoah, and Sharamo, 2012 , p.5
213 UN OCHA, 2012.
214 IRIN, 2012b.
215 Metcalfe, Pavanello, and Mishra, 2012, p.13.
216 KHRC, 2011, p.13.
217 IDMC, 2012, p.6.
218 Ilbid, p.6.

Lack of livelihood opportunities

IDPs often live in camps that they have themselves established. These places are typically far from livelihood opportunities. There are also examples of land offered by the government for resettlement that is not suitable: incapable of supporting agriculture and with inadequate access to basic services such as water, health facilities and schools. In some instances, this has exposed IDPs to tensions with local communities.[219]

internally displaced people (IDPS)

Securing a stable living after the trauma of disruption is especially challenging. Many IDPs, having previously built up small businesses for themselves, witnessed the damage, destruction or theft of their property, stock and assets during the 2007/08 PEV: compensation was commonly not provided. In Nairobi, for example, many of those displaced in the violence are now struggling to reestablish themselves and their livelihoods in other parts of the city.[220]

Urban challenges

IDPs also face particular problems in urban areas because of their status. A recent study on IDPs in Nairobi found evidence of heightened vulnerabilities relating to displacement[221]: for example, inadequate housing and services, denial of land and property rights and forced evictions, discrimination, high levels of criminal, political, ethnic and domestic violence, fuelled by widespread unemployment and poverty, drug and alcohol abuse, gang culture and overcrowded living conditions, weak rule of law and a pervasive culture of impunity.[222] Displacement within Nairobi also resulted in increased ethnic tensions between key groups in the slums, including between displaced and non-displaced groups. Following the violent 2007/08 election, many (displaced and non-displaced alike) in the Nairobi slums feared a resurgence of ethnic violence, particularly surrounding the 4 March 2013 General Elections.[223]

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However, the study also concluded that all urban poor in Nairobi's slums have very significant needs and face similar threats to their health and wellbeing. Moreover, for some IDPs, settlement in Nairobi from outside the capital is a coping mechanism that appears to have reduced key vulnerabilities relating to food security, health and education.[224]

Response

***Operation Rudi Nyumbani* (Return Home)**

As mentioned above, internal displacement as a result of the 2007/08 PEV is a sensitive topic in Kenya: it is perceived as a national shame and reminder of recent violent events. There has also been significant resistance to acknowledging the IDP problem in Kenya due to its political and financial implications. Granting official recognition of IDP status implies providing resettlement, which in turn complicates already existing land problems. Often the focus is placed on how engaging with the IDP issue in relation to resettlement might affect voting patterns.[225]

Internal displacement as a result of the 2007/08 PEV is a sensitive topic in Kenya: it is perceived as a national shame and reminder of recent violent events.

Nevertheless, many activities were deployed as a direct response to the large number of IDPs after the 2007/08 PEV. Five months after the PEV

219 Ibid, p.7
220 Metcalfe, Pavanello, and Mishra, 2012, p.17.
221 Ibid, p.1.
222 Ibid, p.13.
223 Ibid, p.2.
224 Ibid, p.1.
225 RCK and DRC, 2013, p.23.

had ended, the government of Kenya launched Operation Rudi Nyumbani (Return Home). The operation encouraged displaced people to go back to their communities, supported by the National Humanitarian Fund for Mitigation and Resettlement of Victims of the 2007 PEV. The Fund was used to replace basic household items for returning IDPs and support logistical movement. Every returning household was entitled to a grant of 25,000 Ksh (USD 350) for reconstructing houses and Kshs 10,000 for general facilitation.[226]

The PEV led to the destruction by burning or vandalisation of 78,254 houses. Shelter reconstruction therefore formed a key component of the recovery efforts of both the government and humanitarian/ development partners.

The PEV led to the destruction by burning or vandalisation of 78,254 houses. Shelter reconstruction therefore formed a key component of the recovery efforts of both the government and humanitarian/development partners. In 2012 it was reported that 38,145 heads of households had at the time of reporting received the 25,000 Kenyan shillings grant and 26,589 houses had been constructed.[227] Operation *Rudi Nyumbani* has seen the return of in total 350,000 people to their homes.[228]

In the country's 2011/2012 budget allocation, then Finance Minister Uhuru Kenyatta set aside 60 million dollars for the resettlement of IDPs. However, the process has been characterised by alleged corruption, tribalism and hostility to the IDPs themselves. For example, in early 2011 the government launched an investigation into a missing USD 2 million that had been allocated for the resettlement of IDPs, which had reportedly been misappropriated by officials in various ministries and even representatives of IDPs.[229]

The response of UNHCR, international donors and humanitarian agencies

UNHCR is the global cluster lead for protection, camp management and coordination with regard to IDPs. The cluster coordination mechanism triggered by humanitarian emergencies was activated in Kenya during and following the PEV in 2007/8. Once the emergency phase moved into recovery, the clusters morphed into thematic groups led by national authorities. UNHCR empowered the Kenyan National Commission for Human Rights (KNCHR) to take on the leadership and coordination of the protection working group: it remains the de facto leader. However, UNHCR decided to phase out its pillar on IDPs.

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"This year, we still have the pillar, but without the budget. So, it is reduced to advocacy and some capacity building and support to the coordination mechanism. Next year, it will be phased out, unless there is an emergency. UNHCR has been instrumental in getting legislation and policy on IDPs and strongly persuaded the government to enact the IDP Act. That was the ultimate goal. Also, the Kenyan civil society is now very engaged."

Interview with UNHCR, March 14, 2013

International donors and humanitarian agencies also provided extensive support for IDPs. Besides providing food assistance in home areas, they distributed non-food items such as blankets and cooking equipment, provided protection of civilians and also offered support for education.[230]

226 Sheekh, Atta-Asamoah, and Sharamo, 2012, p.8.
227 Global Issues, 2012.
228 IDMC, 2012, p. 7
229 Global Issues, 2012.
230 These include, from the Chinese government, 105,000 iron sheets, with a total value of 200 million Kenyan shillings; from the Moroccan government, USD 1 million; from the African Development Bank, 1.5 billion Ken-yan shillings for the rehabilitation of agricultural infrastructure and livelihoods; and the Kenyan government intends to construct 19,000 homes in partnership with IOM, GOAL and the DRC. Sheekh, Atta-Asamoah, and Sharamo, 2012, p.8.

The response of displaced communities

Displaced communities have also developed protection strategies against violence themselves. For instance, many communities displaced by Kenya's PEV drew on faith-based networks to mobilise resources and provide practical and emotional support, sanctuary from the violence in towns and protection from abuse in IDP camps.[231]

internally displaced people (IDPS)

Current national policy on IDPs

After a visit in 2012, the Special Rapporteur on the human rights of internally displaced persons commended the Government of Kenya for the significant progress it had made since the last visit to the country in September 2011. According to the Special Rapporteur, the Government has facilitated returns or other solutions, including resettlement, for most persons internally displaced in the 2007/08 PEV, and also adopted legislation on the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities in December 2012.[232]

The Act provides a comprehensive approach to addressing internal displacement caused by conflict and other forms of violence, natural disasters and development projects, irrespective of the location and tribal affiliation of the IDPS. Besides outlining the institutional framework, roles and responsibilities for state and non-state parties in all phases of displacement, it also provides measures to prevent, manage and mitigate against internal displacement.[233] The Ministry of State for Special Programmes (MoSSP) was designated as the institutional focal point, including for the resettlement of IDPs and the coordination of disaster risk reduction programmes.[234]

Observers initially expected that the implementation of the 2010 Constitution would delay the enactment of the IDP Act, because the Constitution requires Parliament to prioritise particular legislations. However, a recent RCK/DRC study concluded that the sensitivity of the IDP issue in Kenya, the imminence of the March 4 General Election and the momentum of the post-PEV peace and reform agenda under the Kenya National Dialogue and Reconciliation Accord, together with determined advocacy by actors, appears to have assured the successful passing of the legislation, despite a busy calendar.[235] It therefore seems that the presidential elections of 4 March 2013 acted as a catalyst for passing the IDP Act.[236] Nevertheless, further measures must be taken to support its practical realisation: as one RCK representative put it, "the Act is now in place, which is a big step, but the next thing is implementation."[237]

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Regional frameworks on IDPs

In addition to the national IDP policy, Kenya is also due to sign and ratify the recently adopted African Union *Convention on the Protection of and Assistance to IDPs*. The Kampala Convention, as it is also known, has important implications for the protection of all those uprooted from their homes and livelihoods as a result of violence, conflict, development and

231 Parsitau, 2011.
232 UN OHCHR, 2013. The new IDP act (as it is also known) was published in draft form in April 2012 and passed Cabinet on 25 October 2012 after lengthy consideration by the Cabinet. The act was signed by then President Kibaki on 31 December 2012, and published in the Kenya Gazette on January 4 2013. Republic of Kenya, 4th January, 2013.
233 IDMC, 2012, p.8.
234 Ibid, p.8.
235 RCK and DRC, 2013, p.25.
236 Ibid, p.26.
237 Interview with RCK, March 15, 2013.

environmental factors.[238] Though it is a strong regional instrument, already ratified by 15 countries, Kenya itself has yet to ratify the convention despite being heavily involved in the negotiations[239].

Other IDP-related instruments include the *Protection and Assistance for IDPs of the International Conference of the Great Lakes Region (ICGLR) Pact on Security, Stability and Development* (2006).[240] Kenya has signed the pact and associated protocols.

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Criticism

Despite significant progress, Kenya's IDP policy has still attracted substantial criticism. According to some observers, internal displacement is still a neglected area compared to the issue of refugees and asylum seekers. In 2012, before the passing of the new IDP act, the UN Special Rapporteur concluded that Kenya lacked a coherent policy and legislative framework on internal displacement: it also did not have an efficient system of data collection or sufficient operational capacity to respond effectively to the current situation. The Rapporteur highlighted the need to address the deteriorating living conditions of those who remain displaced and the need for a broader, more participatory approach to the problem of internal displacement.[241]

A large number of Kenyans displaced during the 2007/08 PEV are still struggling to achieve durable solutions. Nevertheless, IDMC found that the level of service provision and donor attention for displaced groups is rapidly declining. While many assume the emergency to be over, humanitarian shortfalls for many IDPs remain. There is a clear gap between short term measures to provide emergency assistance and the longer term initiatives that IDPs also need to restart their lives.[242]

According to some observers, internal displacement is still a neglected area compared to the issue of refugees and asylum seekers.

According to RCK, there is also poor profiling of IDPs and a lack of coordinated assistance: in particular, the capacity of the Ministry of State for Special Programs (MoSSP) is insufficient. Another issue is the integration of IDPs. Though the government aims to undertake this as soon as possible to avoid the establishment of tented camps, there is reportedly little follow up to support the process: "We don't know who the 'integrated' IDPs are and what their needs are."[243]

In addition, research by Human Rights Watch in late 2012 revealed significantly preferential treatment for internally displaced persons (IDPs) from the Kikuyu community of former President Mwai Kibaki over other displaced people in the Central Rift's Nakuru county and North Rift's Uasin Gishu county. The Kenyan government has reportedly discriminated on the basis of ethnicity, without satisfactory justification, when assisting displaced people from the Rift Valley. Human Rights Watch warned that these discriminatory practices could fuel inter-ethnic tensions ahead of the March 2013 elections.[244]

Finally, the ISS/IDMC study notes that while IDPs in other parts of Kenya at least have been afforded protection and assistance, these are largely

238 Sheekh, Atta-Asamoah, and Sharamo, 2012, p.4.
239 Kenya has put the ratification of all international instruments on hold, pending the enactment of the Ratifi-cation of Treaties Bill. Once implemented, together with the 2010 Constitution, all international conventions ratified by Kenya will form part of Kenyan law.
240 Sheekh, Atta-Asamoah, and Sharamo, 2012, p.4.
241 United Nations General Assembly, 2012.
242 IDMC, 2012, p.1.
243 Interview with RCK, March 15, 2013.
244 Human Rights Watch, 2013a.

lacking in Northern Kenya where a large number of IDPs are present due to conflicts between pastoralists. Northern Kenya is already among the country's poorest regions, where communities suffer marginalisation from mainstream economic, social and political life, have limited access to justice and are denied rights to development and sustainable livelihoods. The study concludes that agencies mandated to protect affected pastoralist communities, such as the Protection Working Group - jointly chaired by the Ministry of Justice, National Cohesion and Constitutional Affairs (MoJNCCA) and the Kenya National Commission on Human Rights (KNCHR) – lack any meaningful presence in the region.[245]

internally displaced people (IDPS)

245 Sheekh, Atta-Asamoah, and Sharamo, 2012, p.1.

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This report is the second study in the RMMS mixed migration series – explaining people on the move - offering data and analysis on a range of issues relating to mixed migration relevant to the Horn of Africa and Yemen region.

With the focus on migration out of the Horn of Africa (towards, Yemen, Saudi Arabia, South Africa and Libya etc.) the scope and nature of mixed migration in Kenya has attracted little attention. This study examines the details of known movement into, through and out of Kenya itself – a country which acts as such a powerful magnet for so many people on the move in the region. It particularly examines the scale of movement and associated protection risks as well as the legal and policy environment facing migrants and refugees in Kenya.

The basis of this compilation of known data and information in Kenya has been developed from contributions from participating agencies of the Kenya Mixed Migration Task Force, established in mid-2012.

RMMS Regional Mixed Migration Secretariat

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