Survival Migration

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Since the collapse of Siad Barre’s authoritarian regime in Somalia in 1991, civil conflict and interclan violence have led to state collapse, destroying the governance structures that characterize most functional nation-states. The formal institutions that usually guarantee property rights, ensure law and order, and enable markets to exist have given way to an anarchical territory in which constantly shifting distributions of power among rival groups undermine security.

Without a functioning state, people have lacked the most basic institutions to ensure their fundamental human rights. Faced with a lack of access to food, water, physical security, or a viable livelihood, with the exception of the autonomous areas of Somaliland and Puntland, Somalis have had no functioning state to offer recourse or protection. Instead, they have been left dependent on their own private networks. Where these have failed, millions of Somalis have been forced to leave their homes, either being displaced within the country or fleeing across international borders.

The movement of Somalis is an important case of survival migration, one that challenges the basis of the refugee regime. Cross-border displacement has been driven by a combination—and frequently the complex interaction—of persecution, conflict, and environmental factors. For some Somalis, the most immediate cause of cross-border movement may have been persecution, which would fall within the 1951 Refugee Convention. For others, it may have been generalized violence, as covered by the OAU Refugee Convention and applied selectively in the African context. For others still, it may have been environmental factors, which may fall outside the existing framework of international refugee law.
The complexity of cross-border movement, and its imperfect fit with the refugee regime, was most starkly illustrated by the effects of the famine and drought in the Horn of Africa in 2011, in which unprecedented numbers of people crossed from south-central Somalia into neighboring countries. From a human rights perspective, however, it is irrelevant whether the proximate cause is primarily persecution, conflict, or environment. What makes these factors matter is that weak governance in Somalia means that fundamental human rights deprivations—resulting from whatever cause—cannot be restituted in the state.

Given the range and complexity of factors underlying displacement, states have responded to displaced Somalis differently. Recognition rates for Somali refugees have varied greatly across states. In Europe, there has been different jurisprudence based on whether, for example, persecution by nonstate actors is included in the 1951 convention; the United Kingdom and Germany in particular have different interpretations of this. Furthermore, European states have differed in their interpretation of which areas of Somalia are safe for return within the EU refugee protection framework. Nevertheless, the European Convention on Human Rights has ensured that sources of complementary protection in international human rights law have prevented many Somalis who fall outside the 1951 convention from being returned. Within Africa, there has also been significant variation in response. Some states have applied the OAU convention to recognize Somalis fleeing generalized violence as refugees; most have not.

Kenya’s response has been unique. In terms of defining the contours of who a refugee is, its policies have been almost unrivaled in their inclusivity. It has hosted hundreds of thousands of Somalis on its territory for more than two decades, irrespective of the individual circumstances that have led to flight. It has recognized refugees under both the 1951 convention and the OAU convention, and it has recognized people fleeing south-central Somalia on a prima facie basis rather than using individualized refugee status determination. It has assumed that if people come from those regions, then they are, by definition, in need of international protection and there is no need for individualized screening. Even Somalis fleeing primarily famine and drought have been admitted onto Kenyan territory and registered in the refugee camps, where they have been supported by UNHCR and the organizations that make up the refugee regime.

In that sense, Kenya’s refugee regime appears to have stretched to include people who fall outside the dominant interpretation of who a refugee is. Yet there has been a trade-off. While the regime has stretched at the level of quantity of asylum, this has come at the price of the quality of asylum. Somali refugees—irrespective of the causes of their flight—have faced extremely restrictive conditions. Hundreds of thousands have been confined to the overcrowded Dadaab refugee camps in the arid and insecure North Eastern Province of the country. Kenya’s
de facto encampment policy toward refugees has created severe restrictions on their freedom of movement and access to livelihood opportunities, and most live in the camps in an intractable state of limbo. A minority of Somalis who have left the camps for the Eastleigh district in Nairobi generally live outside formal protection and assistance channels.

In terms of the argument of the book, this chapter shows how the Kenyan refugee regime has stretched to be inclusive of people at the margins of the international refugee regime fleeing fragile and failed states. The price of inclusivity, however, has been a reduction in the quality of asylum at the cost of depriving Somalis of their rights to freedom of movement and self-employment, and their access to basic necessities of life. Thus, paradoxically, the extension of the refugee regime has resulted in the failure to meet the basic rights guaranteed by the convention to refugees lawfully present. The reasons for both the inclusiveness of quantity and the limitations on quality, the chapter argues, can be found in the configuration of elite interests. It shows how a convergence of interests at the international and national level has conspired to create an implicit bargain of “humanitarian containment.” On the one hand, the government has faced significant international incentives to admit Somalis onto its territory. On the other hand, it has faced both international and domestic incentives to contain the refugee population within a clearly designated physical and socioeconomic space. Over time, the result has been a trade-off between numbers and rights.

Somali Displacement as Survival Migration

Somalia is generally seen as the archetypal failed state (Murphy 2011; Patrick 2011; Shay 2008). The label of “failed state” can be misleading both because it assumes a normative ideal of a functioning state and because it risks ignoring the range of informal institutions and networks that continue to regulate social, economic, and political life within the country. Nevertheless, it captures the reality of a state in which weak governance means that there is no state willing or able to provide the most basic protection against fundamental human rights violations.

Since the collapse of Siad Barre’s dictatorship in 1991, the south-central parts of the country have been characterized by the collapse of central government functions. In the absence of a strong central government in Mogadishu, clans, warlords, and religious groups have competed for power and authority, contributing to violence, persecution, and environmental disaster. Without an effective state, Somalis have relied on their own networks and informal institutions. When these have proved insufficient, the only option for many has been to flee, either within the country or across international borders. By 2011, it was estimated
that around 25 percent of Somalia’s 7.5 million population was either internally displaced or living outside the country as refugees.³

Patterns of Displacement from Somalia

The causes and cycles of displacement from Somalia can be divided into three broad phases (Lindley 2011; Menkhaus 2010a). First, between 1988 and 1995, Somalia entered a period of state collapse. Mohamed Siad Barre was president and dictator of the country from 1979 to 1991. His rule contributed to a period of stable government based on creating an elaborate patronage system that allowed him to manipulate Cold War interests to attract foreign aid that was used to buy the support of particular factions within Somalia’s deep-rooted clan system. As sources of foreign aid began to wane, distrust with Barre’s corrupt regime began to emerge, and he was toppled in 1991, leading to a full-scale civil war in which clans competed for control and authority. In particular, the warlord General Aidid competed with the supporters of Barre. The international community became involved, and the United States advocated UN intervention in order to support the deposed government of Barre, but eventual withdrew in 1995. As warlords competed for power and the basic functions of the state collapsed, large-scale internal and cross-border displacement took place.

In the second phase, between 1996 and 2005, the violence decreased. By 1996, Barre’s supporters had been largely defeated, Aidid’s forces had taken control of Mogadishu, and more stable patterns of clan-based territorial authority were emerging. In certain parts of the country, basic functions of government returned. In particular, Somaliland, which declared independence in 1991, created a stable and functioning government, and Puntland began to develop a viable regional administration. While south-central Somalia remained prone to violence and instability, the basic distribution of power between warlords was more or less stable and the international humanitarian community was able to operate in the country. By 2004, there was optimism that a UN-backed peace deal would bring an end to violence, and a transitional federal government (TFG) was negotiated based on an internationally backed coalition among prominent Somali warlords. During this period, there were only occasional periods of new displacement, and the main displacement challenge was how to manage the protracted refugee situation of Somalis living in camps and settlements throughout the region since the early 1990s.

In the third phase, between 2006 and 2011, serious conflict returned, marked by the rise of al-Shabaab. While the international community backed the TFG’s installment in Mogadishu, a radical Islamic movement, the Islamic Courts Union (ICU), emerged to compete for authority in south-central Somalia. In June 2006,
the ICU declared that it had defeated a U.S.-backed warlord coalition. In December 2006, the UN Security Council authorized the African Union to send soldiers in support of the government. In response, the African Union Mission in Somalia (AMISOM) was deployed to support the TFG, and Ethiopian soldiers invaded (Shay 2008). The conflict and Ethiopian invasion led to massive displacement. While the invasion achieved the defeat of the ICU, it triggered the growth and expansion of the ICU’s military wing, al-Shabaab, which subsequently waged a jihadist war against the TFG, acquiring growing territorial authority and imposing sharia law across south-central Somalia and most of Mogadishu. Throughout the period, generalized violence and brutal persecution led to significant internal and cross-border displacement.

By 2011, al-Shabaab controlled most of south-central Somalia, and the TFG—protected by AMISOM—was limited to a small block of streets in Mogadishu, an airport, and a port. Until that point, generalized violence and persecution—classic drivers of displacement—were the most significant and obvious, yet not the only, sources of displacement. Without recourse to effective structures of government, and with humanitarian agencies and the UN having withdrawn from south-central Somalia in 2009, growing numbers of people were increasingly displaced by environmental factors and the absence of available livelihood opportunities.

In 2011, when rains failed for the second year running, there was a humanitarian crisis in the Horn of Africa, prompted by drought and hunger at famine levels in southern Somalia. Complete crop failure in southern Somalia and rising levels of malnutrition meant that in April the UN proclaimed a humanitarian emergency amid large-scale internal and cross-border displacement. By July, the UN formally declared famine in two regions of southern Somalia. By September, nearly half of Somalia’s 7.5 million people were affected by drought, and the UN declared famine in six regions of southern Somalia. The UN estimated that drought and famine led to massive internal displacement and around 273,000 to cross international borders, particularly into Kenya and Ethiopia, between January and September 2011 alone. Facing acute malnutrition, having lost the cattle that sustain their pastoralist livelihoods, and with no recourse to a functioning state, many Somalis faced little choice but to flee.

The level of exodus reduced as the UN Food Security Nutrition Analysis Unit downgraded its “famine” designation for three Somali regions—Bakool, Bay, and Lower Shabelle—to an “emergency” phase following both a break in the region’s deadly drought and an improvement in the UN’s ability to deliver food assistance in the country. By November, the famine and drought were considered over, and UNHCR ended registrations at the Dadaab camps in Kenya for those fleeing famine and drought. By this point, the total number to have fled across borders into
neighboring countries during the famine and drought was 289,349 (UN High Commissioner for Refugees 2011b).

Unpacking the Causes of Displacement

Across the patterns of displacement described above, the population of Somalis recognized as refugees has fluctuated. In 1994, the global Somali refugee population was just over 630,000, with more than 200,000 registered in Kenya. By 2004, with stabilization and repatriations, this had been reduced to nearly 390,000 globally and just over 150,000 in Kenya. Yet with increased insecurity and the emergence of drought and famine, the numbers escalated to an all-time peak of more than 1 million globally and more than 500,000 in Kenya by 2012.

Displacement has been driven by the interaction of persecution, conflict, and environmental change (Lindley 2011). The predominant drivers of displacement have shifted over time and across regions of Somalia. It would be intuitively tempting to suggest that the primary causes can be divided along the lines of the periods of displacement outlined above, with conflict and persecution being the dominant causes of displacement across most of the two decades of displacement, and famine and drought changing its nature to a more characteristic example of survival migration in 2011.

This conclusion, however, would be misrepresentative. Although the balance of the drivers of displacement has certainly evolved, and survival migration has

![Figure 4: Numbers of registered Somali refugees in Kenya and globally, 1993–2011.](image-url)
become extremely evident since 2011, the reality is that displacement has been driven by the complex interaction of conflict, persecution, and environment since the early 1990s, and at every phase multicausality has been present, albeit with significant geographical variation. By 2009, for example, UNHCR Somalia was recording monthly internally displaced persons (IDP) data through its Population Movement Tracking System, disaggregating the primary causes of displacement across different Somali territories. Although the data it recorded on internal displacement did not provide a complete time series, a range of predominant factors could be differentiated: clan conflict, forced return, drought, livelihood insecurity, and IDP return. The data show tremendous variation even within the space of few days; factors such as fluctuation in rainfall and weather patterns, for instance, influenced the balance.

Throughout all three periods, what has driven displacement has not been any single cause but the way in which diverse causes have been mediated by the underlying weak governance in Somalia. I would therefore argue that since the early 1990s the movement of Somalis across borders cannot be reduced to flight from persecution or even from conflict. It amounts to a process of survival migration, a serious human rights–driven cross-border displacement that in many cases transcends the categories of the 1951 Refugee Convention (Tayler and Albin-Lackey 2009). In 2009, Peter Kusimba, director of Kenya’s Department of Refugee Affairs, succinctly stated that most Somalis did not and had never fitted the 1951 Refugee Convention definition of a refugee based on individualized persecution: “Somalis are running into Kenya because of the generalized situation of insecurity—not individual but generalized.”

If there was any doubt, however, that these wider patterns of displacement have had complex causality even since 1991, then the famine of 2011 most starkly illustrates the limitations of the 1951 convention to address contemporary cross-border displacement and the relevance of survival migration as a concept. In April 2011, drought and famine struck Somalia as rains and crops failed for a second year in a row. Images appeared on television screens around the world of dead cattle, malnourished babies, and humanitarian aid agency vehicles.

Many of the scenes were reminiscent of the Ethiopian famine of 1984. The UN humanitarian coordinator for Somalia, Aeneas Chuma, claimed: “The humanitarian crisis we are facing is huge. It threatens lives, particularly those of the most vulnerable. It also threatens livelihoods and these must be protected as well” (IRIN 2011b). An MSF nurse, Alice Gude, claimed, “This is the worst drought that Somalia has seen for many years. People are dying in Somalia. Their crops have failed for many seasons and their livestock are all dying. . . . Twenty per cent would be in an intensive care unit if they were in Europe” (Gude 2011).
The events of 2011 starkly illustrate the role that factors beyond the scope of the existing refugee regime have played in contemporary Somali displacement. Anita Sacki, the MSF coordinator of nutritional assessment in the Dadaab camps, claimed: “The majority of new arrivals fled because they had nothing to eat, not just because their country has been at war for decades” (Médecins Sans Frontières 2011).

Although Somalis in Kenya have not generally been forcibly returned to their country of origin, their predicament—not only in 2011 but throughout the period since 1991—has placed them at the margins of the international refugee regime. The global regime’s concept of a refugee—based on understanding refugees primarily as people fleeing individualized persecution—breaks down when confronted by the realities of Somali displacement.

Somali cross-border displacement has been driven by the complex interaction of conflict, persecution, and the environment. While the relative significance of these factors has varied temporally and spatially, the consistent feature—and the ultimate cause for cross-border displacement—has been weak governance. Conflict, persecution, or environmental change per se did not make displacement inevitable or necessary. Rather, these factors have been mediated through weak governance, which has meant that the state has been unwilling or unable to provide or ensure fundamental human rights, whether basic security, liberty, or subsistence.

**FIGURE 5.** Survival migration per month across borders during the drought and famine in Somalia, January–November 2011. These statistics are based on UNHCR registrations, which came to an end on October 1, 2011, for the Dadaab refugee camps.
Somali displacement has thus fallen beyond the boundaries of who is generally recognized as a refugee by the international community. Throughout the period, it has defied the 1951 convention definition of a refugee, and has been based mainly on factors other than individualized persecution. While many of those fleeing generalized conflict and security have fit the regional OAU convention definition of a refugee, a significant proportion—particularly those primarily fleeing famine and drought—have fallen outside even this definition. Somali displacement is illustrative of forms of displacement that lie at the boundary of the refugee regime, and it draws attention to the arbitrariness of the 1951 convention in relation to contemporary patterns of displacement. The chapter now examines the response of the Kenyan government and the international community.

**Kenya’s Response**

In many ways, Kenya’s response to survival migration has been one of the most generous and open examined by this book. Rather than rounding up, detaining, and deporting those who have fallen outside the 1951 convention definition of a refugee, Kenya has generally recognized all Somalis as though they were refugees. On the other hand, the picture has been far from perfect. Although Somalis have been admitted to the territory, there has been a trade-off in terms of the limited sets of rights they have received in Kenya. In the language of this book, the Kenyan refugee regime has stretched to be inclusive—but at a cost, primarily in terms of restrictions placed on refugees’ freedom of movement and access to livelihoods.

**The Evolution of Asylum Policy**

Before the Somali influx, Kenya conducted individual refugee status determination interviews, applying the definition of the 1951 convention (Odhiambo-Abuya 2004), incorporated in its 1984 Immigration Act. While imperfect and often influenced by an immigration control agenda (Verdirame and Harrell-Bond 2005), its policy had been government-led and had offered de facto integration to all its refugees. However, up until 1991, the refugee population had not exceeded 10,000, and most had been skilled labor from Uganda and Rwanda (Milner 2009, 86).

With the fall of the Barre regime in 1989, there was a shift in Kenya’s response to refugees. It initially engaged in forcible returns—or “push-backs”—at the border. The Daniel Arap Moi regime began drafting national refugee legislation in 1990; however, because of the new circumstances on its border, this was put on
hold until the middle of the first decade of the 2000s. By 1991, Kenya, which previously hosted a maximum of 14,500 refugees, was playing host to 130,000. Just over a year later, in 1992, this figure had skyrocketed to almost 400,000, including 285,000 Somalis and a significant number of Ethiopians fleeing the collapse of the Mengistu regime (Odhiambo-Abuya 2004, 188; Milner 2009, 86).

Arap Moi allowed large numbers of refugees from Somalia to cross the border in 1991 and 1992 and received great acclaim for it from the international community (Milner 2009, 84). He appealed to the international community for support, and seven new refugee camps were established in the extreme northeast of the country. A UNHCR emergency appeal brought in nearly $15 million, enabling the refugees to be consolidated within the camps, in which UNHCR provided assistance. Given the numbers involved and the inefficiency of providing individual refugee status determination, all Somalis except those suspected of being involved in the conflict were recognized on a prima facie basis (Albert 2010). By June 1993, the emergency was declared to be over.

However, the refugee camps were rife with insecurity, border incursions, and sexual and gender-based violence (Milner 2009, 87). In 1993, faced with concerns over security and dwindling international support after the initial emergency phase, the Kenyan government shifted its policy to one that James Milner (2009) has described as “abdication and containment,” which has endured until the present day.

At the level of containment, Kenya adopted an encampment policy. Nearly all Somalis were relocated from the other camps in the country to the Dadaab camps (Ifo, Hagadera, Dagahaley) in North Eastern Province (NEP). All refugees were henceforth obliged to reside in camps in order to qualify for assistance. Only those with travel documents, or “movement passes”—issued under very circumscribed conditions (e.g., urgent health problems or security problems that could not be dealt with in the camps)—would be permitted to leave the camps without risking arrest and deportation as illegal aliens (Lindley 2010, 96; Human Rights Watch 2010a, 48–49).

Kenya has taken the view that while it has been prepared to allow refugees on its territory, they should be the primary responsibility of the international community rather than the government of Kenya. In the words of the director of the Department of Refugee Affairs, Peter Kusimba, “the refugee business is not the business of the Kenyan government; it is the responsibility of the international community.” Verdirame (1999, 70) argues that this has effectively implied a delegation of sovereignty to the international community in the Dadaab camps, where UNHCR takes responsibility for providing basic services, overseeing a set of implementing partners with particular mandates.
After the defeat of the Moi government in elections in late 2002, the incoming National Rainbow Coalition (NARC), led by Mwai Kibaki, made refugee legislation a priority. The Refugee Bill had been stalled since the 1990s by the Somali crisis. Stabilization in Somalia and the desire to reengage the donor community created an incentive to place it back on the agenda. Kenya’s 2006 Refugee Act formalized many of the policies that had existed since the 1990s, institutionalizing much of the encampment policy. However, it was also the first and only refugee legislation in Africa to provide for prima facie recognition under the OAU Refugee Convention, creating an extremely inclusive basis on which to recognize all Somalis as though they were refugees (Albert 2010). The act also included provisions for the establishment of a Department of Refugee Affairs (DRA), which assumed administrative responsibilities for refugees in Kenya (Albert 2010, 12). The DRA has plans to eventually assume responsibility for aspects of refugee policy from UNHCR (Campbell and Oucho 2011).

Although the creation of the DRA has established a pro-refugee voice in the government, the DRA has been hampered as a result of being housed in the Ministry of State for Immigration and Registration of Persons, which is strongly influenced by concerns over internal security. Consequently, as the security situation within Somalia has deteriorated since 2006, Kenya’s policy toward Somalis has become increasingly subject to a security and immigration-control agenda.

In January 2007, the Kenyan government officially closed the border with Somalia (Human Rights Watch 2009d). It also closed a UNHCR-run registration center at Liboi, near the border. This move—led by the Ministry of State for Provincial Administration and Internal Security and implemented by the police—highlights a split within the Kenyan government that has increasingly affected Kenyan asylum policy. On the one hand, the official legislation and the role of the DRA have been extremely inclusive compared with other cases outlined in this book, and once in the camps, the Somalis have been tolerated. In practice, though, other branches of government have made access to protection increasingly challenging for Somalis.

By the end of 2010, with 300,000 Somalis in the overcrowded Dadaab camps, an extension was agreed for 80,000 additional refugees at the Ifo camp, land was released by local authorities, and infrastructure work began. However, the government—notably the minister of state for provincial administration and internal security, George Saitoti—called a halt to the extension plan. Meanwhile, plans for a new, fourth Dadaab camp—Jarajilla—for 120,000 refugees were similarly scuttled by local and national political disagreement.

In October 2011, when there were more than 460,000 registered refugees, Kenya stopped registering refugees in the Dadaab, excluding new arrivals, from the services provided to registered refugees. With the suspension of registration,
it is difficult to know how the Kenyan military incursion into Somalia has affected the flows into the country. The presence of Kenyan troops may have hindered the ability of refugees to cross the border (Anderson 2012).

Although Kenya had tolerated the registration of Somalis fleeing famine and drought throughout much of 2011, the sheer numbers have led to a dramatic shift in policy: the government invaded Somalia in an attempt to restore stability along the border and create a safe haven within which to contain Somali IDPs. On October 16, 2011, Kenya sent two battalions into Somalia as part of Operation Linda Nhichi. The stated purpose of the military incursion was to eradicate al-Shabaab, which was blamed for a series of recent kidnappings and killings in Kenya, threatening its vital tourist industry. Despite the official purpose, Kenyan deployment into Somalia is more a result of deep-seated security concerns associated with Somali refugees in Kenya and Kenyans of Somali ethnicity than an immediate need to address the threat posed by al-Shabaab to its tourism industry.

The relationship between the military intervention and the large influx of 2011 was underscored in a speech by President Mwai Kibaki in February 2012 in which he described the presence of Somali refugees in Kenya as a “growing and serious security threat” to both Kenya and the region, and lamented their “adverse impact” on Kenya’s socioeconomic life. Although it was reported before his speech that there were no plans in place to close the camps, Kibaki argued that the refugees should be sent to areas secured from the control of al-Shabaab. The president’s proposal to close down the Dadaab camps, however serious, strongly resonates with Kenyans who are tired of “paying the Somali tax” for the past twenty years.

**Humanitarian Containment**

The human consequences of the trade-off in Kenyan asylum policy are evident. Relative generosity in numbers is not matched by generosity in rights, and the result is a long-standing “humanitarian containment”—humanitarian in the sense of at least ensuring access to asylum for all Somalis, and containment in the sense of limiting rights and effectively imprisoning the majority in closed camps (and Verdirame and Harrell-Bond 2005). A senior UN aid worker at Dadaab described the camp as the “world’s largest detention center” (Blatter 2011).

The dire conditions and insecurity in the Dadaab camps are well documented (Crisp 2000; Horst 2006; Verdirame and Harrell-Bond 2005; Helton 2002). Many Somalis have been in Dadaab since the early 1990s, without access to freedom of movement or the right to work. The camps are intentionally located in a remote and arid area just 80 kilometers from the Somali border. In the words of one
senior NGO worker who has spent years working in the camps, “Dadaab is a dreadful place.” Cindy Horst (2006, 77) writes, “The refugees in Dadaab face insecurities of a physical, economic and existential nature that at times are similar to those they faced before and during the war in Somalia.”

Somalis in the camps live with significant economic challenges, being dependent on humanitarian assistance. Such assistance often includes less than full food rations (Horst 2006, 82), which requires many to find informal sources of money either through low-paid work for the humanitarian agencies or, more commonly, through remittances sent from Nairobi or abroad. While repeated efforts have been made to improve the security situation (Helton 2002, 156–57), levels of sexual and gender-based violence in the camps have remained high, and areas of the camps have been legal black holes typified by gun smuggling and banditry (Verdirame 1999; Crisp 2000). Security concerns in the camp leading up to the Kenyan military incursion into Somalia were highlighted by the abduction of two Spanish aid workers. Since October 2011, there have been several other incidents, including the discovery of improvised explosive devices (IEDs) and detonators, as well as the killing of two refugee leaders (Garvelink and Tahir 2012).

Having been present for two decades, the Dadaab camps are more like a city than a series of camps (Agier 2010, 145; Helton 2002, 155). Yet they are not managed like cities, and instead the fiction of temporariness defines the boundaries of the possible in terms of improving conditions in Dadaab (Perouse de Montclos and Kagwanja 2000, 205). They are overcrowded and lack the necessary infrastructure for even the most basic health, water, sanitation, and education services that one would expect for a city of close to half a million people (Human Rights Watch 2010). Overcrowding resulting from the 2011 famine and drought has also contributed to outbreaks of diarrhea and cholera in the camps, and further exacerbated the insecurity (UN High Commissioner for Refugees 2011b).

In addition to the well-documented hardships in the camps, Somalis have faced increasing difficulties even accessing the camps. In 2010, Human Rights Watch published a report, “Welcome to Kenya,” in which it highlighted the changing response of Kenyan police to Somalis after the border closure on January 3, 2007, and the Kenyan government’s growing concern with border security. It notes that police have engaged in the “systematic interception, detention, abuse, deportation, and extortion of asylum seekers crossing the border from Somalia” (Human Rights Watch 2010, 10). It describes how police checkpoints have been set up at Liboi, near the HarHar border crossing, and around the Dadaab camps. Although the Refugee Act clearly states that asylum seekers have the right to enter freely and travel within thirty days to claim asylum at the nearest office of Kenya’s refugee commissioner, “Kenya’s notoriously corrupt and abusive police force” has
used the Immigration Act’s prohibition on illegal entry without a permit as a basis on which to make arrests, solicit bribes, and in some cases deport” (Human Rights Watch 2010, 23). As well as noting cases of *refoulement*, the report documents how Somalis have been openly accused of being “al-Qaeda,” “al-Shabaab,” and “terrorists,” and how police have engaged in extortion, rape, sexual assault, unlawful arrest, and detention. It also documents abusive and inhumane conditions of detention, including of pregnant women. There have been reports of continued police abuse of Somali residents of the North Eastern Province since December 2011 (Human Rights Watch 2012).

Beyond the camps, the only other viable option for Somalis has been to live as urban refugees in Nairobi, which presents numerous challenges. Getting to Nairobi from Dadaab is difficult enough, given the limited conditions under which travel documents are available and the number of police checkpoints set up en route. Furthermore, leaving informally usually means forfeiting assistance. In the words of the former head of the Refugee Consortium of Kenya, Judy Wakahiu, “The moment you leave the camp, you are effectively saying ‘I can manage by myself.’” Although in theory once refugees reach Nairobi they can register with UNHCR and be entitled to remain, in practice those who register do not get even the same minimal levels of assistance offered in the camps.

The main urban destination for Somalis is the Eastleigh district in Nairobi (Campbell 2005; Lindley 2010), which Anna Lindley (2010, 99) describes as a “place of both deprivation and entrepreneurial wealth.” It is an overcrowded area with filthy muddy streets, thriving trade, and high levels of crime. It is “one of the most economically dynamic areas of Kenya,” where many Somalis run small businesses and remit money to families in Dadaab or Somalia.

There is also a challenging side to being in the city. According to a UNHCR consultant working in the community, “by being in the city, refugees are claiming to be self-sufficient.” In the overcrowded housing, six to seven people may share a room and sometimes are able to afford only one meal a day, and they often face economic exploitation by richer Kenyan Somalis.

In the urban areas, there is very weak protection. According to the Danish Refugee Council, “The urban population is hardly supported or assisted. In some ways it is a very vulnerable population.” UNHCR works in Eastleigh through a range of implementing partners. Yet the health facilities provided by an MSF clinic and an IOM wellness center, the training offered by a UNHCR-funded Centre for Domestic Training and Development, the legal support provided by the NGO Kituo Cha Shariya, the educational role played by the GTZ, and the family tracing provided by the Kenyan Red Cross, for example, offer only very limited support to the most desperate. In practice, while Kenya’s urban Somalis at least have greater freedom of movement than those in the camp, they receive
little assistance. Furthermore, after Kenya’s military incursion into Somalia and security problems at Dadaab, Somalis in Nairobi have been the target of increasing xenophobia (Teff 2012).

The presence of such large numbers of refugees in Kenya over two decades has come at the cost of the depletion of the rights that refugees who are lawfully staying or resident are entitled to under the 1951 convention. James Hathaway (2005) argues that refugees physically present in the territory of the host state have a right to freedom from deprivation and to basic necessities. It is clear that Kenya has failed to grant many of the basic rights, such as the right to freedom of movement and residence and the right to self-employment and professional work. The longer refugees stay lawfully or are legally resident, the stronger the obligations of the state toward them (Hathaway 2005, 657). In Kenya, however, no such adjustment has occurred.

The International Community’s Response

The role of the international community has been schizophrenic or—in the words of Verdirame and Harrell-Bond (2005)—“Janus-faced.” On the one hand, UNHCR and its main donors have urged inclusivity, consistently trying to ensure that all Somalis are given access to territory and recognized as refugees. It has pushed the national refugee regime to stretch at the level of quantity of asylum. On the other hand, it has largely accepted containment as the price of asylum. Rather than openly criticize or actively seek to change the government’s encampment policy, it has generally endorsed humanitarian containment. The outcome has been an implicit bargain in which quality of asylum has become the accepted price of regime stretching.

Since the onset of the initial influx, UNHCR has worked to ensure that Kenya has kept its borders open and provided access to territory. In 1991, this began with an early agreement to support the Moi government through offering international burden-sharing. Through its initial emergency appeal in 1992, UNHCR raised $14.7 million, enabling the Somalis to be housed initially in ten camps and later consolidated into Dadaab and Kakuma. Given Kenya’s limited capacity to address the mass influx and the absence of national legislation or a national refugee bureaucracy, UNHCR agreed to take responsibility for refugee registration and assistance.

Taking on this role gave UNHCR the autonomy to determine the basis of refugee status determination. Though initially established partly to avoid the costly and unwieldy process of individualized refugee status determination, assuming control of refugee registration enabled UNHCR to maintain this form of status
recognition, and hence to ensure inclusive recognition for all Somalis coming from south-central Somalia (Albert 2010).

Furthermore, UNHCR played an important role in pushing Kenya to institutionalize prima facie recognition under the more inclusive OAU convention in its 2006 Refugee Act. UNHCR’s then representative to Kenya, George Okoth-Obbo, is widely credited with guiding the process and directly contributing to the drafting of the act. By engaging with the Kibaki government at a time of relative stability in Somalia, when repatriation was under way and when the Kenyan government was eager to re-engage the international community, UNHCR was able to help institutionalize a legal commitment to inclusivity at a particular moment.

It is worth underscoring that the Kenyan legislation was unprecedented in incorporating prima facie recognition under the OAU Refugee Convention. In other words, it committed the government to recognize—on the face of it—people fleeing situations involving, for example “events seriously disturbing public order.” This meant that in terms of legislation, at least, the Kenyan government had perhaps the strongest legal commitment to inclusively protecting survival migrants of any state in the world.

Securing this legislative commitment subsequently enabled UNHCR to persuade Kenya to preserve access to asylum at crucial moments. For example, after the January 2007 border closure, Kenya tried to restrict access to its territory. As the Human Rights Watch report outlined above points out, the security focus of the government—together with the role of police corruption—has placed restrictions on access to asylum. Yet by highlighting Kenya’s legislative commitments and the fact that the Immigration Act’s prohibition on illegal aliens is overridden by the Refugee Act, allowing asylum seekers thirty days in which to register with DRA, UNHCR has been able to obtain concessions for Somali refugees. For example, at the height of the famine and drought in 2011, UNHCR was able to negotiate improved access and the reopening of a transit center at the border post of Liboi, which had previously been closed by the government.

However, securing a commitment to inclusivity has come at a price. UNHCR and the international community have accepted containment as the norm. There has been limited direct criticism of the Kenyan government’s encampment policy. UNHCR and its core donors have broadly accepted and followed the government’s policy, providing the financial and logistical support to maintain the Dadaab camps in ways that sustain the most minimum conditions of life—but little more.

The implicit Faustian bargain has been that Kenya has provided Somalis with access to territory but that protection and assistance have been enclosed in the Dadaab camps and made dependent on the voluntary support of donor
states. With UNHCR placed between the rock of the Kenyan government and the hard place of limited international donor interest, protracted exile and confinement to Dadaab has become the “norm by default” (Helton 2002, 155). Horst (2006, 107) describes UNHCR as being in “a compromised position,” playing the contradictory role of having to confront host states while being dependent on them.

UNHCR has also faced the challenge of having to consistently work with an underfunded budget for its Kenya operations. Food rations have been reduced in Dadaab simply due to resource constraints. Where there has been donor interest in the protection of Somali refugees, it has mainly been motivated by a desire to further entrench containment in the region in order to avert the onward movement of Somali refugees to Europe. In particular, Denmark, the Netherlands, and the United Kingdom—three of the biggest Northern state recipients of Somali asylum seekers—have funded a range of initiatives to support “protection in the region of origin,” either bilaterally or through UNHCR. For example, between 2003 and 2005, UNHCR developed a so-called Comprehensive Plan of Action for Somali Refugees, which undertook a “protection gaps analysis” with funding from the Netherlands, Denmark, the United Kingdom, and the European Community. Although abandoned because of the deterioration of the security situation in Somalia, the plan was widely acknowledged as motivated by a desire to limit onward migration to Europe (Betts 2008).

Meanwhile, Kenya and Denmark have developed a multiyear capacity-building project, providing 2.7 million euros and seconding a migration expert to Nairobi as part of a “protection in the region of origin” project negotiated in 2004 and for which implementation was delayed until 2009 due to a disagreement over the substance of the agreement.26 The project focuses on how livelihood opportunities might be strengthened to enable Somali refugees to be more self-sufficient. Yet even the Kenyan government has been cognizant of the underlying, unstated motivation: “This program of the naughty countries—Denmark, the Netherlands—they are all involved. They are saying ‘keep refugees in the region.’ They want refugees to be in the region so that when the situation improves, they can go back to their countries.”27

In summary, then, the outcome has been an implicit bargain in which Kenya has admitted Somalis on an inclusive basis. However, the flip side of the deal has been a form of humanitarian containment in which only the most minimum conditions for life have been maintained. The insecure, overcrowded, and underfunded Dadaab camps have become a de facto prison in which Somalis have faced significant human rights deprivations. The chapter now turns to an explanation of why the humanitarian containment compromise has been adopted as the solution to survival migration in Kenya.
Explaining the Kenyan Government’s Response

In his attempt to explain why the Kenyan government has imposed restrictions on asylum, Milner (2009) finds the explanation in the combination of concerns with security and the perceived limitations of international burden-sharing. However, the relevant question for the purposes of this book is not just to explain the restrictions but rather to ask why there has been relative openness in the quantity of asylum alongside restrictions in the quality of asylum. In other words, why has the national refugee regime stretched to include all Somalis, albeit with a trade-off in the depth of protection offered? The answer that this section provides is that there have been significant rewards for government elites from the international level for inclusivity but strong domestic incentives to ensure that Somalis are geographically confined.

At the international level, both Daniel Arap Moi and Mwai Kibaki—at the crucial stages of offering asylum to Somalis in the 1990s and passing refugee legislation in the early 2000s—recognized the political opportunities available from openness. During the Cold War, Moi had been predominantly an authoritarian leader, but his close relationship with the West averted international criticism. With the end of the Cold War, foreign aid was withheld and demands for political reform were made by the United States and other allies. The 1992 elections, in which Moi faced multiparty competition for the first time, were marred by interethnic violence, including government repression of the opposition in the regions of its main support base, the Western and Rift Valley provinces.

In this context, the Somali influx of the early 1990s offered Moi a way to revalidate himself and the Kenya African National Union (KANU)-led regime in the eyes of the international community. Committing to refugee protection enabled the regime to demonstrate its human rights credentials. In turn, it created an opportunity not only to bring in humanitarian assistance but also to provide the legitimacy to attract development assistance and inward investment through improved relations with the West and the United Nations system.

After winning elections in 2002, Mwai Kibaki similarly recognized the international advantages of persevering with an open and inclusive policy and institutionalizing it with legislation. In order to defeat Uhuru Kenyatta and the KANU opposition, Kibaki had contested the election by working within the broad coalition of the National Rainbow Coalition (NARC). Part of Kibaki’s ability to maintain this broad-based support relied on the external legitimacy conferred by the international community as well as the external resources to sustain the coalition, of which the refugee question was an important part.

Pursuing these benefits alongside a policy of abdication and containment has meant that they could be achieved with relatively limited costs. Economically, the
costs were borne primarily by the international community. Politically, the costs were limited because the Somali refugees were confined to the North Eastern Province, an area of the country peripheral to national politics; at the same time, developmental gains, primarily paid for by the international community, were showered on an otherwise impoverished region through the rehabilitation of roads and airstrips, the installation of water boreholes, the establishment of water and electricity, and the provision of medical care and environmental rehabilitation projects (Milner 2009, 95). Indeed, as Horst (2006, 78) observes, “the refugee camps have stimulated trade, created new jobs, and attracted humanitarian aid.”

At the domestic level, however, there have been strong incentives to ensure that the way in which protection is carried out has been geographically confined and based on a policy of containment and abdication. There has been a longstanding politicization of Somalis in Kenya. During the colonial era, there was significant free movement by Somali pastoralists across what is today the border of Somalia and Kenya. The NEP—formerly known as the Northern Frontier District of Kenya (Castagno 1964) and where the Dadaab camps are located—has historically been populated by a majority of ethnic Somali pastoralists. As part of British East Africa, it was largely a buffer zone with Italian Somalia. With the unification and independence of Somalia in 1960, there was a campaign for the incorporation of the NEP within Somalia; however, the British instead made it part of Kenya. In opposition, a low-level secession war took place known as the Shifta (bandit) War between 1963 and 1967 with the aim of incorporating the Northern Frontier District into a greater Somalia.

Consequently, there has been a consistent narrative of anti-Somali xenophobia in national Kenyan politics. In contrast to the NEP, where Somali refugees have generally been tolerated by Somali Kenyans, at the level of national politics the fear of ongoing shifta activity in pursuit of a “pan Somali dream” has exacerbated intolerance (Horst 2006, 117). This has made it politically costly for the government to go beyond confining Somalis to the few areas of the country where they are tolerated. Since the 1990s, this anti-Somali strand of national Kenyan politics has been exacerbated by the putative link between Somalis and terrorism (Juma and Kagwanja 2008).

On August 7, 1998, the bombings of U.S. embassy in Nairobi (and Dar es Salaam) by al-Qaeda operatives was linked to Somalia (Haynes 2005). Fear of Somali-connected terrorist possibilities led the Kenyan government to attempt to pass counterterrorist legislation in 2003 and 2006, but both drafts failed to receive support because of their wide interpretation of terrorism and the extensive powers given to the police. Nevertheless, some of these powers have been used by the Anti-Terrorist Police Unit, leading to “increasingly tense relations between the central government and the Muslim community” (Bachmann and Hönke
By 2009, the Kenyan government was in partnership with the TFG to engage in counterterrorist activities against al-Shabaab. In 2009, there were media reports that Somalis in refugee camps were being recruited by the Kenyan government to fight Islamists in Somalia (Tayler and Albin-Lackey 2009). On July 11, 2010, two bombings in Kampala were carried out by al-Shabaab, killing 74. The bombings constituted the first strike by al-Shabaab outside Somalia, raising fears of attack within Kenya.

Fears of terrorism and the spillover of conflict have influenced the Kenyan government’s response to Somali refugees. Refugees have increasingly been accused of being terrorists by police (Human Rights Watch 2010b). Kenya’s joint military-police disarmament operation among Somali communities in NEP, launched in late 2008, has even been accused of torture (Human Rights Watch 2010b, 16). The shift has coincided with a rise in the forcible deportation of Somalis back to their homeland by Kenyan authorities, in violation of international law (Human Rights Watch 2010b). By the end of 2011, Kenya had closed the border with Somalia and even stationed soldiers on the Somali side of the border in order to reduce armed incursions. Police and military presence has since increased in and around the Dadaab camps (Anderson 2012).

A key to understanding how the concern with national security has affected asylum policy is the division of responsibility in government. On the one hand, UNHCR has been able to operate with a supportive Department of Refugee Affairs, which has worked to preserve asylum space for Somalis. On the other hand, this support has been counterbalanced by the branches of government dealing with immigration and internal security, which have had different priorities.

As we have seen, George Saitoti has been central to this split. As minister of state for provincial administration and internal security since 2008, he has pushed for significant restrictions on the movement of Somalis and has frequently overridden the DRA. Saitoti is a populist and a career politician who has consistently played on citizens’ concerns about security in order to advance his popularity. The split between Refugee Affairs and Internal Security has been widely noted. Judy Wakahiu, head of the Refugee Consortium of Kenya, noted, “The Refugee Secretariat and the Immigration Ministry do not have any clout within the government. The Minister of State for Internal Security is the obstacle.”

Even Peter Kusimba, head of the DRA, acknowledged: “The problem is that a number of government agencies look at you differently. . . . We want to treat refugees as they are supposed to be treated. . . . The Ministry of Internal Security views them as security risks.” It is Saitoti who has upheld the border closure, closed the Liboi transit center, and supported the provincial commissioners’ clamp-down on Somalis outside the Dadaab camps. He has also been accused of obstructing full implementation of the 2006 Refugee Act. In the words of
Peter Klansoe of the Danish Refugee Council: “Peter Kusimba is effective, but his task is not high on the agenda. . . . It is the minister of the interior who closed the border. He is also the one who restricts decisions on expanding Dadaab. It is not the prime minister; it is not the president. It is this guy. I can remember the first time I came to Kenya, which was twenty-three years ago; he was the vice president. So he is the most powerful minister, and he is taking the decisions. He is very difficult to come in contact with. The concern is whether he has the real information and what his interest is in.”

It is this division in government that partly explains a stark disjuncture between an inclusive policy—mandated by the Refugee Act and supported by the DRA—and an increasingly restrictive and repressive implementation. On the one hand, UNHCR has been able to use the Refugee Act as an important advocacy tool, and to work through the DRA in order to preserve a legally recognized right for all Somalis to be recognized as refugees. On the other hand, it has been forced to operate within the constraints of an increasingly security-focused government policy that has made clear that the Dadaab camps are the only area in which Somali refugees will be tolerated.

The Kenyan invasion of Somalia in October 2011 was the latest illustration of the growing dominance of certain branches of the government over the DRA. The minister of state for defense, Yusuf Haji, had strongly promoted the intervention as a means of testing the Kenyan army’s military capability. Business interests have also promoted the invasion, with a return to stability in the NEP being seen as a means to facilitate the construction of oil pipelines from Uganda and South Sudan in the region (Throup 2012). President Mwai Kibaki has seen the invasion primarily as a way to restore stability to the border region and to enable some of the refugees to be protected within the territory of Somalia (Anderson 2012). The intervention has become the latest means of promoting humanitarian containment—but this time through creating an extra-territorial protection space.

Explaining the International Community’s Response

On many levels, humanitarian containment has also suited the international community. A genuine protection motive has been coupled with the desire to ensure that a perceived migration and terrorism threat from the region does not spill over from South to North. The legacy of international failure in Somalia in the early 1990s and the limitations of protection space in south-central Somalia (Abild 2009) have continued to impel international donors to push for inclusive recognition of Somalis in Kenya. However, concern over onward movement of a globally stigmatized refugee population has predisposed the international
community to try to ensure that displaced Somalis remain protected within the
region of origin.

Since the early 1990s, there has been a need to ensure a humanitarian space
in which Somalis can receive access to international protection. This has been
assumed to be a basic obligation of the international community because the
United States and the UN system were implicated in the failures of humanitar-
ian intervention in the early 1990s. The 1992–93 UNOSOM missions and the
withdrawal of U.S. soldiers following Black Hawk Down made humanitarianism
the international community’s fig leaf for engaging with the problems of Somal-
ia. After withdrawal, the United States, not surprisingly, contributed more than
50 percent of emergency appeal contributions to UNHCR in Kenya during the
initial mass influx. While levels of humanitarian assistance channeled through
UNHCR fell in the early 2000s, UNHCR’s main donors have continued to priori-
tize earmarking contributions to UNHCR’s Dadaab operations. Meanwhile, the
humanitarian industry of NGOs working in the camps has continued to provide
a strong lobby to maintain these operations.

On the other hand, there has been countervailing pressure to engage in con-
tainment not only from the host government but also from UNHCR’s core donor
states. Since the 1990s, Somali mixed migration to Europe has increased, and So-
malis have become the subject of xenophobia in some northern European states.
Most notably, Denmark, the Netherlands, the United Kingdom, and the European
Commission have pushed UNHCR to explore ways of developing the concept of
protection in the region of origin (Betts 2009; Lindley 2010, 109–113). The basis
of this concept has been to see ways in which development assistance might be
used to enhance the quality of protection available to Somalis in Kenya as a means
of reducing the need for them to move onward in search of asylum in Europe.

One of the leading states in this endeavor has been Denmark, which exem-
plifies UNHCR’s European donor states’ concerns with Somali mixed migra-
tion. Bettina Gollander-Jensen, the Danish government’s minister counselor in
Nairobi, explained: “In 2003, Denmark started a Regions of Origin program,
and the objective of that program was to really control migration.”34 It focused
on Kenya and Somaliland. Klansoe, of the Danish Refugee Council, concurred:
“The minister of course has an interest. It is ‘support refugees in their region of
origin’ . . . but clearly with the political aim of ‘keep people in there.’ . . . If you
want to deal with displacement and refugee issues, Kenya is the place to be.”35
Meanwhile, the Netherlands has been conferring with the Danes about building
on this work. The United Kingdom has also actively sought to establish a bilateral
partnership on mixed migration from the region. Its embassies and high com-
missions have attached new migration officers, and the U.K. Home Office has
supported the new EAC Centre of Excellence for Training Migration Officials.
The U.S. government has also funded International Organization for Migration (IOM) research on Somali smuggling routes to South Africa. At the multilateral level, the concern with the mixed migration of Somalis has led to the creation of a Mixed Migration Task Force (MMTF), in which UNHCR, IOM, and the Danish Refugee Council, in particular, are collaborating with donors to understand and limit the onward movement of Somalis, whether across the Gulf of Aden or toward South Africa.

This trend in donor support for the containment of Somali refugees has in turn been exacerbated by a global concern with the link between Somalia and terrorism, mirroring that in Kenya (Juma and Kagwanja 2008). The August 1998 bombings of U.S. embassies in Nairobi and Dar es Salaam, the announcement by then president George W. Bush of an East African counterterrorism initiative in June 2003, the January 2007 Battle of Ras Kamboni in which the United States attacked al-Qaeda suspects in southern Somalia all illustrated key turning points at which Kenya—and its Somali refugees—became increasingly central to the West’s counterterrorism strategy. Kenya has become an important ally in the “war on terror,” receiving external support for its counterterrorism efforts mainly from the U.S., U.K., and Danish governments (Juma and Kagwanja 2008, 101).

As Bachmann and Hönke (2009, 101) explain, after the September 11 terrorist attacks: “Development and security policies merged into an agenda of conflict prevention and peacekeeping in which stable states such as Kenya received new strategic importance as regional anchor states. . . . A problematic blurring of the lines between developmental and classical security instruments in the practice of reactive conflict management interventions soon became evident. The process intensified with regard to the functionality of development projects in the fight against terrorism.” UNHCR has been placed in a position in which it is caught between donor and host states with a coincidence of interests: to provide an inclusive humanitarian space for Somalis—yes—but also to contain them in a way that aligns with perceptions of national and international security. This concession to security is implicit in the comment of UNHCR’s Kenya Representative Elike Segbor during the 2011 survival migration influx: “With a refugee population of over 400,000, compared to the host community’s 100,000, only 80 km from a border of a country at war, you can imagine there are security concerns” (IRIN 2011b).

Conclusion

From a certain perspective, the refugee regime in Kenya has stretched to an exceptional degree. Relative to other cases explored in this book, Kenya has assumed a broad and inclusive definition of a refugee. Since the early 1990s, it has
recognized all people fleeing south-central Somalia as refugees, irrespective of the proximate cause. What began as a pragmatic policy for addressing a large-scale mass influx was enshrined in legislation in 2006. By becoming the only state in Africa to incorporate prima facie recognition under the OAU refugee definition, Kenya formally adopted perhaps the most inclusive refugee definition of any government in Africa. Even during the 2011 famine and drought, when many people were fleeing causes that arguably fell outside even the OAU definition, the Kenyan refugee regime remained inclusive.

The reasons why regime stretching has taken place can be attributed to a set of incentives of key elites within the government at critical historical junctures. The initial influx came at a point when the Moi regime needed international legitimacy and development assistance because it could no longer count on the same unconditional support it had received in the context of the Cold War. The revival of debates on inclusive refugee legislation came at a time when Kibaki was similarly seeking greater international recognition and support. Ensuring that refugees received protection offered a means to demonstrate the human rights credentials of both leaders and to bring in international assistance.

Furthermore, the option to effectively contain and outsource the cost of protection to the international community massively reduced the domestic political costs of hosting. NEP already had a population dominated by ethnic Somalis. Provided that the international community not only paid the refugee protection bill but also extended benefits to the host community, it could be conceived as beneficial. There has been a coincidence of interests between the government’s concerns and those of the international donor community. Inclusive recognition has suited UNHCR. During the initial mass influx, prima facie recognition was more pragmatic and cost-effective given the large numbers of Somalis, while at later stages introducing individualized screening would have risked *refoulement*.

Regime stretching, however, has come at a cost. There has been a trade-off between the quantity and quality of asylum. The combination of anti-Somali xenophobia and rising concerns with terrorism has reinforced government restrictions on freedom of movement and livelihood opportunities. The overwhelming majority of Somalis have been forced to remain indefinitely in the overcrowded Dadaab camps, where conditions have deteriorated over time. Government elites like George Saitoti have exploited the “Somali question” for electoral gain, pushing for greater security restrictions on Somalis since 2007. However, the 2006 Refugee Act and the Department of Refugee Affairs have at least created an institutional safeguard that has prevented any systematic attempt to engage in deportation. The government’s ongoing concern with international legitimacy has led it to broadly continue to respect the 2006 act and to retain inclusivity toward all displaced Somalis even during the 2011 crisis.
By the end of 2011, however, this commitment had begun to erode. The increasingly large numbers of Somali refugees in Kenya, coupled with already existing tensions with Kenya’s resident Somali community, played a significant role in contributing to Kenya’s invasion of Somalia in late 2011. Although the military deployment was framed as a response to the immediate threat of al-Shabaab to Kenya, and despite the commercial and political gains Kenya stands to make as a consequence of its military involvement in Somalia, the invasion is clearly also a way to begin to close the Dadaab camps. This is most clearly illustrated in President Kibaki’s speech in London in February 2012, in which he suggested that the territories freed from al-Shabaab should be used for the return of Somali refugees.

In summary, international support and the incentives of elites at key moments have enabled the refugee regime to stretch to protect all Somali survival migrants, regardless of the proximate cause of their flight. However, this inclusivity has come at a price: a trade-off between numbers and rights. In admitting large numbers, Kenya has simultaneously sought to contain the population movement in ways that have compromised the human rights of those in exile. While Somalis may not yet have been deported in large numbers, they certainly have not received all the rights to which they would be entitled as refugees, or even under international human rights law (Human Rights Watch 2010b). Furthermore, the invasion of Somalia—and the search for an internal flight alternative—indicates that the government’s generosity may have been pushed to its limits.