



Kenya should obey international law in the repatriation of refugees

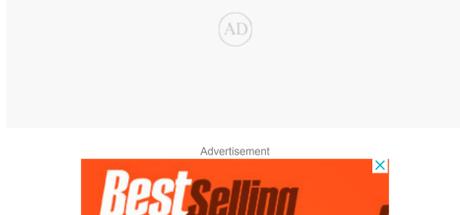
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By CAROLINE LICHUMA

What you need to know:

- The relative peace and prosperity in Kenya has allowed citizens of neighbouring countries embroiled in conflict to find refuge within its borders.
- Dadaab has the dubious honour of being the largest refugee camp complex in the world.
- The government of Kenya has justified the move to close down Dadaab on the grounds of national security.
- If Dadaab is closed down and all its inhabitants sent home, it is the women, children, and the old and infirm who will suffer.

Kenya has for a long time been a beacon of hope for its troubled neighbours. The relative peace and prosperity in Kenya since independence has allowed citizens of neighbouring countries embroiled in conflict to find refuge within its borders. Some of these refugees have lived in Kenya all their lives.



The United Nations Convention on the Status of Refugees identifies a refugee as any person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality and is unable to avail himself of the protection of that country or return to it.

Dadaab has the dubious honour of being the largest refugee camp complex in the world. The camp was created in 1992 and was first used as a haven for refugees fleeing the Somali civil war. Over time, it has been expanded and conservative estimates say that it currently houses over 350,000 refugees.

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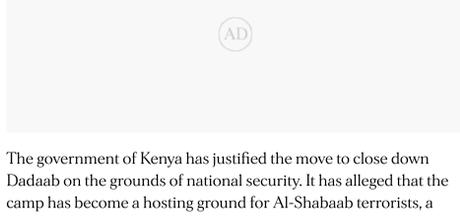
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In 2013 the Tripartite Agreement on Voluntary Repatriation Programme of Somalia Refugees by the government of Kenya, the Federal Republic of Somalia, and the United Nations High Commissioner for Refugees was signed.

The key aim of this agreement was to allow refugees living in Dadaab who voluntarily wanted to go back to their homeland to be able to do so. However, almost three years later, few refugees have heeded the call to go back to Somalia willingly. This clearly demonstrates that the inhabitants of Dadaab are unable or unwilling to go back to their country of origin due to fear of persecution.

In May 2016, the government of Kenya announced its intention to close down the Dadaab complex and forcibly send the inhabitants back to their countries of origin.

One of the most important doctrines in refugee law is the principle of non-refoulement. This is a rule to the effect that a state cannot and should not send refugees back to a country where their life or freedom will be threatened.



The government of Kenya has justified the move to close down Dadaab on the grounds of national security. It has alleged that the camp has become a hosting ground for Al-Shabaab terrorists, a centre of smuggling and contraband trade, and that a vast number of the refugees are enablers of illicit proliferation of weapons.

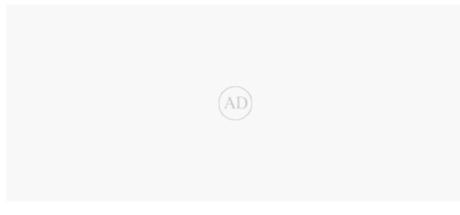
It has also asserted that the running of the Dadaab refugee camp is placing an unacceptable financial strain on Kenya. The problem with the government's action in this case is that a blanket policy of refoulement will hurt the most vulnerable members of the refugee society while having a minimal effect on improving national security.

If Dadaab is closed down and all its inhabitants sent home, it is the women, children, and the old and infirm who will suffer.

It is unlikely that all the refugees in the camp have been aiding Al-Shabaab militants or engaging in other illicit activities. Why then is the government punishing everyone, including the innocent?

The principle of non-refoulement is not an absolute rule; it does have an exception. If there are reasonable grounds for regarding a refugee to be a danger to the security of the host country, then the government may forcibly repatriate that individual. Therefore, it is incumbent upon the government to prove that the unique circumstances of the Dadaab refugees fall within this internationally recognised exception.

Unfortunately, however, the Kenyan Government has failed to show that all the refugees currently inhabiting the Dadaab camp constitute a threat to Kenya's national security interests. A mass deportation like the one currently contemplated is unjustifiable under international law. A more measured response needs to be taken.



Due process of the law requires that before a decision of such magnitude is undertaken, careful screening of refugees should be carried out and evidence gathered on Al-Shabaab sympathisers and accomplices living in the camp. These people can then be sent back to Somalia without the rules of international law being infringed.

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