ARCHIVIO ISTITUZIONALE DELLA RICERCA

Alma Mater Studiorum Università di Bologna
Archivio istituzionale della ricerca

Conflict, health emergencies, and disasters in Somalia: What role can the 1951 Refugee Convention play?

This is the final peer-reviewed author's accepted manuscript (postprint) of the following publication:

Published Version:
Scissa, C. (2025). Conflict, health emergencies, and disasters in Somalia: What role can the 1951 Refugee Convention play?. Glos : Edward Elgar Publishing [10.4337/9781035301232.00028].

Availability:
This version is available at: https://hdl.handle.net/11585/1019331 since: 2025-07-11

Published:
DOI: http://doi.org/10.4337/9781035301232.00028

Terms of use:

Some rights reserved. The terms and conditions for the reuse of this version of the manuscript are specified in the publishing policy. For all terms of use and more information see the publisher's website.

This item was downloaded from IRIS Università di Bologna (https://cris.unibo.it/).
When citing, please refer to the published version.

(Article begins on next page)

07 September 2026

Chapter 15

Conflict, Health Emergencies, and Disasters in Somalia: What role can the 1951 Refugee Convention play?

Chiara Scissa 0000–0003–1887–389X

Abstract *This chapter engages with Somali displacement and outlines three of the never-ending crises that are persistently affecting the country – these being conflicts, health emergencies, and disasters – which have compelled Somalis to seek protection in neighboring countries. This contribution explores the attitudes of African countries in addressing Somali cross-border displacement, and particularly highlights the different approaches undertaken by Kenya and Ethiopia. It investigates what protection statuses have been provided in receiving African countries and the relevance of, respectively, international refugee law and African asylum law. Given that the prominence of the latter seems to be linked to a misinterpretation of the 1951 Refugee Convention, the Chapter concludes by evaluating the role that it could play in addressing the compounded impact of Somalia's never-ending crises if applied in a principled way.*

Keywords: Somalia; Conflict; Disasters; Health; Africa; Asylum.

[a]Introduction

Somalia and its communities are struggling to cope with the combined adverse impacts of conflicts, disasters, and health emergencies, such as COVID-19 and the desert locust invasion. These factors, some of which represent persistent crises in Somalia, have displaced millions of people within Somalia and across borders (OCHA, 2021).

Somalia is affected by an armed conflict between the Somali government and Al-Shabaab, which is causing displacement, disruptions of livelihood, crimes and severe violations of human rights, including the killing of civilians, the forced recruitment of children, and conflict-related sexual violence.

In addition to the conflict, in 2020 Somalia faced a desert locust crisis, categorized at the highest threat level of danger, while the COVID-19 pandemic outbroke. At that time, Somalia was among the places of the world least able to cope with pandemics due to many forms of poverty-related deprivation, low levels of access to health care and limited State capacity, which made Somalia rank 193 out of 195 countries in the Global Health Security Index in terms of its ability to respond to a pandemic (Global Health Security Index, 2019).

In January 2022, drought and an additional locust infestation caused a sharp decrease in crop production, estimated to be between 50% and 70% below the last 10-year average (OCHA, 2022). At the end of the same year, 3 million people were internally displaced, and at least 20.000 had been displaced in the Dadaab refugee camps in Kenya (IRC, 2022). Being among the biggest camps in the world, which is now hosting 300.000 people, the Dadaab refugee camps have received some 44.000 new arrivals in 2022, mainly from Somalia, who are left with no access to food and water aid provided by the UN High Commissioner for Refugees (UNHCR) and other international organizations as their presence is not registered (UNHCR, 2022). The

International Federation of Red Cross and Red Crescent Societies noted that a combination of disasters, especially floods and droughts, locusts and the COVID-19 pandemic eroded the coping mechanisms in several countries, especially in Somalia.

In this context of severe human rights denials, the applicability of international and regional refugee instruments to Somalis fleeing never-ending crises and their compounded effects needs to be taken into duly account. The cornerstone of international refugee law, the 1951 Convention on the Status of Refugee (Refugee Convention), defines a refugee as someone who:

> "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it".

Pursuant to Article 1A (2), Convention refugees share four key elements: Once outside their own country, they need to establish 1) a well-founded fear 2) of being persecuted 3) for reasons of 4) race, religion, nationality, membership of a particular social group or political opinion. Each element of this definition must be satisfied for the claimant to be recognized as a refugee under the Refugee Convention. The Refugee Convention sets a benchmark of regional and national provisions on asylum, while the refugee definition has been transposed in all the main instruments of refugee protection worldwide, including the African Union Convention Governing the Specific Aspects of Refugee Problems in Africa (AU Convention), the Cartagena Declaration on Refugees and the Protection of People Fleeing Armed Conflict and Other Situations of Violence in Latin America, the Treaty on the Functioning of the European Union.

More into detail, the AU Convention provides for the regional refugee protection framework in Africa and complements the Refugee Convention. The AU Convention broadens the traditional refugee definition as the term "shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality". Although the legal concept of "events seriously disturbing public order" does not present a common definition in international law, both the anglophone and francophone African literature seem to agree that the item applies to disturbances, including those stemming from conflicts, disasters and threats to a healthy environment (Hansen-Lohrey, 2023). According to Hansen-Lohrey, the definition is met in all those cases when: 1) The disturbance to public order involves a threat to the rights to life, physical integrity and/or liberty of individuals; 2) The disturbance affects society at large, for example by being widespread and/or generalized. The disturbance need not affect the majority of a society insofar as it creates a general sense of instability by undermining public peace, public safety or public security; and 3) The State is unable or unwilling to restore public order.

The African Charter on Human and People's Rights, which is the regional human rights treaties binding all African States except for Morocco, provides for the right to seek and enjoy asylum and protects against refoulement. Moreover, it also prohibits the collective and arbitrary expulsion of aliens, and postulates that the expulsion of a non-national legally admitted in a territory of a State Party must be provided by a decision taken in accordance with the law.

Faced with Somali displacement, African countries' reaction widely diverged and inconsistently applied the relevant refugee instruments. Additionally, whereas the direct and indirect impacts of the armed conflict and systematic constraints on access to basic health care have been taken into duly consideration in the guidelines on international protection for Somalia issued by UNHCR, little or no consideration has been given to other persisting challenges, such as the heightened exposure to disaster displacement.

In light of the foregoing, the aim of this Chapter is to investigate the relevance of the Refugee Convention in dealing with the impact of three major challenges persistently faced by Somalia – conflicts, health emergencies, and disasters. To do so, it briefly describes the main features of each of them. It then explores the attitudes of neighboring countries towards Somalis displaced cross-borders, and particularly highlights the different approaches undertaken by Kenya and Ethiopia. In doing so, the Chapter notes that the Refugee Convention has almost never found application as Somalis were (mistakenly) believed not to fit within its requirements. The Chapter concludes by evaluating the role that the Refugee Convention could play in addressing the compounded impact of Somalia's never-ending crises if applied in a principled way.

[a]Conflicts

Somalia is a federal State characterized by federal member States, in addition to the federal government. These also dispose their own Constitutions and military forces.

Conflict and violence between military forces and non-state armed groups, particularly Al-Shabaab, have been major triggers of displacement in Somalia for at least three decades. Torn by an ongoing non-international war since 1991, Somalia is divided into three main regions (Puntland, Somaliland, and South-Central Somalia) fighting against each other to establish the leadership. Although Somalis are not ethnically homogenous, there is, however, a "dominant" ethnicity associated with the Samaal group, whose social structures have permeated Somali society over several centuries. Non-Samaal groups have either been expected to adapt to the dominant Samaal culture, or faced social exclusion, discrimination and even persecution (Rights Group International, 2010). The Samaal clan include minority groups, such as the Darod, Hawiye, Dir and the Isaaq. The Rahanweyn are also a minority clan, however, they differ from Samaal in their culture and language, but not that much in their social practices, which have gradually adapted to the Samaal ones. They are excluded from education and Somali politics and are considered as second-class citizens within Somali society (de Waal, 1994). Finally, many Somalis are do not belong to any clan and they are mostly referred to as people of low status or slaves. Their marginalization is exacerbated by their "inferior" occupations.

Clans are essential in Somali culture and politics. They are not only used as a tool for identification and as a way of life, but the membership of a stronger or weaker family clan matters a lot when it comes to accessing resources, or influencing and holding the political power. As we will see, in fact, minority clans in Somalia have been harshly discriminated against and suffered from long-standing marginalization from the societal and political life of the country. Moreover, majority clans have clan militias, while minority clans often lack one, which disproportionally expose them to severe violence and abuses.

The political instability in Somalia is harshly exacerbated by the presence of terrorists and violent non-state actors. Among these, Al-Shabaab is an Islamist Sunni Salafi jihadist armed group that seeks to establish an Islamic caliphate in Somalia since early 2000s. Although the overall situation remains fluid, it steadily controls large parts of rural territory in Central and Southern Somalia, where it restricted freedom of speech, press, assembly, movement as well as women's rights.

ACLED defines 2022 as the "deadliest year" in Somalia since at least 2018, with over 6.500 reported fatalities where women and girls are particularly at risk of gender-based violence (ACLED, 2023). Solely between February and May 2022, in fact, 428 civilians were killed or injured, 76% of which were caused by unlawful attacks by Al-Shabaab, with the remaining fatalities attributed to State security forces, clan militias, and international and regional forces (UN Secretary General, 2023). A wide range of human rights violations have been reportedly committed by all parties in the conflict, which include extrajudicial killings, arbitrary arrests and detentions, conflict-related sexual violence, enforced disappearances. Additionally, some government officials have engaged in land grabbing and forcible eviction of internally displaced people, while Al-Shabaab has forced child recruitment (US Department of State, 2022).

According to UNHCR's data, more than 1.8 million people have been displaced in 2022 mainly because of conflict, drought and flood. As of July 2023, an additional 1.3 million people have been displaced for the same reasons (UNHCR Somalia, 2024). Prolonged conflict has disrupted food production, and increased food insecurity. The destruction of already limited health facilities and the increase in hunger has exacerbated the spreading of diseases. Meanwhile, Al-Shabaab has reportedly restricted humanitarian access in areas under their control, aggravating the dire humanitarian needs of the population.

It is nowadays well established that people fleeing violence or the threat of violence in the context of an international or internal conflict may meet the criteria for refugee status as enshrined in Article 1(A)2 of the Refugee Convention. In its International Protection Considerations with Regard to People Fleeing Somalia, UNHCR lists some emblematic examples of cases where civilians subjected to violence for a Convention reason may fit in the traditional refugee definition. These include situations where violence is targeted against specific clans or ethnic, political or religious groups; the imposition of parallel justice structures and illegal punishments against civilians residing in areas controlled by Al-Shabaab; forced recruitment; high levels of crime and corruption (UNHCR, 2022).

For civilians fleeing violence to come within the scope of Article 1(A)2 of the 1951 Convention, the impact of the violence must be sufficiently serious to amount to persecution. According to UNHCR, a risk of regular exposure to violence or to its consequences can amount to persecution, either independently or cumulatively. In particular, decisionmakers need to determine whether the consequences of conflict-related violence for civilians are sufficiently serious to meet the threshold set out under Article 1(A)2 of the Refugee Convention. In doing so, considerations shall be limited to the direct impact of violence, rather they shall encompass the consequences of violence that are more long-term and indirect, including the impact of the conflict on the human rights situation and the extent to which the conflict impedes the ability of the State to protect human rights. Relevant factors in this respect are: "1) The control over civilian populations by Al-Shabaab, including through the imposition of parallel justice structures and the meting out of illegal punishments, as well as by means of threats and intimidation of civilians, abductions of clan elders, retaliatory attacks and the use of extortion and illegal taxation; 2) Forced recruitment; 3) The impact of violence and insecurity on the humanitarian situation as manifested by food insecurity, poverty and the destruction of livelihoods; 4) High levels of crime and the ability of corrupt government officials and clan members to operate with impunity; and 5) Systematic constraints on access to education and basic health care as a result of insecurity.

[a]Health emergencies

Somalia, among the poorest countries in the Horn of Africa, is designated as a "least developed country" by the United Nations, with its economic development affected by protracted crises (World Bank, 2020). The persistence of compounded challenges has made the Somalian health system extremely weak - which lacks comprehensive health services, healthcare professionals and infrastructure - with limited or no access to basic healthcare for the majority of its population (Braam et al, 2021). In particular, national and international institutions have denounced the dramatic lack of infrastructure, programs, medicines, and professionals for survivors of gender-based violence, people with disabilities, people affected by physical and mental illnesses, including HIV (WHO, 2020).

With almost 70% of Somalis living in poverty, by mid-2020 almost a third of the population was in need of humanitarian assistance due to disasters, including floods and droughts, locust invasions and COVID-19 (Heritage Institute for Policy Studies, 2020). As a result, malnutrition rates became high exposing people to heightened risk of contracting viruses, including COVID-19. By September 2022, there were more than 27.000 confirmed cases and more than 1.300 related deaths, with only 14% of the population successfully vaccinated by end of August. According to Amnesty International, although the government increased the health budget in 2022, healthcare remained poor and access to water, sanitation and food was severely inadequate.

In 2020, Somalia had to face another major health emergency, namely the locust plague. Locusts are among the most devastating pests worldwide, the most destructive of which is the desert locust. Locust plagues in Somalia and other countries in the East and Horn of Africa are closely related to long-term droughts and warm winters coupled with occurrence of high precipitation in spring and summer. Hence, scholars have argued that

climate change, in causing more precipitation and higher temperatures which accelerate the reproduction of locusts, is the primary cause of worsening locust invasions in the last decades, with devasting consequences for crop production, agriculture, and food security (Wilke, 2024). As noted by the UN General Assembly, tensions and conflicts among clans escalate during droughts, floods and locusts, which heighten the need, especially among vulnerable rural communities, for arable land and access to water (UN General Assembly, 2020).

In February 2020, Somalia declared the state of emergency as locusts posed a major threat to the country's fragile food security situation. Its limited financial capacity and the lockdown due to COVID-19 have further hampered control efforts. The responses to the locust plague were indeed limited as supply lines for insecticides and other equipment stopped and locust response workers could also be subjected to quarantine (Salih et al, 2020). Additionally, the armed conflict in Somalia made some of the locust breeding areas inaccessible. In 2021, the Intergovernmental Authority on Development (IGAD), which also includes Somalia, launched an inter-regional platform to manage locusts and other trans-boundary threats through developing an early warning system and facilitating regional cooperation (IGAD, 2021).

In Somalia, health emergencies have exacerbated already dire humanitarian conditions. Restrictions related to the COVID-19 pandemic, the persisting drought, desert locusts and political instability have exacerbated poverty in Somalia, aggravated vulnerability and undermined resilience and livelihood.

In its Considerations, UNHCR explained that the impact of violence and insecurity on the humanitarian situation as manifested by food insecurity, poverty and the destruction of livelihoods and the loss of assets, and the systematic constraints on access to education and basic health care as a result of insecurity could substantiate the need for the refugee status. Moreover, UNHCR reaffirms that a person with an established fear of being persecuted in one part of the country cannot be expected to relocate to another area where the claimant would be exposed to a new risk of serious harm, including a serious risk to life, safety, liberty or health.

[a]**Disasters**

In 2011, Somalia experienced its most destructive drought in five decades (Maxwell & Fitzpatrick, 2012). At the peak of the resulting famine, 4 million Somalis were in need of humanitarian assistance, with 750.000 people at imminent risk of starvation (Food Security and Nutrition Analysis Unit - Somalia, 2011). Between 2010 and 2012, over 200.000 Somalis have been displaced in Kenya and Ethiopia because of disasters, especially floods and droughts. These caused shortage of water, crop and livestock failure, an increase in local food prices, and the suspension of food distribution by UN Agencies disrupting livelihood, among others. The then government failed in adopting adequate preventive measures, partially because Al-Shabaab controlled much of the affected area, and counter-terrorism restrictions prevailed over humanitarian concerns. Al-Shabaab exacerbated the already severe impacts of a dire humanitarian situation, including by forbidding access to humanitarian and UN agencies and expelling those that had access to critical zones, banning people

from leaving controlled areas even if devastated by the drought, and limiting the flow of information on the severity of the crisis in areas under its control.

The drought has "particularly devastated the livelihoods of the most vulnerable Somalis, whose ability to cope has been eroded by decades of protracted conflict, climate shocks, locust infestation and disease outbreaks" (UN Security Council, 2022). In Somaliland, the drought has further deteriorated an already dire humanitarian situation, which has caused the displacement of 810.000 people. In both Puntland and Somaliland, pastoralists were increasingly unable to get enough water for their livestock (UNSOM, 2022). In Puntland reported increases in acute malnutrition of children and women (Humanitarian Affairs and Disaster Management Agency, 2021). At the time of writing, Somalia is in the midst of its fifth consecutive failed rainy season and is, again, at risk of famine. Drought and the locust infestation have caused a sharp decrease in crop production, estimated to be 50 to 70% below the last 10-year average in January 2022 (OCHA, 2022). Over 7.1 million people, or 40% of the population, are suffering from starvation and food insecurity, and the number of Somalis facing the highest levels of extreme hunger has increased up to 91% in 2022 alone (FAO, 2022). Between January and March 2023, 7.8 million Somalis were affected by drought, and 245.000 were newly displaced (IOM, 2023).

To such rooted process of environmental degradation, the Russian invasion of Ukraine in March 2022 added further concerns. According to the International Committee of the Red Cross, Somalia depended on the Russian Federation and Ukraine for more than 90% of its wheat supplies but the conflict interrupted them, while rising fuel costs and food prices (ICRC, 2022). In 2022, the government created the Ministry of Environment and Climate Change and appointed a special presidential envoy to address the drought-related emergency. However, funding fell far short of what was needed to mitigate the crisis.

[b]**Kenya's responses to Somali displacement.**

Kenya is party to the Refugee Convention and its New York Protocol as well as to the 1969 AU Convention. The country has also transposed key obligations at the domestic level through the 2006 Refugees Act. At the very beginning of Somali displacement, Kenya considered all people coming from South Central Somalia as *prima facie* refugees according to the AU definition. In 2011, 121.474 Somalis received the refugee status according to the AU Convention in Kenya (18.631 in 2012), while 94 were entitled to the refugee status according to the Refugee Convention (95 in 2012) (Weerasinghe, 2018).

The government found that drought was the primary cause of their flight: "The current influx of refugees into Kenya is of Somalis seeking food and not people running away from violence. The refugees are coming into Kenya to get food due to the severe drought situation in Somalia" (Kolmannskog, 2014).

From October 2011, however, Kenya's policy started to become more restrictive. It limited registration of asylum-seekers to a number of specific time periods. In the following years, national security has started to overcome human rights considerations, demonstrating the high level of political sensitivity around the

reception and protection of refugees displaced in the Dadaab camps. In 2013, Kenya aimed to force 18.000 people to temporarily relocate from urban areas to the Dadaab and Kakuma camps with the ultimate aim to return them to their home countries (Garlick et al, 2015). Such an order has been annulled by the High Court of Kenya as in breach of both the Kenyan Constitution and the country's international obligations (eKLR, *Kituo Cha Sheria v Attorney-General* 2013). During the same year, the governments of Kenya and Somalia and UNHCR signed a Tripartite Agreement to facilitate the return of Somali refugees back home. The reasons behind it concerned the accusation that Somali refugees in reception camps were collaborating or sympathizing with Al-Shabaab and that the Dadaab refugee camps have become training grounds for terrorist groups, despite the lack of any prosecution or terrorism-related charges. Moreover, Kenya considered Somalia to have become a safe place allowing return, despite the massive attacks launched by Al-Shabaab and the impossibility for the Somali government to re-establish control over occupied territories.

In 2014, the Kenyan government issued a new directive, which imposed the obligation for all refugees residing outside the camps to relocate there immediately, while requesting all Kenyans to report to the police any refugee or illegal migrant found outside camps and enforcing police presence around Dadaab and Kakuma. Ten refugees against whom this directive was enacted brought the case before the High Court, which declared the claim inadmissible as, according to the judges, the directive complied with refugees' rights and was adopted in conformity with the law (eKLR, *Samow Mumin Mohamed v Cabinet Secretary*, 2014).

In 2014, the government advanced legislative proposals to amend the Security Laws (Amendment) Act. Although the overall aim was to enhance anti-terrorism measures, several provisions would have negatively impacted refugees and asylum-seekers who, pursuant to proposed Section 46, would have been compelled to relocate in refugee camps and imposed not to leave them without the permission of the Refugee Camp Officer. The proposed law would also have set a limit to the maximum number of refugees hostable in Kenya to 150.000, which is against the scope of the Refugee Convention and the principle of non-refoulement. These instances were annulled by Kenya's High Court in 2015. However, shortly after, registrations of refugees in Dadaab have stopped completely. This implied that Somalis fleeing to Kenya have been since then denied the right to asylum and to registration, in turn excluding them for food and water distributed by UNHCR.

In 2016, Kenya announced its intention to close Dadaab owing to national security reasons, as hosted refugees were again accused of criminal activities (Ministry of Interior and Coordination of National Government, 2016). Such an act was held to be unconstitutional by the Kenyan High Court in February 2017 and respectively in violation of international refugee law, specifically with the principle of non-refoulement, the right to fair administrative action, and the constitutionally guaranteed rights of refugees stemming from the AU Convention and the African Charter, including the right to life and to dignity (eKLR, *Kenya National Commission on Human Rights & Another v Attorney General & 3 Others*, 2017). Since April 2016, the group-based approach to the refugee status determination process has ceased. This *excursus* highlights that Kenya's response has rapidly evolved since the beginning of 2011 and appears tied to the "politics of the day" (Maxwell, & Majid, 2014)

[b]Ethiopia's responses to Somali displacement.

In 2011, UNHCR's data indicate that there were 98.650 Somali refugees in Ethiopia who were recognized under the AU Convention (34.816 in 2012), while 17 Somalis were entitled to the refugee status under the Refugee Convention (0 in 2012) (Wood, 2013).

Somalis were recognized as refugees under the group-based approach according to Ethiopia's domestic refugee law, which largely transposes the Refugee Convention and the AU Convention.[1] Whereas the declaration of famine in parts of Somalia in July and August 2011 does not seem to have played a role in the application of the regional refugee definition, the "events seriously disturbing public order" item was discussed with reference to 1) severe mobility restrictions that prevented distribution of, or access to, humanitarian assistance; 2) lack of access to basic services including water, emergency healthcare and subsistence for an "unreasonable" duration. According to Weerasinghe, Ethiopia recognized that multiple factors compelled Somalis to flee, these including the impacts of drought, livelihood depletion, lack of access to basic subsistence, insecurity and conflict. More into detail, Weerasinghe divided Somalis' protection claims into three main categories: 1) The fear or experience of being subjected to targeted persecution (some cases); 2) The fear of lacking access to food and subsistence resulting from the impacts of the drought (and later, famine) *as well as* the effects of the conflict on their existence (several cases); 3) The fear primarily for the impacts of drought (and later, famine) and the inability to access humanitarian assistance (rare cases). This particularly occurred in those areas of southern and central Somalia controlled by Al-Shabaab where access to humanitarian assistance was impinged.

At the Nansen Initiative Global Consultation in October 2015, Ethiopia maintained:

> "We in Ethiopia, based on regional and international conventions governing refugees, including those who are forced to leave their countries due to natural disasters, mainly climate related calamities such as droughts, have welcomed them with an open-hand and have provided shelter in accordance with the protection standards contained in the Kampala Convention. *We are of the view that, as outlined in the Agenda for Protection, the broader definition of refugees adopted by the OAU/AU Convention Governing the Specific Aspects of Refugee Problems in Africa to include persons who are compelled, due to natural disasters, to leave their place of habitual residence in order to seek refuge in another place outside their country of origin or nationality, has enabled African countries, including Ethiopia to open their borders*" (The Nansen Initiative, 2015).

Accordingly, Ethiopia considers "natural disasters, mainly climate related calamities such as droughts" as potentially satisfying the broader refugee criteria under the AU Convention. Likewise, Djibouti and Uganda recognized the refugee status to Somalis in 2011–2012 pursuant to the AU Convention.[2] Between 2013 and

[1] Yet, Ethiopian law limits application to refugees coming from Africa. Please note that a group-based approach is only possible pursuant to the AU Convention's broader refugee criteria.
[2] Yet, Uganda did not recognize refugee status to individuals who fled a volcano eruption in the Democratic Republic of Congo in 2002.

2016, as the humanitarian situation in Somalia gave no sign of improvement, Ethiopia explored the possibility of establishing a cross-border initiative to provide humanitarian assistance (food, water etc) *within* Somalia, thus limiting potential cross-border movements in Ethiopia. Such a possibility does not seem to have materialized yet. In 2016, 3.088 Somalis obtained the refugee status according to the AU Convention in Ethiopia, and 6.494 people received it in 2017. No refugee status has been recognized according to Article 1(A)2 of the Refugee Convention to Somalis reaching Ethiopia in those years.

[a]The relevance of international refugee law in dealing with Somalia's never-ending crises.

Although decades of crises have been affecting the whole population in Somalia, minority clans have traditionally and disproportionally been affected. Since 2011, the conflict and disasters, exacerbated by health emergencies, have been playing a prominent trigger in displacing hundreds of thousands of Somalis. Al-Shabaab exacerbated the already severe impacts of a dire humanitarian situation, including by forbidding access to humanitarian and UN agencies and expelling those that had access to critical areas, banning people from leaving controlled areas even if devastated by the drought, and limiting the outward flow of information on the severity of the crisis in areas under its control. State failure to protect and violent conflicts have therefore exacerbated the impact of disasters on vulnerable people, reducing their adaptive capacity. The lack of humanitarian assistance was reportedly one of the main causes of the famine (Food Security and Nutrition Analysis Unit and Famine Early Warning Systems Network, 2011).

As recalled:

> "[…] in 2010–2012, Kenya received over two hundred thousand Somali citizens who were fleeing the severest drought/famine in the Horn of Africa in sixty years. These people crossed from Somalia to Kenya towards the Dadaab refugee camp *to escape imminent death*. *Although we received and registered them as refugees, they did not meet the definition of refugees per se as defined by the 1951 Geneva Convention on refugees*. Despite this, the government of Kenya recognized them as refugees on humanitarian grounds" (The Nansen Initiative, 2015).

In three respects is the situation of Somalis fleeing drought similar to people fleeing persecution. First, people fleeing Somalia at that time did so to "escape imminent death".[3] The data collected by UNHCR during registration processes suggest that, for 2011, the four primary reasons for Somali displacement were: 1) access to food/humanitarian assistance (over 23.000 individuals); 2) general insecurity (over 23.000 individuals); 3) livelihood problems linked to persisting drought (over 14.000 individuals); and livelihood problems associated with security concerns (over 6.000 individuals). Despite the risk and fear of imminent death, Somalis were excluded from the Refugee Convention and their recognition as refugees largely depended on the discretion of receiving countries that, as seen in the case of Ethiopia and Kenya, endorsed strongly different approaches to

[3] As a matter of fact, 250.000 Somalis did not survive the 2011 drought and died of starvation, dehydration, or related diseases.

Somali flight. Whereas the former provided the refugee status almost exclusively under the AU Convention, the latter endorsed a restrictive and punitive approach.

Second, and in addition to the refugee-like fear and harm experienced by Somalis, Somalia, often considered as a failed State torn by decades of civil war, did not manage to provide adequate assistance and relief to people affected by drought, and it did not succeed in preventing the devastating effects of this disaster on its population (Call, 2008). And although the limited compliance of failed States with their international law obligations was tolerated by the international community until mid-2000s, in 2011 it was already well established that even failed or fragile States like Somalia could not neglect their core responsibility towards their own population in disregard of international human rights law (Berkes, 2013).[4] People displaced by disasters cannot be left in a normative limbo, as human rights continue to apply also in disaster contexts. As ruled by the European Court of Human Rights (ECtHR) in *Sufi and Elmi vs United Kingdom*, the State lack of resources or capacity to mitigate harm resulting from disasters does not make it any less responsible for breach of the prohibition of torture, inhuman and degrading treatment (ECtHR, *Sufi & Elmi v United Kingdom*, 2011). Hence, even poor income countries or conflict-torn countries such as Somalia are not justified in their omission to protect their population against disasters.

Third and crucially, drought and conflict made historically marginalized groups in southern or central Somalia among the worst affected by the food insecurity and famine. Most victims belonged respectively to the Digil, Mirifle/Rahanweyn minority clans and Bantu populations, mostly sedentary and agro-pastoralist groups. These groups believed the major clans have systematically discriminated against them by excluding them from political decision-making, restricting their educational opportunities and neglecting social and economic services in their home districts (Cassanelli, 1995). As such, they felt marginalized from institutional attention and resources. The Bantu have been persistently and forcibly removed from the most productive land by political authorities and have had exploitative relations with politically or militarily dominant groups. Many of them became landless during the Siad Barre regime. As a result of long-term processes of marginalization, these minority groups have received less urbanization and education, compared to dominant clans in Somalia. This in turn has limited their wealth and business, their representation in the Somali society and the attention received by humanitarian agencies. Indeed, it has been reported that majority clans have benefitted from humanitarian aid to a much greater extent than these more-marginalized clans. A great deal of humanitarian aid were claimed, diverted and/or sold by majority clans at the expense of extremely impoverished, often starving, people (Human Rights Watch, 2013).

[4] Emblematically, in a 2001 case concerning applicants detained by de facto authorities in the unrecognized Transnistrian region in Moldova, the ECtHR acknowledged for the first time that a fragile State continues to have positive human rights obligations over all its territory, even if beyond its effective control. See, *Ilaşcu and Others v Moldova and Russia*, App no 48787/99 (ECtHR, 4 July 2001).

The story told by a Rahanweyn member confirmed the way in which clan identities and power differentiated Somali society according to their ethnic origin, in turn excluding and depriving minority groups from access to humanitarian aid, food and water to the point of starvation:

> "Some days people tell me that some people were given cards to get rations of food but this was done in the night and they gave these cards to their own clans, friends, and acquaintances. I was not a friend or a member of their clan so we were never given a card but we were okay as long as we got something to eat every day. I stayed in these IDP camps for two years during which I saw many tragedies and acts of crime. We were very hungry most of the time. Many children died of malnutrition and diseases such as cholera. I have seen youths from established communities in Mogadishu come in to the camps almost every night and rob these IDPs of the few things they had and rape woman with impunity" (Maxwell & Majid, 2016).

The same happened in the Dadaab refugee camps in Kenya, where Ogaden sub-clans were in control. This underlying and persisting vulnerability is exacerbated in times of crisis because the humanitarian response given is strongly influenced by more powerful clans.

Somalia's failure to protect people from historical patterns of discrimination perpetuating vulnerability is a key element to take into account during the refugee status determination process. Thus, discrimination and a lack of effective protection from their State caused or contributed to the disproportionate exposure of Rahanweyn and Bantu groups to the impacts of the drought-related famine. However, embedded discrimination and the consequent denial of essential rights, such as the rights to food, water, shelter and health, have not been adequately considered in the scant available case law (UKIAT, *DJ (Bantu - Not Generally at Risk) Somalia v. Secretary of State for the Home Department,* 2005).

As of mid-2021, Somalia was the eighth largest country of origin of refugees and international protection-seekers (844.000), particularly because of high levels of insecurity, as well as prolonged droughts and floods (IOM, 2021). From January to August 2021, 90.000 people were displaced due to drought (71.000 from January to August 2020) and 59.000 people by floods (637.400 during the same period in 2020) (UNHCR, 2021). In this context, minority ethnic groups continued to experience structural forms of exclusion and discrimination. They continued to be extremely vulnerable to high levels of acute malnutrition and potential famine, as are the less likely to be receiving food or cash assistance (Jaspars et al, 2019). Minority groups did not receive relevant emergency information, were excluded from consultation and participation in decision-making process, and had hardly access to justice. There is evidence that belonging to a minority clan was the main reason (33%) provided by those who were denied access to humanitarian assistance. As previous Sections highlight, drought in Somalia persisted in 2022 and in 2023, provoking new displacement and aggravating already dire humanitarian conditions.

What emerges from the analysis of Somalia is that international refugee law can and should, at least, apply where harm for a Convention reason is triggered by State actions, omissions, or indifference in the context of war or disasters that severely harm targeted groups. To fall within their scope of application, asylum-seekers need to demonstrate that they are directly and specifically at risk of being seriously harmed because of a protected characteristic. Determining the need to refugee protection where multiple factors come into play, such as the combined impact of conflict, disasters, and health emergencies, should depend not only on the objective situation of the country of origin, but also on the individual's personal characteristics, including the context in which the person lives, thus evaluating the role of external factors in producing or exacerbating patterns of discrimination or marginalization to the detriment of their human rights.

Factors to be taken into account include whether the person has been particularly vulnerable and exposed to disaster displacement as a result of (historical) patterns of discrimination, which has led to consequences of a substantially detrimental nature, such as a real risk to their life or freedoms in the country of origin, a real risk to the claimant's integrity and security; post-disaster relief has not been delivered or has been distributed on a discriminatory manner or the person has had limited or no access to essential rights, services and facilities before, during or in the aftermath of the disaster for reasons of a Convention ground; extreme poverty associated with the occurrence of disasters, the impossibility to receive education and healthcare because schools and hospitals have been destroyed or severely damaged by disasters or violent attacks should be relevant in the refugee determination process and be interpreted against the ability and willingness of the State to address such dire situations. In fact, Somalia's lack of protection cannot be underestimated. Certain minority groups have historically been discriminated against, have been deprived of basic rights as well as essential emergency information, relief and services, which have annihilated their possibility to deal with the worsening impacts of droughts and conflict. It is also important to remember that Somalia has been affected by drought for over four decades and that the country has not succeeded in preventing or countering disasters, even in areas not controlled by Al-Shabaab or in more peaceful times (IDMC, 2023).

With most cases dismissed, the case of Somalia demonstrates the limits of the Refugee Convention, despite the real and serious risk to their life along with severe denials of human rights. Convinced of the concrete and high risks posed to Somalis, receiving States resorted a different status, relying on the AU Convention instead of the Refugee Convention, to protect Somalis. This "protection gap", however, has allowed some African countries, such as Kenya, to refrain from complying with their international responsibilities.

As anticipated, in its 2022 Considerations on Somalia, UNHCR considered Somalis directly affected by the war as well as those residing in areas under the full or partial control of Al-Shabaab as in need of the refugee status under the AU Convention on the grounds that they were compelled to leave owing to threats to their lives, freedom or security as a result of events seriously disturbing public order. However, the relevance of disasters, drought in particular, is only part of the descriptive analysis with no concrete engagement with the Refugee Convention, despite the strong evidence of direct harm in light of historical patterns of ethnic discrimination. This runs counter to UNHCR's 2020 legal considerations regarding claims for international

protection made in the context of the adverse effects of climate change and disasters, which also confirm that refugee protection can be cognizable where the fear of harm is connected to climate change, disasters, and environmental degradation (UNHCR, 2020). It also disregards its own call for a more dynamic and evolutionary approach towards the interpretation of the AU Convention, according to which people displaced by disasters can be refugees under regional refugee criteria.

In doing so, UNHCR misses a crucial point, namely that Somalia has failed to protect the basic human rights of its own population, and that historical patterns of discrimination and vulnerability have contributed to such a massive denial of basic human rights, where marginalized groups in Somalia have been the most affected.

Indeed, the obstruction to the delivery of humanitarian aid in response imposed by Al-Shabaab in drought-affected areas under its control illustratively shows that disasters may be instrumentalized to inflict severe pain on a targeted group with the brutal aim to repress, displace, destroy or annihilate them, thus potentially meeting the threshold for subsidiary protection. This is especially true when the State is aware and able to avoid or mitigate harm and cannot be bothered to do so. Arbitrary exclusion, denial or selection to humanitarian aid on a protected Convention ground may jeopardize the life of individuals seen as "ethnically inferior".

One cannot help noticing that since *Sufi and Elmi* (2011), the situation in Somalia has not improved. The conflict is still annihilating the livelihood of millions of people in the country. Losses are exacerbated by a persisting and worsening drought and locust plague, whose dramatic effects have crossed the borders with Kenya and Ethiopia. People keep seeking refuge in refugee camps where they have no access to food, water and shelter. Owing to extreme hunger and dire living conditions with no access to safe water, sanitation and hygiene coupled with lack of basic health care, famine (integrated food security phase classification 5) has been projected in these camps between April-June 2023. In Dadaab camps there are entire generations of Somalis who were born and have grown up in these camps with no possibility of having a dignified life (IRC, 2022). People are excluded from education and work opportunities, while being at extreme risk of violence, rape, hunger, and premature death (UN Assistance Mission in Somalia, 2022). To this prospect, already dramatic, must be added the deep patterns of discrimination that affects several minority groups in Somalia. Given that no reasonable improvement has been achieved in twelve years and the State failure to protect its population, applying and interpreting in a principled way the refugee instruments at the international and regional levels is of utmost importance.

[a]**Concluding remarks**

After a brief overview of three of the never-ending crises that Somalia has been facing for decades – namely conflict, health emergencies, and disasters, this Chapter notes that UNHCR Considerations on International Protection in the case of Somalia seem to overlook the role of drought in the refugee status determination process. In opposition, the role of conflict and the systematic constraints on access to basic health care is widely explored with reference to the refugee status at the international and regional levels. In addition, the analysis

of the governmental responses provided by Ethiopia and Kenya in the aftermath of Somali displacement clearly shows the highly limited role played by the Refugee Convention in addressing the multiple causes at the core of their flight as Somalis were believed not to fit within its requirements.

Against this view, the Chapter argues that a more principled examination of Somalis' protection claims would have unveiled the relevance of State and non-state actors' actions, omission, and indifference in perpetuating severe and rooted ethnic discrimination against minority groups, whose dire humanitarian situation has been further exacerbated by the compounded impacts of disasters, health emergencies and the conflict. Embedded forms of socio-economic, cultural and political discrimination have worsened their exposure to harm and put their life at heightened risk. Moreover, the instrumentalization of disasters and the deliberate imposition to deny access to humanitarian assistance in the aftermath of a disaster by Al-Shabaab over controlled territories should be reflected in the refugee status determination process as they could provide relevant elements establishing a well-founded fear of being persecuted for a Convention reason.

REFERENCES.

ACLED, *Context Assessment. Heightened Political Violence in Somalia* (March 2023); Amnesty International, *Amnesty International Report 2022/23* (2023) 327.

Berkes Antal, 'Compliance of Territorially Fragile States with International Human Rights Law' (2013) Revue québécoise de droit international 13 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3864406 accessed 26 March 2024.

Braam Dorien H., Srinivasan Sharath, Church Luke, Sheikh Zakaria, Jephcott Freya L. and Bukachi Salome, 'Lockdowns, lives and livelihoods: the impact of COVID-19 and public health responses to conflict affected populations - a remote qualitative study in Baidoa and Mogadishu, Somalia' (2021) 15(47) Conflict and Health https://conflictandhealth.biomedcentral.com/articles/10.1186/s13031-021-00382-5#citeas accessed 26 March 2024.

Call Charles, 'The Fallacy of the 'Failed State'' (2008) 29 Third World Quarterly.

Cassanelli Lee, *Victims and Vulnerable Groups in Southern Somalia* (Immigration and Refugee Board of Canada 1995).

de Waal Alex, 'Dangerous Precedents? Famine Relief in Somalia 1991–93' in Joanna Macrae and Antony Zwi (eds) *War and Hunger. Rethinking International Responses to Complex Emergencies* (Zed Books 1994).

ECtHR, *Sufi & Elmi v United Kingdom*, App no 8319/07 (ECtHR, 28 June 2011).

eKLR, *Kenya National Commission on Human Rights & Another v Attorney General & 3 Others*, (Petition No. 227) [2017].

eKLR, *Kituo Cha Sheria v Attorney-General* (Petition No 19 and 115) [2013].

eKLR, *Samow Mumin Mohamed v Cabinet Secretary* (Petition No 206) [2014] eKLR.

FAO, *Drought in the Horn of Africa: FAO Appeals for $172 Million to Help Avert Famine and Humanitarian Catastrophe* (June 2022).

Food Security and Nutrition Analysis Unit - Somalia, *FSNAU Evidence for Updated Famine Declaration* (2011).

Food Security and Nutrition Analysis Unit and Famine Early Warning Systems Network, *Famine continues; observed improvements contingent on continued response* (2011).

Garlick Madeline, Guild Elspeth, Procter Caitlin, Salomons Machiel 'Building on the Foundation: Formative Evaluation of the Refugee Status Determination (RSD) Transition Process in Kenya' (UNHCR 2015) 271.

Global Health Security Index, *Global Health Security Index 2019 Report* (2019).

Hansen-Lohrey Cleo, 'Assessing serious disturbances to public order under the 1969 OAU Convention, including in the context of disasters, environmental degradation and the adverse effects of climate change' (UNHCR 2023) 7 https://www.refworld.org/reference/research/unhcr/2023/en/124351 accessed 26 March 2024.

Heritage Institute for Policy Studies, *State of Somalia. 2020 Report* (2020).

Human Rights Watch, *Hostages of the Gatekeepers: Abuses against Internally Displaced in Mogadishu* (2013).

Humanitarian Affairs and Disaster Management Agency, *Puntland Drought Assessment Report* (December 2021).

ICRC, *Deteriorating hunger situation an urgent crisis for millions caught in armed conflict* (July 2022).

IDMC, *Country Report: Somalia 2022* (5 May 2023).

IGAD Climate Prediction and Applications Centre, *IGAD Launches Platform to Manage Desert Locusts, Tranboundary Pests* (December 2021).

International Rescue Committee, *Crisis in Somalia: Catastrophic hunger amid drought and conflict* (13 December 2022).

IOM, *A region on the move: East and Horn of Africa* (2021) 15.
IOM, *Horn of Africa drought: Human mobility snapshot* (January-March 2023) https://eastandhornofafrica.iom.int/sites/g/files/tmzbdl701/files/documents/2023-05/iom_dtm_ehoa_drought_snapshot_jan_mar_2023_0.pdf accessed 26 March 2024.
Jaspars Susanne, Adan Guhad M. and Majid Nisar, 'Food and power in Somalia: Business as usual? A scoping study on the political economy of food following shifts in food assistance and in governance' (London School of Economics and Political Science 2019).
Kolmannskog Vikram, '"We Are in Between": Case Studies on the Protection of Somalis Displaced to Kenya and Egypt during the 2011 and 2012 Drought' (2014) 2(1) International Journal of Social Science Studies 85.
Maxwell Daniel, Fitzpatrick Merry, 'The 2011 Somalia Famine: Context, Causes, and Complications' (2012) 1(1) Global Food Security https://www.sciencedirect.com/science/article/abs/pii/S221191241200003X accessed 26 March 2024.
Maxwell Daniel, Majid Nisar, *Another Humanitarian Crisis in Somalia? Learning from the 2011 Famine* (Feinstein International Center 2014) 48.
Maxwell Daniel, Majid Nisar, *Famine in Somalia: Competing Imperatives, Collective Failures, 2011-12* (OUP 2016).
Maxwell Daniel, Majid Nisar, *Famine in Somalia: Competing Imperatives, Collective Failures, 2011-12* (OUP 2016).
Ministry of Interior and Coordination of National Government 'Government Statement and Update on the Repatriation of Refugees and Scheduled Closure of Dadaab Refugee Camp' (11 May 2016) http://www.interior.go.ke/index.php/2015-02-28-06-43-54/news/98-government-statement-and-update-on-the-repatriation-of-refugees-and-scheduled-closure-of-dadaab-refugee-camp accessed 26 March 2024.
OCHA, *Humanitarian Needs Overview: Somalia* (October 2021).
OCHA, *Somalia: Humanitarian Bulletin* (January 2022).
OCHA, *Somalia: Humanitarian Bulletin* (January 2022).
Reach Resource Centre, *Joint Multi Cluster Needs Assessment – Somalia* (2021).
Rights Group International, *No Redress: Somalia's Forgotten Minorities* (2010).
Salih Abubakr A. M., Baraibar Marta, Kemucie Mwangi Kenneth and Artan Guleid 'Climate change and locust outbreak in East Africa' (2020) 10 Nature Climate Change https://www.nature.com/articles/s41558-020-0835-8 accessed on 26 March 2026.
The Nansen Initiative, *The Nansen Initiative Global Consultation: Conference Report* (2015) 107. Emphasis added.
UKIAT, *DJ (Bantu - Not Generally at Risk) Somalia v. Secretary of State for the Home Department,* CG [2005] UKIAT 00089.
UN Assistance Mission in Somalia, *Women in Somalia live through pain of displacement and trauma of conflict-related sexual violence* (June 2022).
UN General Assembly, *Situation of Human Rights in Somalia* (24 August 2020) 9, www.undocs.org/A/HRC/45/52 accessed 26 March 2024.
UN Secretary General, *Situation in Somalia* (16 February 2023) 70.
UN Security Council, *Situation in Somalia* (13 May 2022) 43 www.ecoi.net/en/file/local/2073538/N2233663.pdf accessed 26 March 2024.
UNHCR Somalia, *Internal Displacement*, https://data.unhcr.org/en/dataviz/1?sv=1&geo=192 accessed on 26 March 2024.
UNHCR, *East and Horn of Africa, and the Great Lakes Region Operational Update* (July-September 2022).
UNHCR, *Guidelines on International Protection No. 4: "Internal Flight or Relocation Alternative"* (July 2003).
UNHCR, *International Protection Considerations with Regard to People Fleeing Somalia* (September 2022) 38.
UNHCR, *Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters* (October 2020) 14.
UNHCR, *Somalia. Internal Displacements Monitored by Protection & Return Monitoring Network* (August 2021).
UNSOM, *On a Drought Assessment Visit to Somaliland, Deputy UN Envoy Highlights the Need for Support to Drought-Hit Communities* (February 2022) https://unsom.unmissions.org/drought-assessment-visit-somaliland-deputy-un-envoy-highlights-need-support-drought-hit-communities accessed 26 March 2024.
US Department of State, *2021 Country Report on Human Rights Practices: Somalia* (April 2022).
Weerasinghe Sanjula, *In Harm's Way. International protection in the context of nexus dynamics between conflict or violence and disaster or climate change* (UNHCR 2018) 46.
WHO, *A Situation Analysis of Mental Health in Somalia (*October 2010) 8; Somalia National Bureau of Statistics, *The Somali Health and Demographic Survey 2020* (2020) 178.
Wilke André B B, Beier John C, Benelli Giovanni 'Complexity of the relationship between global warming and urbanization – an obscure future for predicting increases in vectorborne infectious diseases' (2019) 35 Current Opinion in Insect Science https://pubmed.ncbi.nlm.nih.gov/31279898/ accessed 26 March 2024.
Wood Tamara, 'Protection and Disasters in the Horn of Africa: Norms and Practice for Addressing Cross-Border Displacement in Disaster Contexts' (The Nansen Initiative 2013).
World Bank, *Somalia Economic Update, Fifth Edition: Impact of COVID-19: Policies to Manage the Crisis and Strengthen Economic Recovery* (2020).