

**Refugee Review Tribunal
AUSTRALIA**

RRT RESEARCH RESPONSE

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Questions

- 1. Please provide statistical information on the population in the North Eastern Province (NEP); ie. percentage of Somalis is of specific interest.**
- 2. Please provide country information on police/government officials in NEP, Kenya and specifically their human rights record in NEP in relation to Somalis from 1980 to the present.**
- 3. Has any action been taken/or going to be taken by the Kenyan authorities to improve conditions in NEP for Somalis?**

RESPONSE

- 1. Statistical information about the population in the North Eastern Province required; ie. percentage of Somalis is of specific interest.**

Searches of the sources consulted indicate that the population of the North Eastern Province is predominantly of Somali ethnicity, although no detailed and specific statistical information appears to be available.

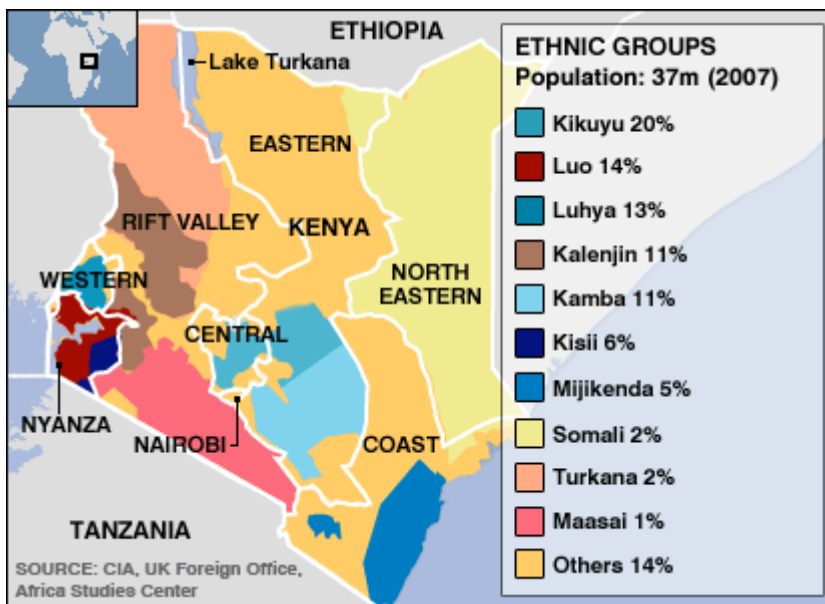
According to information on the USAID website, “North Eastern Province is home to approximately one million people, the majority of whom are ethnic Somalis entrenched in nomadic or semi-nomadic lifestyles” (‘ESD in Kenya’ 2007, USAID website http://www.esdproj.org/site/PageServer?pagename=where_we_work_Kenya – Accessed 30 October 2008 – Attachment 1).

The US Department of State’s 2008 report on religious freedom in Kenya refers to the population of the North Eastern Province as “predominantly ethnic Somali”. On Kenya’s religious demography, the report observes that:

The country has an area of 225,000 square miles and a population of 35.5 million. Approximately 80 percent of the country is Christian, 10 percent is Muslim, less than 1 percent is Hindu, Sikh, and Baha'i, while the remainder follows various traditional indigenous religions. Protestants comprise 58 percent of Christians, and Roman Catholics 42 percent.

The North Eastern Province, where the population is predominantly ethnic Somali, is home to 15 percent of the Muslim population. Sixty percent of the Muslim population lives in Coast Province, comprising 50 percent of the total population there. Western areas of Coast Province are mostly Christian. The upper part of Eastern Province is home to 10 percent of the country's Muslims, where they are the majority religious group. Apart from a small ethnic Somali population in Nairobi, the rest of the country is largely Christian (US Department of State 2008, *International Religious Freedom Report for 2008 – Kenya*, September, Section 1 – Attachment 2).

A map on a page updated on 13 April 2008 on the *BBC News* website indicates that the Somali ethnic group constitutes only 2% of the population of Kenya as a whole, but that the North Eastern Province is predominantly Somali:



(‘Q&A: Kenya peace deal’ 2008, *BBC News*, 13 April <http://news.bbc.co.uk/2/hi/africa/7165962.stm> – Accessed 30 October 2008 – Attachment 3).

The *Europa World Year Book 2008* provides a 2007 projected estimate of the population of Kenya as 34,528,249 and of the North-Eastern Province as 1,368,785. It provides no statistical information regarding the Somali ethnic group (‘Kenya’ in *The Europa World Year Book 2008* 2008, Routledge, London, p.2589 – Attachment 4).

2. Country information on police/government officials in NEP, Kenya and specifically their human rights record in NEP in relation to Somalis since 1980 to the present.

A report dated July 2008 from Minority Rights Group International on pastoralists in Kenya indicates that there have been hostilities between Kenyan's of Somali ethnicity and the government authorities and that, historically, “the government has treated the northern parts of Kenya mainly as a security problem”. According to the report:

The two arid northern provinces of Kenya comprise half the land area of the country yet are home to less than 3 per cent of the population, mainly nomadic pastoralists of many ethnic identities and many more tribal and clan affiliations and rivalries. These groups include various Kalenjin peoples, the Borana, and the Somalis...

Historical context

From colonial times the government has treated the northern parts of Kenya mainly as a security problem. Other interventions have primarily been to try to persuade nomads to settle. Emergency powers have enabled the authorities to bypass the judicial system. Although a variety of colonial and post-colonial legislation has been alternately enforced or ignored, draconian measures are widely available and have often been used. These have included powers to arrest, move or detain people, confiscate or destroy livestock, prohibit gatherings, and impose a mandatory death penalty for illegal possession of firearms. The northern districts are Trust Lands with very limited defences against expropriation, an important factor in moves to privatize land, particularly for ranching.

Somali-speaking pastoralists attracted the greatest government hostility under the Moi regime. The eastern parts of northern Kenya are traditionally inhabited by Somalis of the Degodia, Ajuran and Ogaden clans. These areas have long been claimed by Somalia, with disavowals having limited impact on Kenyan suspicions. The inhabitants voted to secede from Kenya in a referendum held shortly before independence in 1963. The results were ignored by the incoming government, leading to a three-year secessionist war. A mixture of secessionist insurgency, inter-ethnic and clan warfare, and outright banditry has characterized the region ever since. The 1977-8 war between Ethiopia and Somalia, and the civil war in Somalia in the 1990s, which created over a quarter of a million refugees, have led to armed incursions from Somalia and exacerbated instability.

Hostility between Somalis and the authorities have led to continuous conflict over efforts to control movement, such as the impounding of cattle, resulting in extremely serious abuses, including massacres in Garissa in 1980 (300 people) and Wajir in 1984 (up to 2,000) and 1987 (300). The impact of such killings affects all Kenyan Somalis – including those long-resident in urban areas – who feel themselves treated as second-class citizens. A specific grievance was the requirement since 1989 for Kenyan Somalis to carry a separate pink identity card, in addition to the national identity card carried by all Kenyans. This was ostensibly to distinguish them from Somali refugees, numbering about 220,000, who also suffered abuse at the hands of the authorities, including alleged rape by soldiers.

Competition among nomadic groups over cattle and grazing combined with periods of drought have perpetuated a way of life close to subsistence and seldom far from conflict – though most efforts at economic improvement have failed by upsetting the precarious equilibrium between people and resources. Conflict in Somalia has caused further widespread disruption, and the great availability of firearms has exacerbated traditional and more recent enmities ('World Directory of Minorities – Africa – Kenya – Pastoralists' 2008, Minority Rights Group International website, July <http://www.minorityrights.org/3950/kenya/pastoralists.html> – Accessed 30 October 2008 – Attachment 5).

An article by Ahmed Issack Hassan, “an advocate at the High Court of Kenya”, published in *Fahamu* on 24 October 2008, provides a survey of “a history of marginalisation and distance from government support” in northern Kenya, including the North East Province. Hassan offers the following historical overview:

Kenya's colonial government enacted several laws specifically targeting the north. The Outlying District Ordinance of 1902 effectively declared the Northern Frontier District (NFD – made up of the present-day districts of Wajir, Mandera, Ijara, Garissa, Isiolo, Moyale and Marsabit) a closed area; movement in and out was only possible under a special pass. The Special Districts (Administration) Ordinance of 1934, together with the Stock Theft and Produce Ordinance of 1933, gave the colonial administrators extensive powers of arrest, restraint, detention and seizure of properties of 'hostile tribes.' The latter legalised collective punishment of tribes and clans for the offences of their members. These ordinances applied not only to the NFD but also to present-day Tana River, Lamu, Kajiado and Samburu districts.

The net effect of this early colonial legislation was to turn the NFD into a closed zone that had no contact or relation with other parts of Kenya. Indeed, other Kenyans knew little about it. This situation continued after independence ...

INDEPENDENCE OF KENYA AND THE NFD

When political activities were legalised in 1960, the people of the NFD formed the Northern Province Peoples Progressive Party (NPPPP), whose main agenda was the secession of the NFD and its reunion with Somalia. At the Kenya Constitutional Conference of 1962 the Secretary of State for the Colonies proposed that an independent commission be appointed to investigate public opinion in the NFD regarding its future. The commission visited every district in the NFD. It heard oral submissions from 134 delegations, received 106 written submissions, and held meetings in Nairobi with the leaders of other political parties. The majority of people in the NFD were found to be in favour of secession.

However, the British government was unwilling to abide by the result of the commission on the grounds that it was not prepared to take a unilateral decision on the future of the territory so close to Kenya's independence. The Regional Boundaries Commission set up in 1962 recommended that the predominantly Somali-occupied districts of Garissa, Wajir and Mandera be constituted into the seventh region, and thus the North Eastern Province was born.

This was seen as a betrayal of the wishes of the people of the NFD in general and the NEP in particular. They boycotted the 1963 elections and the leaders of the NPPPP started what came to be known as the 'shifita' war. Somalia broke off diplomatic relations with Britain and supported the secessionists. Kenya's newly independent government was firm in its stand that it would not cede an inch of territory. Two weeks after independence it declared a state of emergency over the NFD which lasted for close to 30 years.

AMENDMENTS TO THE INDEPENDENCE CONSTITUTION AND EMERGENCY LAWS IN THE NFD

Kenya became independent on 12 December 1963. Section 29 of the independence constitution provided for the procedure to be followed in the event of declaring a state of emergency. However, Section 19 of the Kenya Independence Order in Council (Kenya subsidiary legislation, 1963) provided that the Governor-General:

'may, by regulations which shall be published in the Kenya Gazette, make such provision as appears to him to be necessary or expedient for the purpose of ensuring effective government or in relation to the North Eastern Region and without prejudice to the generality of that power, he may by such regulation make such temporary adaptations, modifications or qualifications or exceptions to the Provisions of the Constitution or of any other Law as appear to him to be necessary.'

When Kenya became a republic in 1964, the powers enjoyed by the Governor-General under Section 19 were transferred to the president, giving him the power to rule the North Eastern Region by decree. There have been several subsequent amendments to the independence constitution. For example, the sixth amendment Act No.18 of 1966 enlarged the government's emergency powers. It removed legislation relating to parliamentary control over emergency laws and the law relating to public order. Existing constitutional provisions were repealed and replaced by one which gave the president a blank cheque: 'at any time by order in the Kenya Gazette to bring into operation generally or in any part of Kenya, part III of the preservation of Public Security Act or any part thereof.'

The application of emergency laws meant that in effect Kenya had two separate legal regimes: one applied exclusively to the NFD and the other to the rest of the country. The detailed provisions of the emergency laws were contained in the North Eastern Province and Contiguous Districts Regulations, 1966. These regulations formed the basis for the degradation of human rights and explicitly endorsed instances in which the fundamental human rights of the person could be violated. In the process, the government arrogated powers that could only apply to the rest of Kenya when it was at war.

The Northern region was thus technically a war zone and became a virtual police state. The regulations created offences that were punishable without due process. Possession of a firearm, or consorting with or harbouring someone with a firearm, was punishable by death. Harbouring someone who may act in a manner prejudicial to the preservation of public security was punishable by life imprisonment. Even the owning, operating or use of boats or any other means of transport on the Tana River was made a crime liable to imprisonment. Entry into the region by people other than civil servants and members of the security forces was prohibited. Members of the armed forces were given wide powers of search, arrest, restriction and detention. Members of the provincial administration and the security forces were given powers to preside over 'judicial trials.' The Regulations also suspended the application of Sections 386 and 387 of the Criminal Procedure Code, which require the holding of an inquest on the death of persons in police custody or under suspicious circumstances.

The constitutional and legislative framework for the application of emergency laws in Northern Kenya was completed in 1970 with the passing of the Indemnity Act, Chapter 44 of the Laws of Kenya. This was meant to indemnify government agents and members of the security forces working in the region against any claims on account of any loss or damage occasioned by their actions. Many human rights violations occurred in the NFD after 1967; those responsible for these violations cannot claim indemnity under this act.

EFFECTS OF THE EMERGENCY LAWS IN THE NFD

a) Human rights violations

Members of the security forces have been accused of gross violations of human rights in the course of their duties, including instances of genocidal killing, mass murder and rape, extra-judicial killing, arbitrary arrests and detention of persons and communities, and illegal confiscation and theft of properties. For example:

- Bulla Kartasi Estate massacre, November 1980. Following the killings of six government officials in Garissa town, the security forces retaliated by burning the whole of Bulla Kartasi estate, killing people and raping women, and herding the town's residents to a mini-concentration camp at Garissa Primary School playground where they kept them for three days without food or water. Human rights organisations estimate the dead at over 3000, with an equal number unaccounted for.

- The Wagalla massacre, February 1984. The security forces launched an operation in Wajir targeting the Degodia sub-clan of the Somali. Most of those rounded up were summarily executed after days of incarceration at the Wagalla airstrip. Close to 5,000 people are said to have died.
- Other instances of extra-judicial killings and collective punishment include those in Malkamari, Garse, Derakali, Dandu and Takaba areas of Mandera District.

b) Discrimination

Kenyan Somalis in general complain of discriminatory laws, regulations, practices and procedures that apply to them and not to other Kenyans. This is especially acute in the area of citizenship and immigration, i.e., in the issuing of birth certificates, identity cards and passports. The screening exercise of Kenyan Somalis in November 1989 is also cited as a clear case of discrimination. Its justification was contained in a government statement:

‘The Government is to register all Kenyan Somalis and expel those found to have sympathy with Somalia. The Government cannot tolerate citizens who pretend to be patriotic to Kenya while they involve themselves in anti-Kenya activities. The Government has therefore found it necessary to register Kenyans of Somali ethnic group to make them easily identifiable by our security forces.’

In effect this was a mass verification exercise, carried out by vetting committees made up of selected elders and members of the provincial administration and civil service. The burden of proof was placed on those who appeared before the committees to prove their citizenship or their right to claim it. Those who failed to satisfy the committee were effectively declared non-citizens. Some were deported to Somalia while others opted to settle elsewhere in East Africa.

The screening exercise and the requirement on Kenyan Somalis to produce their screening card in addition to their identity card as proof of citizenship was seen as a violation of their fundamental rights to protection from discrimination as enshrined in Section 82 of the constitution. The legality of the exercise was also questioned by many experts.

c) Marginalisation and underdevelopment

One of the most visible legacies of the period of emergency law in the region is the state of underdevelopment in all aspects of life. The government’s energies and resources were largely directed towards security and the maintenance of law and order. Its policy has been described as one of containment not engagement. No constructive or meaningful development took place during this period. Indeed, over 80 per cent of the region’s budget was spent on security. The net result is that the region is today the most underdeveloped and marginalised in Kenya.

d) Constitutional reform, multi-party politics and the repeal of the emergency laws

The clamour for constitutional reform in the 1990s, which led to the repeal of Section 2A of the constitution, the introduction of multi-party politics and the Inter-Parties Parliamentary Group (IPPG) talks that produced the minimum reforms to the constitution, also saw the repeal of the emergency laws affecting the NFD in general and NEP in particular. Section 127 of the constitution, which laid the foundation for the state of emergency, was repealed on 29 November 1991. The North Eastern Province and Contiguous Districts Regulations, 1966, was also repealed in 1991. The Outlying District Act and the Special Districts

(Administration) Act were repealed under the Statute Law (Repealed and Miscellaneous) Amendment Act of 1997.

The repeal of these laws was a big step forward in restoring to the people of the NFD their fundamental rights and freedoms as guaranteed in chapter five of the constitution. They are now much freer than before and are slowly becoming aware and assertive of these rights (Hassan, A. I. 2008, 'Legal Impediments to Development in North', *AllAfrica.com*, source: Fahamu, 23 October <http://allafrica.com/stories/200810240289.html?viewall=1> – Accessed 30 October 2008 – Attachment 6).

An opinion piece dated 9 April 2008 by Halakhe D. Waqo, “a peacebuilding, conflict management and humanitarian response consultant”, states that “[t]he entire northern region of Kenya has suffered untold levels of neglect and deliberate marginalisation by successive regimes”. The article includes the following information relevant to the North Eastern Province:

(2) The Northern Frontier Districts:

As the colonial government prepared to give Kenya its independence, the northern districts occupied by Somali, Borana and related ethnic groups were not consulted. The result of a referendum to determine where they wanted to remain alone, join Somalia, or join Kenya, was never implemented.

This led to secessionist movement in 1960s. The Government decided to crush the northerners with no regards whatsoever for human rights or international law. Children, women, the elderly and innocent non-combatants died.

To deny such people justice, the Government had Parliament pass what was referred to as “Indemnity Act” in the late 1960s. This Act was repealed in 2001.

The subsequent decades saw insecurity, deaths and destruction as a result of chronic banditry – clear evidence of the State’s deliberate neglect and isolation of Northern Kenya.

(3) The Malka Mari, Wagalla and other massacres in North Eastern Province:

The 1960s, 1970s and even 1980s saw many undesirable events taking place in the NEP. Huge numbers of people were massacred by Government security forces with complete impunity.

The Malka Mari massacre in Mandera (1981), the Wagalla massacre of 1984 in Wajir, and various other mass murders were committed by security forces. The people are crying for justice. Will they get it?

(4) Identity crisis in upper eastern and north eastern provinces:

Anybody who comes from the above regions knows very well that some of the inhabitants do not know where they belong - whether they are Kenyan, Somali or Ethiopian nationals.

It does not matter whether ones’ father or grandfather was born and lived in Kenya. It does not matter if one’s grandfather was a colonial chief. There has always been a need to prove to a policeman that you are, indeed a Kenyan. One must always carry one’s identity for without it, one is in great peril.

As if that was not enough, in 1988, the Government introduced a major screening process and an extra identity card for Kenyans of Somali ethnicity (pink cards). This became a serious human rights issue. A number of indigenous Kenyans were deported to Ethiopia or Somalia.

(5) Marginalisation of northern Kenya:

The entire northern region of Kenya has suffered untold levels of neglect and deliberate marginalisation by successive regimes. The North West (Turkana, Pokot and Samburu); Upper Eastern (Isiolo, Marsabit and Moyale); NEP (Mandera, Wajir, Garissa and Ijara); Coast (Tana River and Lamu), are all affected.

Insecurity has become synonymous with these areas as deaths from banditry, raids, and ethnic conflict. The Government security forces are too weak to contain the violence.

Kenya's political history is based on socio-ethnic foundations where the large ethnic groups call all the shots. The northerners and pastoralists are few and weaker than the rest (Waqo, H.D. 2008, 'Addressing Historical Injustices – Queries That Require An Answer', *AllAfrica.com*, source: The Nation, 9 April <http://allafrica.com/stories/200804081173.html> – Accessed 31 October 2008 – Attachment 7).

The most recent US Department of State report on human rights practices in Kenya, covering 2007, reported as follows:

National/Racial/Ethnic Minorities

The population is divided into more than 40 ethnic groups, among whom discrimination and occasional violence were frequent. The 1999 census indicated that Bantu ethnic groups constituted approximately 67 percent of the population, of which the Kikuyu and closely related Embu and Meru accounted for 32 percent, the Luhya 16 percent, and the Kamba 10 percent; Nilotic groups constituted 30 percent, of which the Kalenjin accounted for 12 percent and the Luo 11 percent; and Cushitic groups – mainly Somalis – constituted 3 percent of the population. The Kikuyu and related groups dominated much of private commerce and industry and often purchased land outside their home province, which sometimes resulted in fierce resentment from other ethnic groups. The numerically small and shrinking South Asian community controlled a disproportionate share of commerce.

The conflict between two Cushitic groups in the far north continued, with each group accusing the other of maintaining militias and receiving armed support from their ethnic kinsmen across the border in Ethiopia to harass, intimidate, and kill members of the other group. The government quickly sent a police force supported by the army to stop the attacks. In April it formed a peace committee involving local politicians and elders of the two communities to discuss problems and seek peaceful solutions to the conflict.

Leading up to the 2007 general elections, some political leaders made blatant appeals to traditional ethnic animosities for political purposes, resulting in intimidation of members of targeted ethnic groups and communal clashes. After the announcement of the disputed presidential election results in December, interethnic violence occurred in many areas of the country. In many cases, ethnic Kikuyu living outside their Central Province homeland were targeted with violence. Tens of thousands fled their homes in Rift Valley Province and, to a much lesser extent, elsewhere in the country. There were also reports that Kikuyu gangs forcibly circumcised Luo males in Nairobi.

Through the provincial administrations, the government held public meetings in regions plagued by ethnic violence to promote dialogue and peaceful resolution of conflicts. The government dispatched police and a paramilitary force to patrol affected areas to prevent a recurrence of violence. In June 2006 ethnic violence erupted in the region of Western Province bordering Uganda and continued for six months. Competition over land exacerbated by rivalries among political leaders representing contending ethnic communities were the cause. Other conflicts in 2006 took place between the Maasai and Kuria in southern Rift Valley Province and between rival Kikuyu and Luo criminal gangs in a major slum in Nairobi. Both conflicts were quickly suppressed by security forces.

Many factors contributed to interethnic conflicts: the proliferation of guns, the commercialization of traditional cattle rustling, the growth of a modern warrior/bandit culture (distinct from traditional culture), unresponsive local political leadership, diminished economic prospects for groups affected by a severe regional drought, political rivalries, and the inability of security forces to adequately quell violence. Conflict between land owners and squatters was particularly severe in Rift Valley and Coast provinces, while competition for water and pasturage was especially serious in the northern districts of Eastern Province and in North Eastern Province.

In private business and in the public sector, members of nearly all ethnic groups commonly discriminated in favor of other members of the same group. Some neighborhoods, particularly in slum areas of the capital, tended to be segregated ethnically, although interethnic marriage had become fairly common in urban areas (US Department of State 2008, *Country Reports on Human Rights Practices for 2007 – Kenya*, March, Section 5 – Attachment 8).

A recent news report of fighting between Somali clans in the North Eastern Province mentioned both calls for government intervention and accusations that officials have been “fanning clannism”. On 22 October 2008, the *Daily Nation* reported that “policemen and district officers have taken sides with their clansmen” in an ongoing conflict over land. According to the article:

Some Provincial Administration officials have been accused of fanning clannism and insecurity in Mandera.

The conflict, which has so far claimed 20 lives, is getting out of control. Elders now want the Government to reorganise the Provincial Administration to save lives.

They say that the two clans laying claim to a piece of land that stretches for 20 kilometres, have sustained the chaos due to the assistance they get from their respective clansmen in the administration.

This is making it impossible to get an amicable solution to the conflict.

Piece of land

The ill-equipped administration police officers, who are largely from the two warring communities, are also taking sides in the conflict, the elders said.

Water for livestock is at the centre of the conflict in the semi-arid district. A recent attack was sparked by a raid on a water point in Jaldesa location, where one person died and more than 1,200 heads of cattle were stolen.

Residents said the two communities are fighting for control of the border town, which is largely inhabited by the Murulle community.

Elders say that for peace to be realised, all individuals from the warring Murulle and Garre clans must be removed from leadership positions.

“Reports indicate that policemen and district officers have taken sides with their clansmen, thereby increasing tensions.

“They must be independent and that is why we are calling on the Government to reorganise the administration,” said Mr Farah Ahmed.

“We should have leaders and police officers from other communities because we have failed to control ourselves”, he said.

Mr Ahmed said clannism was still a major issue among the Somali (Kihara, G. 2008, ‘DOs blamed for clan wars’, *Daily Nation*, 22 October <http://www.nation.co.ke/News/regional/-/1070/483044/-/6kysx/-/index.html> – Accessed 30 October 2008 – Attachment 9).

On 27 October 2008, the *Daily Nation* reported that a security operation in the North Eastern Province had given rise to accusations that “the security officers on the ground had used violence on the residents”:

A security operation has been launched in North Eastern Province to curb the influx of illegal fire arms from Somalia and Ethiopia.

Speaking to the *Nation* on phone on Monday, Internal Security assistant minister Orwa Ojodeh said the operation started two days ago.

“We have ordered an operation in Mandera to flush out dealers in illegal arms from the neighbouring Somalia and Ethiopia,” he said, noting that immigrants had taken the local residents hostage.

But the residents said that the Administration Police, in conjunction with the Army officers, had tortured them and raped their women.

Mr Osman Abdi, the principal of Elwak Secondary School in Mandera, said that the security officers on the ground had used violence on the residents.

The area is largely inhabited by the Gare community and a few members from the Degodia clan.

Mr Ojodeh noted that the area was fast becoming a security threat with trade in illegal arms flourishing. “If we don’t take care of such arms, we will have no country in future,” he said.

On Monday, several people fled to a camp in Wargadud from their homesteads in fear of police brutality.

Before then, normal life had slowly been returning in Mandera Town and its environs after an attack that left two people dead and 31 houses torched last week.

According to Red Cross, some 13 people are still missing in Koromey Village where there was intense clan fighting.

The public relations officer of the organisation Mr Titus Mung’ou said most villagers have returned to their ruined homes.

“There is urgent need of food and other non-food items,” he said in a statement (Muindi, B. 2008, ‘Police launch swoop over illegal arms’, *Daily Nation*, 27 October <http://www.nation.co.ke/News/-/1056/484746/-/tlhs77/-/index.html> – Accessed 31 October 2008 – Attachment 10).

A follow-up article dated 29 October 2008 in the *Daily Nation* further reported accusations against the security personnel involved in the operation:

A security operation in North Eastern Province has left more than 200 people hospitalised.

Residents accused the security personnel of torturing them. The operation, which started on Sunday, is intended to curb the influx of illegal firearms from Somalia and Ethiopia. It is a joint army and the police undertaking.

Rape claims

Mr Hassan Omar Hassan of the Kenya National Human Rights Commission said the security forces should be held responsible for the torture and rape allegations.

“This is a total failure by the country’s security forces,” he said. “It is so painful that the people who are mandated to protect the residents were now turning them into their prey.”

He said one person had been confirmed dead and nine others raped. Two women were allegedly gang-raped by four security officers at Wargadud, he claimed.

When the *Nation* visited Elwak District Hospital, 112 people were admitted. The victims said the joint security forces started torturing them after they were asked to produce illegal guns in their custody.

Another 100 were admitted to Wargadud health centre. They moved into the outpatient centre with their bedding.

Internal bleeding

The patients accused the officers of rounding them up from as early as 5am and taking them to an open area, where they were stripped before being beaten.

The doctors said the patients suffered fractures, internal bleeding and cuts, which they said was evidence of torture.

“They met me as I was heading to school,” said the headmaster of Elwak DEB Primary School Rashid Giro.

“They asked me where I was going before ordering me to kneel down.” But North Eastern provincial police officer Stephen Chelimo dismissed the torture allegations.

“Our operation has been humane. The injuries they claim to have sustained are self-inflicted.” (Koross, K. 2008, ‘Army accused of torture’, *Daily Nation*, 29 October <http://www.nation.co.ke/News/-/1056/485344/-/tliedh/-/index.html> – Accessed 31 October 2008 – Attachment 11).

In a separate article also published on 29 October 2008, the *Daily Nation* reported that the security operation had begun “after bandits raided the area, killing eight people and stealing more than 3,000 goats, 500 cattle and 25 camels” and against a background of years of inter-clan conflict:

Security agents have recovered 47 rifles and more than 900 rounds of ammunition in a major operation in Mandera area.

The operation was launched after 21 people were killed when months of tension between the Garre and Murulle clans exploded into fierce fighting in the middle of the month.

Military helicopters sealed off the borders with Somalia and Ethiopia during the operation, in which a rocket propelled grenade launcher and a hand grenade were also recovered.

Three radios

The officers also seized a satellite telephone and three radios. The operation began six days ago after bandits raided the area, killing eight people and stealing more than 3,000 goats, 500 cattle and 25 camels.

Police, however, have been accused of brutality and reports on Wednesday said that up to 200 people had been treated in hospital for injuries sustained during the operation.

According to Sheikh Ahmed Takoy, a member of the arbitration committee between the Garre and Murulle clans, Mandera will have no peace until recommendations of a 2005 peace pact are implemented.

In 2005, the two clans battled for four months and, after a series of local peace initiatives, signed the Mandera Peace Accord on April 22, 2005 (‘Crackdown on warring clans nets 47 rifles’ 2008, *Daily Nation*, 29 October <http://www.nation.co.ke/News/regional/-/1070/485322/-/6119qt/-/index.html> – Accessed 31 October 2008 – Attachment 12).

3. Has any action been taken/or going to be taken by the Kenyan authorities to improve conditions in NEP for Somalis?

The US Department of State’s 2008 report on religious freedom in Kenya reports that:

Upper Eastern, North Eastern, and Coast Provinces, which together are home to approximately 75 percent of the Muslim population, have less developed infrastructure, lower levels of education, and higher levels of poverty and unemployment than many other parts of the country. The new coalition Government created a Ministry of the Development of Northern Kenya and Other Arid Lands to specifically redress this situation. The Minister is a Muslim from the North Eastern Province (US Department of State 2008, *International Religious Freedom Report for 2008 – Kenya*, September, Section 1 <http://www.refworld.org/docid/45d8d8d8.html> – Attachment 2).

Updated in July 2008, the Kenya overview provided by Minority Rights Group International reports that the Kenyan government’s allocation of funds to redress the neglect of the North Eastern Province has, however, been described as “woefully inadequate given the scale of the needs involved”:

Pastoralists in the north of the country have long faced government neglect, while Somali pastoralists in the north-east have long been viewed with suspicion if not outright hostility by the authorities due to long-standing disputes between Kenya and Somalia. Kenya shares the concern of other neighbours of Somalia that aspirations to unify Somali populations in a 'Greater Somalia' could lead to claims on its territory in the north and east.

...

The coalition government has – however – delivered some help to the pastoralist communities of Northern Kenya and the Fishing communities, through the establishment of two new ministries. The hope is that the Ministry of Northern Kenya and Arid Lands, and the Ministry of Fisheries will focus resources and planning efforts on these neglected communities. However, problems have arisen over the funding of these two new government departments. Both MPs from the Northern Kenya and minority activists from the Lake Victoria region of Western Kenya condemned the allocation of funds in the annual budget, as woefully inadequate given the scale of the needs involved ('World Directory of Minorities – Africa – Kenya – Overview' 2008, Minority Rights Group International website, July <http://www.minorityrights.org/3955/kenya/kenya-overview.html> – Accessed 30 October 2008 – Attachment 13).

The previously mentioned report dated July 2008 from Minority Rights Group International on pastoralists in Kenya identified certain current issues relevant to the North Eastern Province, as follows:

In 2008, the UN issued a warning that crippling drought and soaring food prices, was affecting over 1.3 million Kenyans – many of them in the North and North-East. Despite a string of dire warnings about the impact of the drought, the government largely ignored the looming crisis, and provision of emergency aid fell to the international community. This was the latest in a series of rapidly accelerating droughts where [sic] has left pastoralist communities more and more vulnerable. In a 2007 report, UNICEF reported that half of the total stock holding of pastoralists in the Horn of Africa had been wiped out. In a 2008 report, Oxfam identified the risks associated with climate change faced by pastoralists. Many of these communities are already dealing with the consequences of global warming – but national governments, such as Kenya's, have yet to identify strategies to help them. Crucially, the briefing paper 'Survival of the fittest: pastoralism and climate change in East Africa', identified the need for pastoralist communities to be consulted on adaptation processes, and for an end to development policies which pushed communities to settle in resource-poor areas. Competition over dwindling resources has resulted in increasing conflict – and especially in rising levels of cattle-raiding ('World Directory of Minorities – Africa – Kenya – Pastoralists' 2008, Minority Rights Group International website, July <http://www.minorityrights.org/3950/kenya/pastoralists.html> – Accessed 30 October 2008 – Attachment 5).

In the previously mentioned article by Hassan, the author observed that, if the new Ministry of State for the Development of Northern Kenya and other Arid Lands is to be effective, "there must be a legal framework that sets out its functions, the procedures for their implementation, and the powers of the minister". Hassan made the following observations:

e) Continuing legal and administrative impediments to the development of Northern Kenya

1. The creation by the coalition government in April 2008 of the Ministry of State for the Development of Northern Kenya and other Arid Lands is an important milestone. The ministry can become the focal point for the government's efforts in addressing historical injustices, marginalisation and underdevelopment. However, the ministry was created by executive fiat. If it is to be effective and not just symbolic, there must be a legal framework

that sets out its functions, the procedures for their implementation, and the powers of the minister.

2. Despite the repeal of the emergency laws, there are still some vestiges of laws and administrative practices. These include but are not limited to the following:

- The Stock Theft and Produce Act that provides for the collective punishment of pastoralists in Northern Kenya is still part of our laws. So too is the Indemnity Act, which was not repealed with the other emergency laws. These two Acts of Parliament should be repealed in order to formally lay to rest the emergency law regime. In 2001 parliament passed a motion brought by the MP for Wajir West, the Hon. Adan Keynan, to repeal the Indemnity Act, but to date no bill has come to the house to repeal it.

- The security forces still operate under the mentality of the emergency law era. There are many unnecessary barriers that result in harassment, corruption and the hindrance of the free movement of people and goods. The police force is yet to change its mindset in the region. It is common knowledge that when police recruits from Kiganjo are posted to North Eastern Province, they are given more training at the Forces Training Centre in Garissa before deployment. While all police officers are required by law to wear their uniform and display their force numbers, those in Northern Kenya do not do so. This even includes traffic officers, who are mostly dressed in jungle fatigues. The anonymity granted to them by this mode of dressing aids and abets the culture of impunity. This practice must be reversed. The security forces operating in Northern Kenya must do their work under the same conditions as their colleagues in other parts of the country.

3. The absence of a legal mechanism for restorative justice must be addressed. Those affected by gross violations of human rights during the emergency law period, such as the victims, widows and orphans of the Wagalla massacre, need closure. There has not even been a commission of inquiry into the excesses of the security forces in the region.

4. The lack of a legal framework for affirmative action and positive discrimination to help the people of the region recover from historical injustices remains an impediment to the region's catching up with other parts of Kenya.

5. The lack of lands registries is a major impediment to economic progress. Title to land or property enables the owner to offer it as security to access financial loans, guarantee payment of goods and services, or give surety for bail or bond in court. There is no lands registry in the entire Northern Kenya where a title can be processed, or sales, transfers and charges can be registered. The system of land registration should be brought into effect and land registries established in every district's headquarters.

6. The Districts and Provinces Act, No. 5 of 1992, established the composition of Kenya's provinces. Moyale, Marsabit and Isiolo districts fall under Eastern Province, whose headquarters is far away in Embu. Bringing these three into one province would be consistent with the spirit of bringing government services closer to the people.

7. Under the Judicature Act, Chapter 8, Laws of Kenya, the Chief Justice is empowered to create high courts and magistrates courts in any part of the country. There is no high court in the whole of the north. Appeals from magistrates' courts must be filed in the high court in Nairobi, Embu or Meru. This limits access to justice. Magistrates' courts are also few in number, as are the Kadhis courts which attend to matters of personal law for Muslims.

8. The potential for tourism of the region has never been harnessed. Instead of taking the camel to tourists at the coast, tourists should be taken to the camel in its natural habitat. The few game parks and reserves in Northern Kenya, such as the Kora and Arawale, have been neglected by the Kenya Wildlife Service.

10. Livestock is the economic mainstay of the region. The absence of a legal framework for the marketing and sale of livestock and livestock products is a major obstacle to its development.

11. The problems encountered by the people of Northern Kenya in obtaining birth certificates, identity cards and passports are a matter of public notoriety. The Registration of Persons Office and the Immigration Department have made it very difficult for young people to obtain these important documents that enable them to register as voters and take part in political affairs, or to travel out of the country to study or seek other opportunities abroad.

12. The role played by civil society and charitable institutions in supplementing government poverty alleviation efforts cannot be ignored. However, the rigid and strict application of the NGO Coordination Act and the Societies Act makes it difficult for local professionals to register local NGOs and charitable organisations.

13. With the relative peace in the region and the availability of raw materials and cheap labour, there is an urgent need for legislation that encourages private investment. This should contain provisions for tax incentives to spur wealth creation and economic growth in the region.

The legal and administrative impediments to the development of Northern Kenya can be overcome by enacting appropriate legislation where necessary, or by administrative action by the relevant ministry or government department concerned. This can only be achieved successfully if there is political goodwill from the executive and an accommodating parliament (Hassan, A. I. 2008, 'Legal Impediments to Development in North', *AllAfrica.com*, source: Fahamu, 23 October <http://allafrica.com/stories/200810240289.html?viewall=1> – Accessed 30 October 2008 – Attachment 6).

An article dated 23 September 2008 in *The Standard* mentioned a recently launched report, commissioned by Community Aid International, indicating that “Kenyan have reservations about the grand coalition government’s ability to improve their lives”. According to the article:

It emerged the public supported the coalition to end political violence but believed those in government were focused on their personal benefit.

“Kenyan feel not much difference will be achieved by the grand coalition in terms of improving living standards. They are concerned that politicians are the very same who presided over the decline of the economy and mismanagement of government affairs,” says the report, The Scorecard II, commissioned by Community Aid International.

Speaking during the report’s launch on Monday [22 September], Community Aid International CEO Joseph Kwaka said Kenyan felt the government had ditched them.

“The general feeling is that there is nothing so far to show those in government are doing anything differently...[ellipsis as published] The government is not for the people but about interests of those in power,” Kwaka said.

Mr Caesar Handa, CEO of Strategic Research said Kenyans' pessimism was worsened by inflation.

"Inflation was reported to have risen by 89 per cent by those interviewed; up from 64 per cent in a survey done six months ago.

Unemployment was also reported to have risen by 64 per cent from 26 per cent in the previous survey," Handa said.

Kenya National Commission on Human Rights Vice Chair Hassan Omar said the government had not done enough on the rising fuel prices.

"Prices of food and fuel have stretched Kenyans to the limit and they feel abandoned by the coalition government," Omar said.

The scorecard said in the last six months, corruption levels had soared.

Graft in high places

"Kenyans feel grand corruption is taking place in high places where the 'high and mighty' collude in shady deals. They are of the opinion this cannot end unless those at the apex of the corruption scandals are brought down," Kwaka said.

Police poor show

Corruption was reported to have gone up by 76 per cent, up from 67 per cent. Corruption in police stations rose from 51 per cent in 2007 to 60 per cent this year.

The most common form of corruption encountered was bribery and was cited by 85 per cent respondents.

"The police still come out as the arm of government that is still performing poorly. Those interviewed perceive it as a 'cartoon' of the Executive and indeed the Executive has failed to control it," Kwaka said.

...

Tribalism came into focus, with 75 per cent saying it had gone up, increasing from 32 per cent six months ago.

Kenyans in Rift Valley [Province] perceive tribalism in employment and public offices to have increased, followed by North Eastern [Province] ('Survey says Kenyans feel "ditched" by coalition government' 2008, *BBC Monitoring Africa*, source: The Standard, 23 September – Attachment 14).

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