

BLACK AND WHITE

Kenya's Criminal Racket in Somalia



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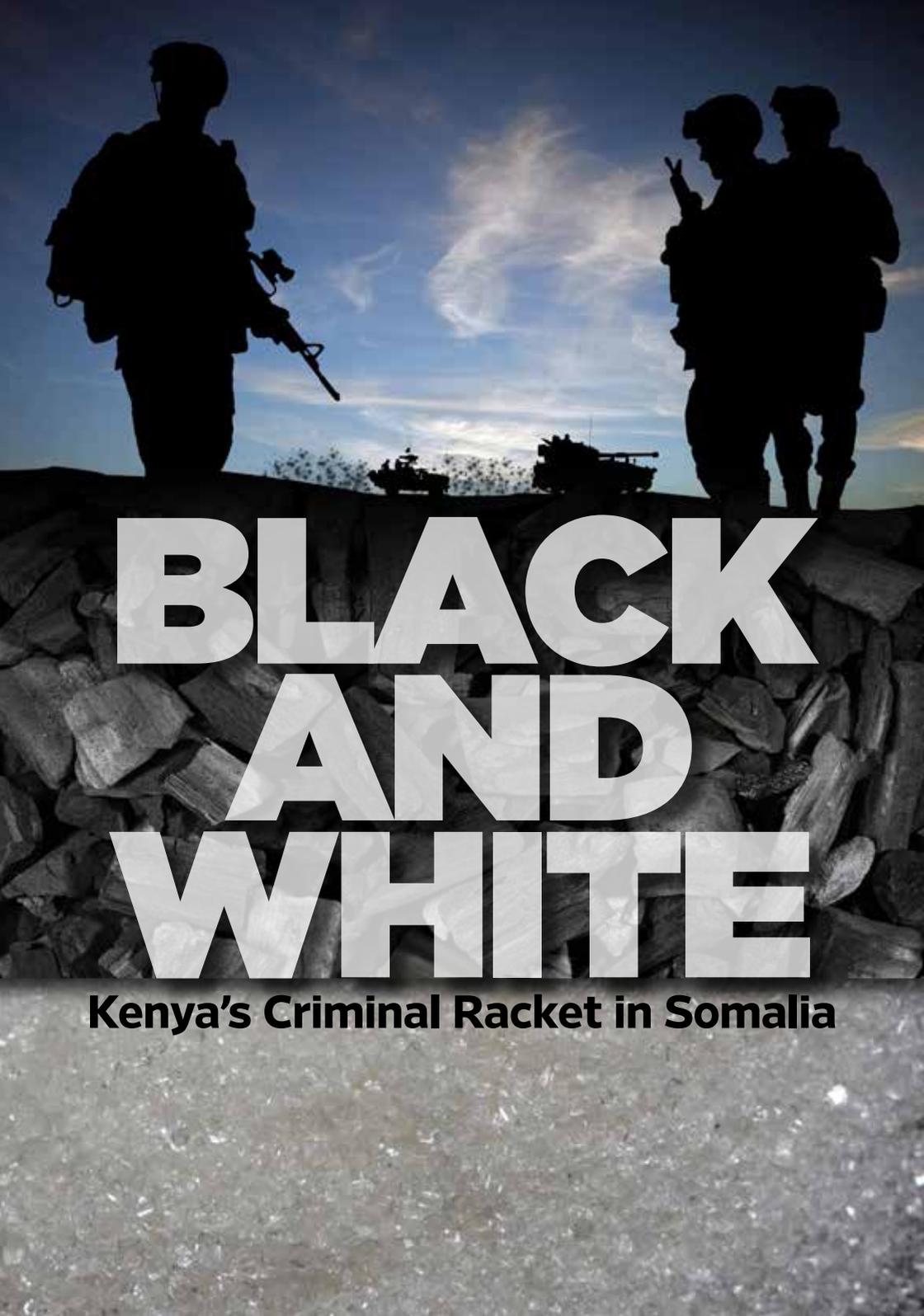
By Journalists for Justice



Published by Journalists for Justice, a project of the
International Commission of Jurists, Kenya Chapter,
Vihiga Road, Kileleshwa, P.O. Box 5943-00200,
Nairobi, Kenya;
email: info@jffjustice.net; website: www.jffjustice.net

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Acknowledgements

This report was researched and written for JFJustice by Ben Rawlence with the invaluable help of four other researchers in Garissa, Nairobi, Dadaab and Kismayo. Unfortunately, fears for their safety mean that they cannot be named. Kwamchetsi Makokha gave editorial support; Rosemary Tollo, the Programme Director of Journalists for Justice, was the project champion; and ICJ Kenya Executive Director George Kegoro provided overall leadership.

Foreword

Kenya's very survival is dependent on the capacity of the country to stem the wave of insecurity that terrorist attacks associated with the al-Shabaab group have wrought on the country. The human cost of these attacks is already very high, with more than 400 deaths since Kenya's incursion into Somalia in 2012. The insecurity has also caused massive economic disruption in the country, with businesses in the coastal region having to close down because of travel warnings. Beyond the loss of investments, which these closures usually signify, is the loss of livelihoods often by the poorest and most vulnerable people whose lives depended on such economic activities.

In the northeastern part of the country, insecurity has also caused massive disruptions in the education system, with teachers who do not come from these areas fearing to report to work since the government cannot guarantee their safety. The reversals in the education system threaten further marginalisation to a part of the country that was already heavily marginalised, and will feed into the grievances that drive insecurity in the first place.

There has been no shortage of evidence that the responses to Kenya's terrorism-induced insecurity have suffered significant slippages -- with the country's political and military leadership lodging a personal interest in the war economy that exists in Somalia, and whose disruption Kenya's military incursion was meant to achieve.

It is to be hoped that this brilliantly-written report by Journalists for Justice, which expertly marshals the latest evidence of what is wrong with Kenya's continuing presence in Somalia, will spur a public discussion in Kenya that will, at last, lead to action towards accountability for the mistakes that have been made. Each passing day of inertia in the face of the overwhelming evidence of what has gone wrong further imperils the country because, as the report warns, Kenya's invasion of Somalia has brought Somalia's conflict dynamics into the heart of Kenyan society.

George Kegoro

Nairobi

November 11, 2015

Executive Summary

Since Kenya invaded Somalia in October 2011, there has been little accounting of its activities, achievements and challenges both to the National Assembly and to the public at large. There has been little independent reporting on the invasion, with coverage mostly from journalists taken on “guided” tours by the Kenya Defence Forces or with public relations videos paid for by the KDF, and now, most recently, a book.¹ Moreover, censorship has played a role: editors described to JFJ being summoned to meetings with top military brass and told that critical stories would be considered as undermining national security. And the UN Monitoring Group on Somalia and Eritrea, mandated to report on violations of international law and sanctions on Somalia – including the financing of al-Shabaab and the targeting of civilians – has so far avoided looking too closely at the activities of the Kenyan military inside Somalia.

With the death toll from al-Shabaab attacks inside Kenya rising to over 400, Journalists for Justice felt that the task of examining whether Operation Linda Nchi is actually delivering was overdue. This study looks at the conduct of KDF forces in two areas: 1) sugar smuggling and financial enabling of al-Shabaab and, 2) human rights violations.

This report presents the findings of several months of research in Somalia in Kismayo and Dhobley and inside Kenya in Liboi, Dadaab, Garissa and Nairobi. A desktop review, encompassing UN monitoring reports, academic studies, African Mission in Somalia (AMISOM) communication and media reports was followed by one-on-one interviews with over 50 people with intimate knowledge of KDF activities, including serving senior KDF officers, UN officials, western intelligence officials, members of parliament, victims of KDF human rights violations inside Somalia, journalists, doctors, porters at the charcoal stockpiles, drivers on the sugar routes and middlemen in the Dadaab camp.

Following the Garissa University College massacre in April 2015, the Kenya Government once again talked tough about tackling al-Shabaab. It launched air strikes inside Somalia, threatened to close the Dadaab refugee camp and froze the assets of 86 people and organisations allegedly connected to al-Shabaab, among them traders involved in sugar smuggling.

The findings of this research however contradict this impression of seriousness on the part of the Kenya Government. Human rights abuses inside Somalia appear widespread and are carried out with impunity. Air strikes are targeting livestock and wells rather than militant training camps. And the Kenya Defence Forces, rather than taking the fight to al-Shabaab, are actually in garrison mode, sitting in bases while senior commanders are engaged in corrupt business practices with the Jubaland administration and al-Shabaab. The illicit trade in sugar and charcoal is, according to one diplomat, “shocking” and, “inimical to national security”.

¹ *Operation Linda Nchi*, Kenya Defence Forces, Ministry of Defence, 2015.

Sugar Smuggling

Sources from within KDF, parliament and foreign embassies all described to JFJ a situation in which a high ranking military official is at the head of a smuggling network which includes commanders of KDF forces within AMISOM, key figures in the Ministries of Defence, Immigration and State House and that this network enjoys the protection and tacit cooperation of leaders at the highest echelons of the Executive and the National Assembly.

In its report of October 2015, the UN Monitoring Group described a recent decline in the charcoal trade at Kismayo and reported that, “As the centrality of revenue stream from charcoal declines, al-Shabaab’s taxation of the illicit sugar trade is gaining relevance.” It estimated that al-Shabaab’s earnings from sugar were “substantially higher” than the \$400,000 to \$800,000 estimated in 2011. Although the monitoring group said that, “The connection between al-Shabaab and sugar smuggling came to the fore in Kenya during the Group’s current mandate,” and implied KDF involvement by describing how sugar enters Kenya via Kismayo, the report did not cite KDF directly. The report said that the monitoring group, “is continuing to investigate Al-Shabaab’s revenue stream from the sugar trade,” but made no mention of KDF.

The monitoring group must tread carefully of course. As one unnamed UN official told JFJ in relation to information that might be embarrassing for Kenya: “the impact it can have on [the group’s] ability to live and work in Kenya is significant.”²

JFJ research conducted over a similar period can reveal the true picture: KDF is heavily involved. JFJ research suggests that both KDF, the Jubaland administration of Ahmed Madobe and al-Shabaab are all benefitting from shares in a trade that is worth, collectively, between \$200 million and \$400 million.

Loaders, traders and intelligence officials told JFJ that an estimated 150,000 tonnes of illicit sugar comes into Kenya via Kismayo each year. Workers at the port in Kismayo told JFJ that around 230 trucks of 14 tonnes each leave Kismayo for Kenya, around 3000 tonnes a week. These numbers were corroborated by journalists, traders in Dadaab and Dhobley, and drivers at both locations, accounting for the hundreds of trucks crossing the border at Liboi and Amuma and arriving in the Dadaab camps each month. JFJ examined the trade at key points: Kismayo, Dhobley, Liboi, Amuma, Dadaab and Garissa.

KDF and Jubaland forces control the Kismayo port. KDF and Jubaland officials levy a tax of \$2 per bag on imported sugar, an income of around \$250,000 a week, or \$13 mil-

² JFJ personal communication with UN official, October 29, 2015

lion a year. Al-Shabaab taxes the trucks as they leave Kismayo at the rate of \$1,050 each, (yielding an income similar to KDF, around \$230,000 a week, or \$12.2m a year). At Dhobley, the Jubaland administration collects a tax of Ksh60,000 per truck. To cross the border, the truck owners pay the KDF network Ksh60,000 per truck and then a further Ksh60,000 to the police in Dadaab.

This income is in addition to the export of charcoal, which, although apparently somewhat disrupted and diminished, is still going on and is still a mainstay of revenue for al-Shabaab, Jubaland and KDF. Loaders and journalists in Kismayo told JFJ that the port tax on exported charcoal is around \$3 a bag, split three ways between Jubaland, KDF and al-Shabaab, as reported previously by the UN Monitoring Group. Until recently, the export volumes were around 1 million bags a month equaling revenue of \$24 million a year. Al-Shabaab also taxes charcoal production before the bags reach the port and it has a stake in the market value of the cargo when it reaches its destinations in the Middle East.

Sources in the diplomatic community and the UN told JFJ that Kenya's allies in the fight against al-Shabaab, in particular the UN, US and UK are "very frustrated" with the fact that the KDF network is facilitating al-Shabaab's profiteering from illegal charcoal and sugar smuggling in contravention of United Nations sanctions and Kenyan law. But, they said, there is little the UN, the Somali Federal Government or the international community can do, apart from work around the problem, sponsoring Somali government efforts to interdict smugglers, withholding intelligence from KDF and pursuing al-Shabaab targets on their own or with Somali Special Forces. Western diplomats have made private representations to the Kenyan government on the matter but they cannot force the issue, they said, because US and European forces need KDF's cooperation for access to bases in Kismayo and the use of Kenyan facilities for other military training.

Further complicating the diplomatic picture is the fact that customs duties levied at the Kismayo port are the mainstay of revenue for the Jubaland administration of the former Islamist, Ahmed Madobe, now a key ally in the coalition against al-Shabaab. Thus, the illicit conflict economy is benefitting both al-Shabaab and those ostensibly opposing them.

Human Rights Violations

Concerning the conduct of Kenyan forces, the situation revealed by JFJ research is very different from the government claims of hundreds of militants killed and training camps destroyed by air strikes. Victims of dozens of recent air strikes interviewed by JFJ spoke of jets targeting civilian villages, water-points and livestock. As one elder who lost relatives in an air strike said: "Whenever [an] insecurity incident happens in Kenya, our people are attacked from the air... no one ever comes to establish the facts... the targets are any crowd."³ JFJ also spoke to victims of rape: returning refugees and residents of

³ JFJ Interview, Dadaab, April 9, 2015.

Kismayo, by KDF and families whose relatives have disappeared in custody.

The picture of Kenya's involvement in Somalia that emerges appears to be directly opposed to AMISOM's mandate as set out in numerous Security Council resolutions: to neutralize armed groups, support the federal government and disrupt terrorist financing. The corruption and human rights abuses undermine Kenya's goals in Somalia, provide funds and propaganda to al-Shabaab, and ultimately result in the deaths of hundreds of innocent Kenyans. In light of JFJ's research, several steps appear to be warranted:

1. A wider-ranging inquiry by an independent body such as the Kenya National Commission on Human Rights or the UN Office of the High Commissioner for Human Rights is necessary to gain a broader picture of the scope and scale of the problem.
2. KDF's efforts in Somalia need to be refocused. Top KDF brass involved in the racket should be investigated and removed, while KDF must shut down all smuggling, investigate and prosecute the kingpins of the charcoal-sugar trade, not just the middle-men identified in recently published lists.
3. KDF should halt counter-productive airstrikes, investigate and compensate rights violations.
4. The UN Security Council Sanctions Committee should encourage the Monitoring Group on Somalia and Eritrea to investigate rights abuses and violations of the financial sanctions by all AMISOM contingents without fear or favour.

Introduction

Since Kenya invaded Somalia in October 2011, there has been a dramatic rise in terrorist attacks inside its borders. If Operation Linda Nchi really was intended to destroy al-Shabaab as then President Kibaki claimed, it has been a spectacular failure. Over 400 Kenyans have died in Kenya at the hands of the terror group since 2011. It is a matter of national urgency that the media examine and accurately report what exactly Kenyan forces are doing in Somalia. This report, therefore, takes up that challenge and examines two aspects of KDF conduct in Somalia, both illegal and both of which, unfortunately, seem to be aiding al-Shabaab more than degrading it: 1) human rights violations and 2) illegal commercial activities.

Human Rights

The laws of war defined in international instruments and domesticated in Kenyan law, including through the Geneva Conventions and the Rome Statute, are clear about the proper conduct of armed forces in a conflict.⁴ Not only is the commission of human rights abuses a crime under Kenyan and international law, but it is a gift to the enemy in the battle for hearts and minds.

Al-Shabaab is clear in its communications about why it is targeting Kenyan civilians, and Christians specifically. In announcements following the attacks on Westgate, Mpeketoni, Mandera and Garissa, Al-Shabaab has said that its actions are revenge for the slaughter of innocent Muslims in Somalia by Kenya. Establishing whether or not Kenya has committed war crimes in Somalia, and removing this powerful propaganda weapon from the hands of al-Shabaab should therefore be a pressing concern for the Kenyan media, and even more so, for the Kenya Government. However, in the four years since the invasion of Somalia, no such audit has been attempted.

Access for journalists and human rights organisations, whether Somali or international, is difficult and fraught with dangers, not least reprisals for victims and investigators alike. Militaries routinely keep track of their own casualties but often neglect to monitor civilian harm. Since 2011, AMISOM has promised to implement a civilian casualty tracking unit but has still not done so even though the UN mandate for AMISOM required it in 2012 and again in 2013.⁵ Nor does AMISOM have a formal civilian compensation programme. Kenya has had its own problems with civilian casualties and internal accountability in Mt Elgon and elsewhere. It would do well to learn from those mistakes and to implement a new way of doing things in Somalia.

The cases of rights violations by KDF: rapes, disappearances and indiscriminate killings from air strikes documented and summarized here only scratch the surface of this large

⁴ Kenya Defence Forces Act, 2012, Geneva Conventions Act, 1968 and International Crimes Act, 2008

⁵ On this issue, AMISOM has worked with The Center for Civilians in Armed Conflict since 2011, see: <http://civiliansinconflict.org/our-work/countries/somalia>

unexamined field of research. A wider-ranging inquiry by an independent body such as the Kenya National Commission on Human Rights or the UN Office of the High Commissioner for Human Rights is necessary to construct a broader picture of the scope and scale of the problem. This small sample of allegations merely points the way.

Illicit Trading

At the outset of Operation Linda Nchi, KDF spokesman Major Emmanuel Chirchir claimed on Twitter that Kismayo was not the goal of the military incursion. Nearly four years later, however, Kenyan forces have not advanced beyond Kismayo. Rather, they have been re-hatted and absorbed into the AMISOM peacekeeping mission and have settled into their bases in Jubaland. As the UN Monitoring Group reports have shown, the KDF did not dismantle al-Shabaab – rather, al-Shabaab was allowed to regroup. The scholars David Anderson and Jacob McKnight have pointed out: “An explanation of how Al-Shabaab maintained their strongholds in southern Somalia, and their fighting force, despite the loss of Kismayo, can be found in the rent-seeking behaviour of the KDF and its allies.”⁶

Since September 2012 when KDF pushed al-Shabaab out of Kismayo, successive UN reports have shown that control of the port is the central activity in which KDF troops are engaged and illegal export of charcoal has continued in significant volumes in flagrant violation of the UN Security Council’s ban on the trade which contributes directly to the financing of al-Shabaab.⁷ Local journalists and businessmen in Kismayo also told JFJ researchers that “everyone knows they came for the port”.⁸

The research presented here in terms of the links between KDF, al-Shabaab, Jubaland forces [former Ras Kamboni militia], senior Kenyan politicians, businessmen and the Kenya police go some way to explaining why the illegal export of charcoal (black) from Somalia and the illegal import of sugar (white) -- the “black and white” trade -- into Kenya is so hard to dismantle. This is not a question of a few corrupt border guards and junior policemen. This is a racket involving large sums of money that stretches to the highest levels within Kenya.

Moreover, it is an economy that thrives on insecurity. Stability and the proper functioning of law and order, regularized border crossings and lawful taxation would pose a greater threat to the circular trade than anything else. It is a textbook definition of a conflict economy in that war is more profitable (for a select and powerful few) than peace. And in that all sides are benefitting from economic activity in the conflict zone. Kenya’s invasion of Somalia has not brought it peace; rather it has brought Somalia’s conflict dynamics into the heart of Kenyan society.

⁶ David Anderson and Jacob McKnight, “Kenya at War: Al-Shabaab and its enemies in Eastern Africa”, African Affairs, January 2015.

⁷ See the Reports of the United Nations Monitoring Group on Somalia and Eritrea, available at: <https://www.un.org/sc/committees/751/mongroup.shtml>

⁸ JFJ Interviews, Kismayo, April 2015.

1. Human Rights Violations by Kenyan Forces

After the al-Shabaab attacks on the Westgate Mall in Nairobi, the bus in Mandera and Garissa University College, the government conducted retaliatory air strikes inside Somalia. These were followed by claims about the number of al-Shabaab fighters or training camps destroyed in Somalia as a result. After the attacks on the bus and the mine in Mandera, Deputy President Ruto claimed that air strikes had killed “over 100 militants” at a training camp. However, the District Commissioner of Mandera town told Somali radio station Bar Kulan that jets had instead killed scores of livestock and one civilian.⁹ This is closer to the picture that emerged from JFJ interviews.

There has been little or no human rights investigation by Kenyan and international agencies on abuses in the Kenyan sector. But unpublished testimonies collected by human rights organisations during 2012 paint a grim picture of the KDF consolidation of control in Kismayo and of its treatment of people travelling through KDF checkpoints. For example, a military tribunal established by the Somali Federal Government received 60 complaints from Kismayo in 2013.¹⁰ A human rights organization in Kismayo that did not wish to be named for fear of reprisals from Jubaland forces or KDF described to JFJ harassment of its staff forcing six (6) of them to flee the city.¹¹ The deaths from bombardment prior to the KDF takeover of the city alone, contradict the KDF claim in its book that the capture of Kismayo was “largely bloodless.”¹² The blood of KDF soldiers was saved, perhaps, by the indiscriminate shedding of civilian blood beforehand.

In this research, JFJ interviewed 13 victims of air strikes in Gedo and Lower Juba regions of southern Somalia between 2011 and 2015, and cross-checked their accounts with elders, medical staff in Kismayo and with other testimonies gathered by civil society organisations. All the interviewees were questioned separately.

The consistent pattern that emerged was of air strikes targeting crowds of people and animals. The majority of victims seem to be herders and their livestock. Many complained of water points being destroyed. As one 51-year old man from Gedo region who recently fled to Dadaab refugee camp after he got tired of living under the burden of constant air strikes said: “Whenever [an] insecurity incident happens in Kenya, our people are attacked from the air... unfortunately the Kenya Government claims it has killed and dismantled al-Shabaab cells, but they are taking advantage of the fact that no one ever comes to establish the facts.”¹³ He lost two relatives in air strikes following the Novem-

⁹ See “Kenya troops blamed for killing livestock in airstrike,” *Bar Kulan*, November 26, 2014. http://www.hiiraan.com/news4/2014/Nov/87150/kenyan_troops_blamed_for_killing_livestock_in_air_strike.aspx

¹⁰ See the archive of www.Somalirights.com [no longer online as of October 2015]

¹¹ JFJ Interview by phone, Kismayo, April 30, 2015.

¹² *Operation Linda Nchi*

¹³ JFJ Interview, Dadaab, April 9, 2015.

“Unfortunately the Kenya Government claims it has killed and dismantled al-Shabaab cells, but they are taking advantage of the fact that no one ever comes to establish the facts.”

ber 2014 Mandera bus attack and witnessed the deaths of others from his village the following week when Kenya bombed the area in retaliation for the Mandera mine massacre. He said, “Attacks are done without prior investigations of the areas to be bombed and mostly the targets are any crowd.”¹⁴ According to the official KDF account, Chapter 10 is concerned with the operations of the Joint Targeting Cell and numerous examples are given of air strikes hitting al-Shabaab convoys.¹⁵ Based on the testimonies

recorded here, serious questions remain about the accuracy of the cell’s decisions.

Despite targeting questions, even accurate strikes can result in displacement as people move away from frequently targeted areas. In many cases, people have already been displaced by al-Shabaab repression. The UN estimates there are around 1.1 million internally displaced persons in Somalia. Anecdotal evidence and estimates from existing refugees suggests hundreds of victims of aerial bombing from Gedo and Lower Juba regions have fled to the Dadaab camp in 2015 alone.

In the villages around Bulla-Xawa, on the Somali side of the border from Mandera town, elders said 20 people had been killed, around 20 injured from shrapnel wounds and at least 50 camels killed during 2014. Another claimed the figure was closer to 35 dead and 45 injured going back to the beginning of 2013.¹⁶

Elders in Dadaab refugee camp from Gedo region and six victims recently arrived from there said that the most common targets of Kenyan jets were the villages of Damasa, El Wak (Somalia), Gadoon Dabe, el-Cade, Bhadere, Gaweti Hills, Irida, Gurba, Khadija Hajji.¹⁷ Seven other victims interviewed in Liboi and Kismayo spoke of strikes in Lower Juba. A summary of all the strikes mentioned by interviewees follows:

Gadoon Dabe, April 6, 2015 and April 7, 2015

Following the attack on Garissa University College on April 2, airstrikes were launched at the village of Gadoon Dabe on successive days, according to a young man who had come to Dadaab camp after losing his aunt in an attack. He said she was herding camels at the time.¹⁸ This was the same village that was struck in November 2014 following the Mandera attacks where one old man and livestock were killed. An elderly herder who was also driving his camels on that day and who took cover from the jets, spoke to JFJ

¹⁴ Ibid.

¹⁵ *Operation Linda Nchi*

¹⁶ JFJ Interviews, Dadaab and Dhobley, April, 2015

¹⁷ JFJ Interviews with victims of airstrikes in Dhobley, Liboi and Dadaab, April 2015.

¹⁸ JFJ Interview with young man, Dadaab, April 9, 2015.

on the telephone from Gadoon Dabe. He told JFJ that the first strike killed five (5) people -- two old men, a mother and two children between 8 and 11 years old. Seven (7) camels and two (2) cows were also killed, he said. He then described a second strike in which one old man, two camels and five (5) goats were alleged to have died from shrapnel wounds.¹⁹ As a result, dozens of people fled the area. Bloomberg news also reported farmers claiming civilians killed in Gadoon Dabe and surrounding villages.²⁰ KDF meanwhile confidently told the media that two al-Shabaab bases had been destroyed, but that cloud cover prevented the death toll from being ascertained.²¹ In addition, the herder reported that a father and his two boys herding goats had been the target of a KDF grenade thrown by a patrol near the military base in Mandera on April 8. The herders were seriously injured and taken to hospital, he said.

El-Cade, January 2015

According to a woman who fled to Dadaab camp, her male relative, a herder who had taken animals to drink from a well near El-Cade, was killed by Kenyan jets.²² Another family member from the same village said that 10 to 15 others were injured and dozens of animals killed.²³ KDF told the media that it had killed “at least 30 fighters” in a strike on El-Cade on January 9.²⁴

Birhani, December 20, 2014

An elder from Birhani village interviewed in Kismayo told JFJ that a child of five was killed and two women injured in an aerial bombardment by KDF jets. He said witnesses had reported al-Shabaab hiding near the village, and thus he assumed this was the cause of the airstrike. He said such attacks were common and that KDF sometimes came to the village to justify the attacks as an attempt to “flush out” militants.²⁵

Irida, November 30, 2014

A fifty-year old man who had fled to Kenya to escape the bombardments and was clearly traumatized by the constant attacks, said that following the ambush of Kenyans in a bus near Mandera, there was an aerial assault on his village of Irida in Gedo region, at around midday. Two of his relatives, a mother of 32 years and her 10-year-old son were killed and several others injured. The next week, following the second Mandera attack on the miners, his village was attacked again. He said the planes targeted a convoy of animals headed for grazing fields. Five people were seriously injured, a mother and her two chil-

¹⁹ JFJ Interview, by phone with elderly herder, Gadoon Dabe, April 10, 2015.

²⁰ Paul Richardson, “Somali Farmers Accuse Kenya of Killing Civilians in Airstrikes,” Bloomberg, April 7, 2015. <http://www.bloomberg.com/news/articles/2015-04-07/somali-farmers-accuse-kenya-of-killing-civilians-in-air-strikes>

²¹ See “Kenya Airstrikes ‘Destroy’ Al-Shabaab Bases.”, Al-Jazeera, April 6, 2015 http://allafrica.com/stories/201504080064.html?utm_source=twitterfeed&utm_medium=twitter

²² JFJ Interview with middle-aged woman, Dadaab, April 25, 2015.

²³ JFJ Interview with middle-aged man, Dadaab, April 25, 2015.

²⁴ See “Kenya Airstrike in Somalia Kills 30 Al-Shabaab Fighters,” VOA News, January 10, 2015. <http://www.voanews.com/content/kenya-airstrike-in-somalia-kills-30-alshabab-fighters/1827150.html>

²⁵ JFJ Interview, Kismayo, April 16, 2015.

dren aged five and three, an elderly woman and two male herders. Ten camels, five (5) cows and seven (7) goats were also killed. He admitted that al-Shabaab had been spotted in the region but that they lived in the inaccessible hilly areas and did not mix with the local population. Retaliation against unarmed civilians in Gedo had become “a ritual” for the KDF, he said, without any prior investigation on the ground. “Our people are caught between a rock and a hard place,” under attack from al-Shabaab and from the KDF.²⁶

Village near Garbatulla, September 2014

A man living in Dadaab camp with his family said that a female relative of his called Suleka Ahmed was killed in Garbatulla, a village near the border with Kenya, in a strike last year. He also said a child was injured and an elderly man lost his leg in the airstrike by Kenyan jets. “We don’t know why KDF is targeting our village, there are no al-Shabaab here,” said a relative still living in Garbatulla who was contacted by telephone.²⁷

Kudah, June 23, 2014

“We don’t know why KDF is targeting our village, there are no al-Shabaab here,”

An elderly woman who had fled from Kudah, 160 kilometres southwest of Kismayo, following an air strike and is now an IDP near Kismayo recalled an attack by fighter jets on the village which destroyed two homes, five (5) donkeys, killed eight (8) civilians and wounded eight (8) others. Many people in the village fled into the bush following the strike and most of the wounded died of their injuries for lack of medical care, she said.²⁸ AMISOM told the media that strikes on “Kuday” in June 2014 had killed “at least 50” al-Shabaab militants.²⁹

Farigow, mid-2014

Farigow is a settlement of leprosy victims near Jilib. A woman living near there said it was attacked by jets in mid-2014. Three adults were injured and one killed, she reported to JFJ.³⁰ The UN Monitoring group report in October 2014 confirmed the account of a strike, but used it as an example of how hard it was to verify such information: “On 20 May 2014, for example, a village at Faragurow, 3 kilometres west of Jilib town in Middle Jubba, was attacked by fighter jets. Some reports claimed that among the dead were ‘two (2) women, two (2) children and an old man.’ “

Jilib, October–November, 2013

Four victims interviewed in Kismayo spoke about a series of airstrikes in Jilib town, north of Kismayo following the attack on the Westgate shopping mall in Nairobi. Several witnesses mentioned one attack by Kenyan jets on a playing field on the outskirts of the

²⁶ JFJ Interview, Dadaab, April 9, 2015.

²⁷ JFJ Interviews with resident and former resident of Garbatulla, Dadaab, April 25, 2015.

²⁸ JFJ Interview with 60-year old woman, Kismayo, April 18, 2015.

²⁹ “KDF Airstrike kills 80 near Mogadishu,” The Star, June 23, 2014. <http://allafrica.com/stories/201406240208.html>

³⁰ JFJ Interview with thirty-year old woman, Kismayo, April 18, 2015.

town where livestock were grazing. Two herders were killed along with 70 to 100 cows and goats and dozens others injured by shrapnel, they said.³¹

Another strike mentioned by two others, one young man and one young mother, took place on a Sunday in October at an al-Shabaab distribution of food to people displaced by prior strikes killed 10 and wounded 47, they said.³² The prior strikes had allegedly taken place in June 2013 near Jilib. Seven (7) people, including three children, were seriously wounded, two women died and one elderly man after drones and helicopters attacked their village. An elder who was present at all the strikes said, "We agree there was al-Shabaab in our town but the militia have no known base. In their response, the KDF attack settlements where civilians are the victims."³³

A third set of strikes took place a few weeks later in November 2013, according to the residents. Around 1pm jets razed five (5) homes. In one house five (5) children from the same family were killed, two interviewees said. At another open farming area on the edge of Jilib town, one herder was injured.

Kol, Bulla-Xawa, March 2013

According to a young man who fled to Dadaab camp from Kol, a small nomadic settlement near Bulla-Xawa, there were two airstrikes there in March 2013. The attacks happened around noon and killed three: a mother and her two children and 13 goats, he said. Three other women and two children were injured. The man himself had narrowly escaped the strike and had heard of numerous attacks in Gedo region during the recent period. He said, most fatalities were "children, women and livestock, since most of the attacks occur in the day time, when men are usually out of the homestead." By his reckoning, from January 2013 to April 2015, more than 35 people had been killed by aerial attacks. He had decided to come to the Dadaab camp because nomadic life was proving impossible and under threat from bombing. He was bitter about the lack of attention the bombing was receiving: "This is a gross violation of human rights against unarmed civilians, but unfortunately nobody is caring about the victims. We urge the world to come to our rescue to investigate this matter."³⁴

In addition to these accounts, there have been a few notable attempts to document the victims of Kenyan airstrikes in Somalia. For example, radio reports by Voice of America and the BBC Somali service and a report by Human Rights Watch on the attack on Hosingow in 2011.³⁵ Human Rights Watch has published another report on the shelling of Kismayo prior to the Kenyan takeover in 2012.³⁶ There has been no accountability for

³¹ JFJ Interview with forty-five year old man and forty-year old woman, both residents of Jilib, Kismayo, April 17, 2015.

³² JFJ Interview with thirty-year old woman and twenty-five year old man, residents of Jilib, Kismayo, April 18, 2015.

³³ JFJ Interview with forty-five year old man, from Jilib, Kismayo, April 17, 2015.

³⁴ JFJ Interview with young nomad from Gedo region, Dadaab, April 9, 2015.

³⁵ "Kenya: Investigate Bombing of Somali Village," Human Rights Watch, December 21, 2011. <http://www.hrw.org/news/2011/12/21/kenya-investigate-bombing-somali-village>

³⁶ "Somalia/Kenya: Protect Civilians in Kismayo," Human Rights Watch, August 23, 2012. <http://www.hrw.org/news/2012/08/23/somalia-protect-civilians-kismayo>

the civilian casualties caused by the Kenyan (and reportedly French) shelling of Kismayo prior to the KDF takeover of the city. A hospital in Kismayo reported to JFJ that it admitted 13 injured civilians during the strikes and 10 dead, mostly women and children. The hospital staff estimated that from the information they were aware of, around 50 people had been killed across the region due to airstrikes during 2012.³⁷

The enhanced international media scrutiny following the Garissa attack seems to have led to more questioning of the official line from KDF about airstrikes. Many, mostly foreign news outlets carried reports with quotes from residents contradicting the extravagant claims made by the KDF about the success of strikes following Garissa. Going back in time, this more complicated picture would seem to be in line with the patchy accuracy and frequency of civilian casualties that JFJ research suggests.

In the long run, transparency about military activities and mistakes will do more to bring peace to Somalia than fictional reports of large numbers of militants killed when in fact the only casualties have been goats and camels or, worse, innocent civilians.

The government should review its policy of airstrikes until it can more accurately verify targets and it should conduct proper field assessments to establish civilian casualties and pay compensation where necessary.

Disappearances, Arbitrary Detention, Beating and Torture

JFJ heard testimonies of two cases of disappearances: one by KDF and one by the Ras Kamboni militia.

According to neighbours and relatives, in February 2013, a man called Ali Yussuf was arrested by Ras Kamboni along the road between Kokani and Tabto. Efforts by relatives to trace him did not succeed. But some soldiers within the force told them he had been handed over to the KDF. He has never been seen since.³⁸

In October 2013, a KDF unit raided a shop in the village of Barkiit on the Somalia side of the Kenya-Somalia border and beat the five men inside in plain view of the whole village. The men were then bundled into a military vehicle. Witnesses said the KDF officers accused the men of being bandits and terrorizing the locals although many of them were related to the accused. The abducted men have never been seen since. Family members who followed up with the Kenya police and asked the whereabouts of their relatives were sent away by the police and threatened with deportation to Somalia.³⁹

Civil society organisations in Kismayo complained of regular beatings and torture by KDF, especially in the early days of the occupation, in 2012 and 2013. One soldier serving with KDF in Kismayo who spoke to JFJ on condition of anonymity said he had

³⁷ JFJ Interview with doctor, by phone, Kismayo, September 23, 2015

³⁸ JFJ Interview, Dhobley, April 22, 2015.

³⁹ JFJ Interviews with female and male relative of one of the disappeared, Dadaab, April 10, 2015.

witnessed extra-judicial killings in the early days of the invasion in 2012 and that he had contemplated leaving the force as a result.⁴⁰

JFJ collected 12 testimonies of people beaten or tortured in custody by Kenyan soldiers between 2013 and 2015, as detailed below.

One 60-year old man interviewed by JFJ said he went to visit family in Gabarahary from the Dadaab refugee camp and was arrested between Mandera and Belet-Xawa. He was interrogated in a cell in Mandera and beaten in custody for three days before being released without charge. He is still confused as to the reason.⁴¹

In Dhobley JFJ interviewed 10 people from surrounding areas who had complaints of arbitrary detention and beating. One elderly man said his eldest son had been arrested while taking cows to Afmadow in August 2014 and severely beaten. A young man returning to Dhobley said he had been arrested by Ras Kamboni in Tabto in 2013 then held by KDF for two days until elders pleaded for his release. Another young man travelling near Dhobley from Afmadow was arrested in October 2014 by KDF and beaten in custody for two hours before being released without charge. He has permanent injuries as a result. And one herder complained that KDF vehicles had run over his livestock without compensation.⁴²

There are likely many more cases of disappearances, arbitrary detention and torture but without a comprehensive human rights audit, the scale cannot be known. Such an investigation is in Kenya's interest -- an undisciplined peacekeeping force is counter-productive.

Rape

JFJ documented three cases of rape. One woman said she was raped by three KDF soldiers in uniform within Kismayo town in February 2013. Two others said they were attacked while returning to Kismayo from Dadaab camp.

The first woman explained that she lived alone with two children after her husband died. She said she was lured outside by the officers with the promise of being given some money. As soon as she stepped out of the house, she was accosted and raped, several metres from her compound. A soldier from Jubaland forces who was passing heard her distress and opened fire at her attackers but by then it was too late. The victim was given \$1,500 compensation by the Jubaland authorities and warned not to speak about the incident since it would bring embarrassment to the Kenya Defence Forces which had helped establish the Jubaland government. She told JFJ she was speaking up now because the trauma still haunted her, especially the image of her children watching the attack by soldiers who should have been on a UN mission to protect her.⁴³

⁴⁰ JFJ Interview with serving KDF officer, Garissa, April 1, 2015.

⁴¹ JFJ Interview, Dadaab, April 25, 2015.

⁴² JFJ Interviews with four women and six men aged between 24 and 57 years, Dhobley, April 22-25, 2015.

⁴³ JFJ Interview with 25-year-old mother of two, Kismayo, April 16, 2015.

In a second incident in October 2014, two girls, aged 15 and 17 said they were raped by KDF soldiers manning a checkpoint in Dhobley. In the middle of the day, the girls approached the checkpoint. They were returning to Somalia voluntarily from Ifo refugee camp. Six soldiers, three for each girl, dragged them aside into a bushy area while accusing them of being sympathisers of al-Shabaab. The girls were taunted with obscenities and then raped in turn, they said. After being abandoned by the road they crawled into the path of a donkey cart driver who took them to a local clinic for assistance.⁴⁴

Rape is never acceptable, especially by supposedly peacekeeping forces, but it is worth mentioning that most of the women interviewed by JFJ noted that the incidence of rape by KDF compared to what the community had experienced under other foreign peacekeeping detachments within AMISOM was less. This should be a cause of concern to AMISOM which has recently been accused of failing to tackle sexual abuse by its forces.

“More cases could have been unearthed by the investigation team, if not for the unwillingness and reluctance of some individuals to assist the investigation team with credible evidence.”

In response to a 2014 report by Human Rights Watch on sexual exploitation and abuse by AMISOM troops in Mogadishu, AMISOM conducted an investigation and released the report in April 2015. The report of the Independent Investigation Team established to investigate allegations of Sexual Exploitation and Abuse [SEA] by personnel of the AU Mission in Somalia

concluded, among other points, that: “Several statements/testimonies also insinuated widespread occurrences suggestive of SEA, but these could not be officially substantiated. Probably, more cases could have been unearthed by the investigation team, if not for the unwillingness and reluctance of some individuals to assist the investigation team with credible evidence.”⁴⁵ In short, this could be the tip of the iceberg. The report also recommended the establishment of an Office of Independent Oversight Services and a Force Provost Unit for examining human rights abuses. These sound ideas should be implemented forthwith and applied to all AMISOM sectors, including Kismayo.

⁴⁴ JFJ Interview with two girls aged 15 and 17, interviewed together, Kismayo, April 16, 2015.

⁴⁵ AMISOM SEA Investigation Report, April 21, 2015.

2. Criminal Trading

Violations of UN sanctions on charcoal

The UN sanctions committee made the export of charcoal from Somalia illegal because the trade was a major financial pillar of al-Shabaab. In banning the trade, the UN Security Council said that the charcoal business, “might pose a threat to the peace, security or stability of Somalia.”⁴⁶ Al-Shabaab benefited from the taxation that the group levied at each stage of the charcoal business and from its close relationship with the businessmen at the centre of the trade who passed on profits to al-Shabaab. These links, and even the names of the individual traders, have been well documented and published by the UN Monitoring Group on Somalia and Eritrea.⁴⁷ In 2011, the UN Monitoring Group estimated al-Shabaab’s earnings from taxing trade at the Kismayo port at around \$25 million. In 2013, after Kenya took over, they estimated that al-Shabaab’s revenues from taxing illicit trade were well above this.⁴⁸ The most recent report of the Monitoring Group claims that the significance of the trade has diminished this year. However, it says, charcoal smuggling is still vibrant and occurring at smaller ports and at the southern port of Buur Gaabo.⁴⁹

“Much of the charcoal originates in areas controlled by al-Shabaab and al-Shabaab still benefits hugely from the trade both in terms of taxes and from the actual market value of the charcoal.”

When Kenya captured Kismayo from al-Shabaab, it inherited a stockpile of over 1 million sacks of charcoal at the port, according to the UN Monitoring Group. The Federal Government of Somalia and the UN asked Kenya not to export the charcoal and to suppress the trade, in line with the UN resolutions. After several months of stand-off, including an aborted mission to Kismayo by the President of Somalia’s task force on charcoal and a Kenyan appeal to the UN Security Council to lift the ban, the KDF and Ras Kamboni led by Ahmed Madoobe, resumed charcoal exports very soon after taking control of the port. The trade soon boomed, reaching levels unseen even during the tenure of al-Shabaab.⁵⁰

The reasons for the ban remain in place: much of the charcoal originates in areas controlled by al-Shabaab and al-Shabaab still benefits hugely from the trade both in terms of taxes and from the actual market value of the charcoal since many of the major traders are aligned to al-Shabaab.

⁴⁶ UN Security Council Resolution 2036 (2012)

⁴⁷ See the reports of the Monitoring Group at: <http://www.un.org/sc/committees/751/mongroup.shtml> <http://www.un.org/sc/committees/751/mongroup.shtml> <http://www.un.org/sc/committees/751/mongroup.shtml> <http://www.un.org/sc/committees/751/mongroup.shtml>

⁴⁸ UN Monitoring Group report, 2013, p.38.

⁴⁹ UN Monitoring Group report, Somalia, October 2015, p.47

⁵⁰ *Ibid*, p.40

As detailed in the UN reports, the scale of al-Shabaab's earnings from the charcoal trade are significant. Up to \$15 million from checkpoints alone; around \$1 million per month in export taxes at the Kismayo port. Plus, through its affiliations to the traders themselves, a shareholding, of around 30 per cent of the total market value of the charcoal, of which, until recently, exports from Kismayo were estimated at around \$350 million to \$400 million per year, not to mention exports from Barawe and other smaller ports.⁵¹ In total, charcoal nets al-Shabaab revenues of at least \$100 million per year. It is a massive trade on an industrial scale: still southern Somalia's biggest export by far.

As such, the charcoal trade is not some kind of illicit hobby for KDF officers stationed in Kismayo to earn some pocket money. Together with the import of sugar, it is in fact, the main reason they are there. Residents of Kismayo told JFJ that the KDF, "they do minimal patrols, they just stay in their base, they are concerned only with the operations at the port."⁵² A former UN official said the same thing: "The KDF in Somalia are purely in garrison mode."⁵³

"The KDF in Somalia are purely in garrison mode."

The UN monitoring group reports that documented the trade and estimated the volumes leaving certain areas and the amounts of money accruing to al-Shabaab mentioned the complicity of KDF in the charcoal trade in earlier reports but do not go that far in detailing the Kenyan level of involvement, or estimating the amount of money the Kenyan military and its affiliated businessmen are making. Their concern is the revenue generated by al-Shabaab, not Kenya's role in enabling that revenue. But al-Shabaab is only one of three main players in the trade. The others are the Jubaland administration of Ahmed Madobe (formerly Ras Kamboni militia) and the network within the KDF.

The 2013 UN report acknowledged that al-Shabaab, Jubaland and KDF all have a shareholding in the port. The most recent October 2015 report, acknowledged that that arrangement was unchanged: "Although the actors controlling the trade and export in Kismayo remain largely unchanged since the Group's previous report (see S/2014/726, annex 9.1), export procedures have changed."⁵⁴

That former report noted: "The port is under the joint security control of the KDF and the RKB [Ras Kamboni Brigades], and both undertake joint operations at the port. In addition, according to charcoal traders and shippers, the Kenyan Navy has oversight at the port and a KDF officer, a Major Maingi, was the focal point for authorizing the offloading and loading of vessels."⁵⁵

⁵¹ Ibid, annexe.

⁵² JFJ Interview, journalist in Kismayo, April 26, 2015.

⁵³ JFJ Interview with former UN Official, by phone, London, May 5, 2015.

⁵⁴ UN SEMG, October 2015, p.47

⁵⁵ UN Somalia Eritrea Monitoring Group report, 2013, p.425

In 2015, the Monitoring Group said, “no apparent efforts have been made by either the Interim Juba Administration or local contingents of AMISOM to implement or report on the ban, supporting the Group’s assertion that both continue to be actively engaged in and profiting from the trade.”⁵⁶

In an April 2015 visit to the port, JFJ researchers established that the current KDF officer in charge of the port had the rank of Captain. He worked closely with the port manager, a man mentioned in the UN Monitoring Group reports as Abdullahi Dubad Shil, also known as “Hadun” and he allegedly reported to the overall KDF sector commander for Kismayo, Brigadier Walter Koipaton.⁵⁷

According to workers at the port interviewed by JFJ, the Captain receives the KDF share of the port duties collected by Hadun. One KDF senior officer who visited Kismayo in 2013 said he witnessed KDF soldiers supervising the loading of ships with charcoal in the port. He, and another senior KDF staff at the rank of general, independently corroborated the claim that the commander of KDF troops in Kismayo, Brig. Koipaton, collects the revenue on behalf of the KDF network in Kismayo.⁵⁸ The senior KDF officer alleged that [the former commander], “Brig Ngere didn’t sing [the network’s] tune, he was replaced by a junior officer – Koipaton. Koipaton has risen very fast (this is rare). He works closely with [the KDF network] and Madobe. He is in charge of everything. They are involved in charcoal, sugar, clearly, just like other deals, and he deposits [the network’s] cut overseas.”⁵⁹

In its 2014 report, the UN monitoring group said the port duty was \$3 per 25kg sack of charcoal. By April 2015, when JFJ visited the port, it was still \$3. Since then, it has been reported at up to \$6. But of that original \$3, KDF takes \$2, the loaders at the port and journalists said, with the balance divided between Jubaland and al-Shabaab.⁶⁰ This was corroborated by workers at the port interviewed by JFJ.⁶¹

The monitoring group has estimated monthly exports of charcoal at around 1 million bags. Workers at the port told JFJ that this was accurate.⁶² This means that from the port tax on charcoal alone, until at least six months ago, the KDF network (and al-Shabaab) in Kismayo was making \$1million to \$2 million per month, between \$12 million and \$24 million per year. These amounts have been validated by receipts seen by the monitoring group, although charcoal traders in Dubai told the monitoring group that the actual export amounts are much higher.⁶³

⁵⁶ UN SEMG, October 2015, p.48

⁵⁷ JFJ Interviews with workers at the port, and journalists in Kismayo, April 2015.

⁵⁸ A series of JFJ interviews with unnamed Brigadier, Nairobi, June 2015 and unnamed General, Nairobi, July 2015.

⁵⁹ Ibid.

⁶⁰ JFJ Interview with charcoal loader and journalist in Kismayo, April 17, 2015.

⁶¹ Ibid.

⁶² JFJ Interview with charcoal loader who has worked at the port for 10 years, Kismayo, April 17, 2015.

⁶³ UN SEMG, 2013,

Since the previous monitoring group reports and international attention on the continuation of the charcoal trade despite the ban, the presence of large charcoal stockpiles in Kismayo has been something of an embarrassment. In 2014, monitoring group staff reported that they were prevented from visiting the port until all charcoal loading had ceased.⁶⁴ The October 2015 report cites stockpiles being moved.⁶⁵ In April 2015, JFJ also established that the charcoal stockpile that had been near the port at Allanley had been moved five minutes' drive outside of Kismayo to an open air place called Dulitka Balcada. The facility was well guarded by spies and armed men. The area is around 4 square kilometres holding millions of bags of charcoal where, according to the workers, around 1,500 people are employed. The loaders told JFJ that there are additional stockpiles at Hosingow, Jana Abdulle, Badade, and Bagdada.⁶⁶

The profit from the sale of the charcoal itself is far greater than the taxes levied upon it. According to the monitoring group, 12 million bags a year has a market value of between

\$350 million and \$400 million. There are serious profits to be made. The UN reports of 2013 and 2014 are explicit in naming 30 traders in the Jubaland Chamber of Commerce -- many of whom are Kenyans based in Garissa, and one of them, a Nairobi based trader called Haji Yassin.⁶⁷ Several of those named in the UN report it describes as being affiliated to al-Shabaab and acting as tax collectors and fundraisers for the

“A Kenyan cartel made up of senior military and political figures is pulling the strings of the charcoal-sugar trade from both sides of the border.”

group. Yet, as one UN official explained to JFJ, “these guys move freely in and out of Kismayo,” the KDF makes no attempt to stop them or to enforce the sanctions.⁶⁸

According to a UN official interviewed by JFJ, there is a “fairly formal relationship” between the administration of Madobe and his former al-Shabaab colleagues when it comes to the charcoal business.⁶⁹ Both have appointed special representatives on charcoal who negotiate the terms of their coordination and profit-sharing. Madobe of course is very close to Kenya. In this connection, workers at the port in Kismayo said that the port manager, “Hadun”, was a close associate and relative of the former Kenyan Defence Minister, Yusuf Haji, and that he had been placed there by his relative. Journalists in Kismayo claimed the same, pointing out that “Hadun” is from the same sub-sub-clan (Aden Abdalla/Abdalla/Ogaden).⁷⁰ If this is true, then it would seem that a Kenyan cartel made

⁶⁴ UN SEMG, 2014, p. 440

⁶⁵ UN SEMG, 2015, p.48

⁶⁶ JFJ Interview with charcoal loader, April 17, 2015.

⁶⁷ UN Monitoring Group report, 2014, p.272.

⁶⁸ JFJ Interview with UN official S1, by phone, London, June 2015.

⁶⁹ Ibid.

⁷⁰ JFJ Interview with journalist, Kismayo, April 20, 2015.

up of senior military and political figures is pulling the strings of the charcoal-sugar trade from both sides of the border.

The monitoring group estimates that al-Shabaab affiliated traders control around 30 per cent of the trade, and thus the profit. With the recent disruption in the trade, things will have changed somewhat. But, until recently, and possibly still, this means that Jubaland and KDF-affiliated traders control the remaining 70 per cent. The market value of the remaining charcoal is over \$200 million per year. Plus the \$12 million to 24 million collected at the port. No wonder the KDF and Jubaland authorities do not want to cut off al-Shabaab's revenue streams -- if they did, they would be cutting off their own.

Charcoal is big business, but it is only half of the story. The illicit coin being made in Somalia has two sides: a black side, the charcoal, and a white side: sugar.

Illegal importation of sugar

Ships unloading sugar and other goods for smuggling into Kenya from Kismayo cannot return to the Gulf empty. To be profitable they need to load an export to take back again. As the export of charcoal boomed in 2014, under the watchful eye of KDF and Jubaland authorities, the sugar price in Kenya dropped like a stone.⁷¹ Sugar was coming in as fast as charcoal was going out.

“Sugar enters Somalia through Kismayo port, which is controlled by the Kenyan military.”

The mechanics of the sugar trade are well known in Kenya. For years, domestic suppliers have been unable to meet demand or have been deliberately run down to increase the margins for smuggled sugar – (Mumias Sugar, the largest company, has been investigated by a parliamentary committee for two years but the committee has so far failed to report)⁷². The shortfall of up to 200,000 tonnes per year between domestic production and demand is made up from smuggled imports. The tariff on non-Common Market for Eastern and Southern Africa (COMESA) imports is 100 per cent, making the margins for smuggling very attractive indeed.

A western intelligence source told JFJ that up to two thirds of smuggled sugar enters Kenya from Somalia.⁷³ A government report leaked to the *Star* newspaper, is quoted as saying: “Most of the smuggled sugar enters the country from areas controlled by al Shabaab in Somalia.” It does not. Sugar enters Somalia through Kismayo port, which is controlled by the Kenyan military. Following the al-Shabaab attack on Garissa Universi-

⁷¹ See “East Africa Sugar Smuggling Leaves Bitter Taste,” *Financial Mail*, (South Africa) May 22, 2014, which quotes Kenya sugar prices falling from \$43 per 50kg to \$36. <http://www.financialmail.co.za/features/2014/05/22/east-africa-sugar-smuggling-leaves-bitter-taste>

⁷² “Team Pulls Out of Mumias Probe Over a Year Later,” *The Standard*, March 13, 2015. <http://www.standardmedia.co.ke/article/2000154643/team-pulls-out-of-mumias-probe-over-a-year-later>

⁷³ JFJ Interview with EU diplomat, Nairobi, May 2015.

ty College, the Kenya Government published a list of 86 people and organisations whom it alleged were financing al-Shabaab, 30 of whom it claimed were “sugar barons”.⁷⁴ In fact, the “sugar barons” are only the foot-soldiers for Kenyan politicians and senior military figures higher up the food chain.

JFJ spoke to truckers, loaders, Somali government and Jubaland officials, drivers, sugar barons and civil society people all along the sugar route from Kismayo to Dhobley, in Liboi, Dajabulla and Dadaab, and this is the picture that emerged.

Sugar is offloaded in Kismayo along with other goods being smuggled into Kenya including vehicles, pasta, cooking oil, shoes, rice and some petroleum products. According to the workers at the port, on incoming sugar, the KDF levies a \$2 charge per sack at the port.⁷⁵ Workers at the port say around 230 trucks of 14 tonnes each leave Kismayo bound for Kenya each week. These numbers were corroborated by seven sugar traders in Dadaab and Garissa and by five drivers in the sugar convoys interviewed in Dhobley, Liboi and the Dadaab refugee camps.⁷⁶ That’s around 2,940 tonnes a week, around 150,000 tonnes a year (as noted by the European intelligence source), a significant percentage of the shortfall in Kenyan sugar. And some analysts fear, “sugar is a convenient cover for other things.”⁷⁷

At a rate of \$2 per 25kg sack, the KDF network is making around \$257,600 a week from sugar imports or \$13 million a year. But that is only at the port. The sugar is also taxed at various points on its way to Kenya, as numerous newspaper articles have pointed out in recent years.⁷⁸

According to JFJ research, once a truck leaves Kismayo, it is taxed by al-Shabaab five kilometres outside the city and given a stamped receipt which is good for transit through al-Shabaab territory. JFJ interviewed seven different businessmen involved in the trade. They all, as did a UN official familiar with the monitoring group’s information, confirmed that the amount paid to al-Shabaab is \$1,025 per truck.⁷⁹ At Dhobley, the Jubaland authorities collect a further Ksh60,000 (\$700). The UN official told JFJ that there

⁷⁴ “Sugar Barons Financed Al-Shabaab, says Government,” *The Star*, April 27, 2015. <http://www.the-star.co.ke/news/sugar-barons-financed-al-shabaab-says-government#sthash.E7QgdQqn.dpbs>

⁷⁵ JFJ Interview with loaders at Kismayo port, April 17, 2015.

⁷⁶ JFJ Interviews with sugar traders, drivers, Liboi, Dhobley, Dadaab, April 2015.

⁷⁷ JFJ Interview with UN official S1, by phone, London, July 30, 2015.

⁷⁸ “Al-Shabaab linked sugar smugglers still in business after attack,” *The Nation*, April 24, 2015. The article mentions 5 checkpoints but not the amounts that change hands.

⁷⁹ JFJ Interviews in Dhobley, Liboi, Dadaab and Kismayo, April 2015.

was “clear coordination between the military leaders in Dhobley and Kismayo.” This matched what senior KDF figures and an MP from the former North Eastern Province told JFJ.⁸⁰ An official from Jubaland who works in the tax collecting business complained to JFJ that al-Shabaab and KDF were making more money than them from the sugar but that there was nothing they could do about it.⁸¹

At Dajabulla, Liboi or any one of the other border crossings, (there are many cut lines⁸²), truck owners pay another Ksh60,000. Upon arrival in the Dadaab refugee camps, the trucks pay a final instalment of Ksh60,000. Two drivers of the trucks on the Amuma and Liboi border crossings told JFJ that the payments were all cleared through agents who paid off the police, customs, politicians, and so on.⁸³

When JFJ researchers travelled on a sugar truck from Dhobley to Dadaab refugee camp in late April 2015 (after the supposed clampdown following the Garissa attack) the convoy of 13 trucks was not stopped once. When asked, the driver said that his bosses had “cleared the road.”⁸⁴ He meant that they had paid their contribution to the agent who had informed the police and the military who duly made sure that roadblocks and patrols did not bother the convoy.

Several of the seven businessmen interviewed and involved in the sugar trade complained to JFJ that the taxes had become higher in recent months, and especially in the weeks following the Garissa attack. Two of them complained of KDF demanding more money at checkpoints and making unscheduled detentions of trucks carrying smuggled goods to demand extra payment for their release. The businessmen themselves had no contact with the security services, instead paying their share through agents. In Ifo camp, they said this was a man called Abdullahi Mrefu and in Dajabulla a man named Gessay. Mrefu is on the list of 86, Gessay is not.

Confirming the volumes described by the loaders in the port, traders in the market in Dadaab camp said around 40 trucks a week come to Ifo market alone. Ifo is the biggest, but there are two other markets in Dadaab, in Dagahaley and Hagadera, which traders said see around 100 trucks a month each. That is a total of 360 trucks to Dadaab. Others go straight to Garissa or enter Kenya through Wajir, Mandera and Lamu. From Dadaab, trucks make their way to Garissa where, truckers and a policeman said, sugar is stockpiled in two main stores: Hulugho and Badr and then transported onwards to Nairobi and the rest of Kenya.⁸⁵

⁸⁰ JFJ Interview with UN Official S1, Nairobi, by phone, May 2015 and JFJ interviews with senior KDF officers and MP for Northeastern.

⁸¹ JFJ Interview with Jubaland official, Dhobley, April 2015.

⁸² See the very good summary, “Al-Shabaab storm in a teapot: Why that sweet cup is the poison that is killing scores of Kenyans softly.” Mavulture.com, July 15, 2014. <http://mavulture.com/editorial/al-shabaab-storm-in-the-teapot-why-that-sweet-cup-is-the-poison-killing-scores-of-kenyans-softly/>

⁸³ JFJ Interview with truck drivers in Dhobley and Liboi, April 2015.

⁸⁴ Ibid.

⁸⁵ JFJ Interviews, Dadaab and Nairobi, April 2015

If all of the 230 trucks leaving Kismayo each week are destined for Kenya and they all pay two fees to KDF/Kenya Police, one to al-Shabaab and one to Jubaland, the total accruing to Kenyan security forces is around \$350,000 each week. That's close to \$1.5 million a month or \$17 million a year, not including the port tax at Kismayo. And that's just the tax. This does not include the profit on the smuggled sugar: a hefty margin for the businessmen concerned, none of whom are on the list of 86 blacklisted for cooperating with al-Shabaab. A 2013 investigation by *The Standard* newspaper estimated the daily value of smuggled sugar at close to \$1 million.⁸⁶

There are more powerful interests behind the trade, those putting up the money for the cargo and negotiating the political cover. At the middle level are people well established in the smuggling trade, known to anyone who has followed politics and economics in Northern Kenya since the 1990s. According to the MP from North Eastern,

"If all of the 230 trucks leaving Kismayo each week are destined for Kenya and they all pay two fees to KDF/Kenya Police."

"A [high-ranking Member of Parliament], his brother and [another former high-ranking MP] are all involved in smuggling, but there is no paper trail. We all know each other, we can even tell you whose relatives are driving the trucks."⁸⁷ These people order up the cargoes, provide the financing and arrange the political cover for the shipments.

In 2010, information was provided to the UN monitoring group about the agent Gessay, and his links to all of the above plus Noor Barre, Heider Haji Abdi and a businessman called Mohammed Hussein. Hussein plus another businessman called Sheikh Kassim as well as a former Cabinet minister and his son were all mentioned again to JFJ by a UN official in 2015.⁸⁸ A US diplomat and a European one each confirmed to JFJ the relevance and continued involvement of these senior figures, based on their intelligence.⁸⁹ The same faces are still involved. If they are not being prosecuted it is because senior figures within the administration do not wish them to be. Of the list of 86 traders named after Garissa, all the Dadaab sugar brokers were still operating in the weeks following publication and business is continuing as usual at the time of going to press.⁹⁰ There is another layer of involvement, higher up, who protect them.

"This goes pretty high, very close to Uhuru [Kenyatta], I am told," the UN official said, speaking of the manipulation of the sugar market and the illegal importation from

⁸⁶ See "Kenya: Sugar Smuggling Ongoing Through Border with Somalia," February 2, 2013. http://sugarinfo.co.uk/website_contents/view/1224225

⁸⁷ JFJ Interview with MP from North Eastern, Nairobi, May 2015.

⁸⁸ Information provided to JFJ confidentially and JFJ interview with UN Official S1, Nairobi by phone, May 2015.

⁸⁹ JFJ Interview with US diplomat, London, by phone, July 2015 and with European diplomat, in person, Nairobi, April 2015.

⁹⁰ JFJ Interviews with sugar brokers, by phone, Dadaab, August 2015.

Kismayo, “and [a senior KDF officer] is in it up to his neck.”⁹¹ The serving KDF officers interviewed by JFJ confirmed this assessment. “You need to understand that the military is in charge. The politicians cannot tell military chiefs what to do,” the Brigadier told JFJ.⁹² The General confirmed the role of top KDF commanders in the racket too. “[The commanders] have amassed a lot of wealth,” from sugar, cars and other procurement deals. He went on to say, “If you want to survive at a high level in the KDF, you have to be corrupt ...”⁹³

When JFJ outlined to a US diplomat with sight of US intelligence cables the picture of a smuggling network with interests in sugar and other illicit trade in Somalia involving former cabinet ministers and senior KDF officers and with senior politicians providing political protection, he said: “What you have described is broadly accurate.”⁹⁴

A European diplomat who had seen intelligence reports said, with reference to the Somalia aspect of the smuggling ring: “I can’t tell you the details but [the KDF] ... controls everything, together with Yusuf Haji. Madobe doesn’t exist: it’s Haji that controls the clan.”⁹⁵ He meant that Madobe and his administration in Kismayo were simply representatives of the Ogaden clan of which Yusuf Haji is the most influential member.

“A [high-ranking Member of Parliament], his brother and [another former high-ranking MP] are all involved in smuggling, but there is no paper trail. We all know each other, we can even tell you whose relatives are driving the trucks.”

To the extent that KDF’s involvement in illicit trade is contributing to the financing of al-Shabaab, it is within the mandate of the UN Monitoring Group. But the Monitoring Group has, since Kenya invaded Somalia in 2011, been reluctant to dig too deeply into KDF’s role in charcoal, or now, sugar, focusing mostly on the revenue accruing to al-Shabaab rather than the facilitating role of KDF. As one UN official with knowledge of the monitoring group’s activities and investigations into smuggling explained, in looking too closely at KDF’s role in the sugar trade, “the impact it can have on [the group’s] ability to live and work in Kenya is significant.”⁹⁶

The recommendations of the October 2015 Monitoring Group report encourage the sanctions committee “to designate for targeted measures:

⁹¹ JFJ Interview with UN official S1, Nairobi, by phone, May 2015.

⁹² JFJ Interview with KDF Brigadier, Nairobi, June 2015.

⁹³ JFJ Interview with KDF General, Nairobi, June 2015. See also allegations made in court against General Karangi and the Defence Council for unfair dismissal of senior commanders who had queried what appeared to be corrupt over-payments in procurement contracts: “Former Officers Sue Kenya Defence Forces,” *The Standard*, January 17, 2014 <http://www.standardmedia.co.ke/article/2000102490/former-military-officers-sue-kenya-defence-forces>

⁹⁴ JFJ Interview with US diplomat, by phone, July 2015.

⁹⁵ JFJ Interview with EU diplomat, London, by phone, June 2015.

⁹⁶ JFJ personal communication with UN official, October 29, 2015

“I can’t tell you the details but [the KDF] ... controls everything, together with Yusuf Haji. Madobe doesn’t exist: it’s Haji that controls the clan.”

“...Individuals and entities, including importers, exporters and transporters, involved in the trading of Somali charcoal.”⁹⁷

According to JFJ research, this should read “... and sugar” at the end. And first among those collaborators recommended for targeted measures should be the Interim Jubaland Administration and the Kenya Defence Forces.

A Conflict Economy

Business and politics are always closely linked in Kenya because purchasing high office is expensive. What is emerging in North Eastern looks very like the kind of “conflict economy” model present in the Democratic Republic of Congo, Afghanistan and elsewhere where war is more profitable than peace. The loss to the Kenyan exchequer of the avoided tax on sugar is estimated at around Ksh5 million daily (\$50,000).⁹⁸ But when the value of the smuggled sugar is around \$1 million per day, the incentives to keep North Eastern insecure and ungoverned become clear. Further incentives then build upon the foundational ones as those well positioned to profit from the trade at a time of war (for example, the KDF), have little interest in leaving Kismayo and building peace. They also have strong incentives to push public policy in a more militarized direction to increase their control and their opportunities for profit from other spheres such as procurement and international financing for counter-terrorism.

Politicians who have become accustomed to a system of patronage and corruption in order to gain power have no incentive to play straight and they consistently corrode the central state in their efforts to promote a system that benefits them. This is what we appear to be seeing at the very highest levels in the Kenya Government: beyond the traditional definition of state-bound corruption (the simple abuse of office for personal gain), this is the systematic promotion of conflict and terrorism abroad for the purpose of making money.

⁹⁷ UN SEMG, 2015, p.51

⁹⁸ “Kenya: Smuggling Ongoing...” *op cit.* February 2, 2013.

3. Policy Implications

That senior figures in the government and military are in business with al-Shabaab and have a financial interest in the same activities that fundraise for terrorism is very worrying for Kenya. It is also, diplomats told JFJ, “very frustrating” for Kenya’s allies in the US, United Kingdom, European Union and UN who are assisting the country and Somalia in the fight against al-Shabaab.⁹⁹

In October 2014, the UK ambassador to the UN, Mark Lyall Grant, sponsored a resolution at the Security Council reinforcing the sanctions against terrorist financing of al-Shabaab in Somalia. In comments to the media, he went further, adding that, “If there are also other elements involved in the charcoal trade, and in a place like Somalia one cannot guarantee that is not the case, then obviously that should be pointed out.”¹⁰⁰ It was clear he was talking about Kenya’s illicit activities.

In comments to JFJ, an unnamed UK diplomat said, “of course we’ve brought it [the corruption in Kismayo] up, but it is not something Kenya is ready to discuss.”¹⁰¹ The US source made similar comments, revealing that the US delegation in Nairobi had made representations several times, even stating that KDF’s activities were undermining national security but, “the Kenyans don’t want to acknowledge it... It’s really shocking.”¹⁰²

“KDF’s activities were undermining national security but, the Kenyans don’t want to acknowledge it... It’s really shocking.”

Vanda Felbab-Brown, an analyst expert in illicit networks within the Horn of Africa and more globally, at the Brookings Institute in Washington DC, said: “The US is aware of what is going on, it is one of the many aspects of policy that the US would like to change. The sense in Washington is that there is not enough leverage. The US-Kenya relationship is not strong enough.”¹⁰³

A second UN official involved in trying to limit the trade and disrupt al-Shabaab’s fundraising said, “The UN and US are thrashing around trying to find solutions to this. The UN cannot put people in the ports. It can only work with the Federal Government of Somalia to try and re-equip the coastguard.”¹⁰⁴ But the US, UN and UK cannot insist too hard, even though the first UN official referred to the KDF’s use of international funds (to pay for the Kenyan contribution to AMISOM) for its own corrupt business purposes

⁹⁹ JFJ Interview with US diplomat, by phone, London, June 2015.

¹⁰⁰ UK ambassador, Mark Lyall Grant, quoted in “UN has engaged Kenyan officials on charcoal trade, UK envoy says,” THE NATION, October 25, 2014.

¹⁰¹ JFJ Interview with UK diplomat, by phone, London, May 2015.

¹⁰² JFJ interview with US diplomat, June 2015.

¹⁰³ JFJ Interview with Vanda Felbab-Brown, by phone, London, May 2015.

¹⁰⁴ JFJ Interview with UN official S2, by phone, London, July 2015.

as “almost laughable.”¹⁰⁵ “The UK is in the middle of re-negotiating its Memorandum of Understanding with Kenya on training facilities, they cannot push,” said the second UN official. And the US, he said, just “works around” the problem, using KDF bases in Kismayo for special operations but not expecting them to contribute much to the fight.¹⁰⁶

The authorities in Mogadishu are publicly furious about the collusion between KDF, Jubaland and al-Shabaab, and have opposed attempts to establish Jubaland as a political entity at every turn. And the charcoal-sugar trade is financing KDF, Jubaland and al-Shabaab -- it finances all sides in the conflict. But other AMISOM contributing countries do not appear to be concerned about the enormous breaching of AMISOM's own mandate by Kenya. Felbab-Brown said, “The Ugandans and Burundians are very weak, they have no clue and no interest in what is happening in the Kenyan sector... and Kenya and Ethiopia have a kind of understanding and each allows the other freedom of movement in their sector.”¹⁰⁷

The cooperation with foreign militaries may well be one casualty of the impunity of the KDF in Kismayo and the corrosive influence of the KDF network on international relations. “You begin to wonder,” one UK intelligence official told JFJ, speaking of military cooperation with Kenya, “whether all the money and effort is worth it, why do we bother trying at all?”¹⁰⁸

¹⁰⁵ JFJ interview with UN official S1, by phone, London May 2015.

¹⁰⁶ Interview with UN Official S2. See also Ty McCormick, “Exclusive: US Operates Drones from Secret Bases in Somalia,” *Foreign Policy*, July 2, 2015.

¹⁰⁷ Felbab-Brown, May 2015.

¹⁰⁸ JFJ interview with UK intelligence official, August 2014.

4. Conclusion

More pressing for ordinary Kenyans perhaps is the capacity of al-Shabaab to kill civilians inside Kenya, a capacity that is only being enhanced by the activities of the smuggling network and by the impunity that the KDF enjoys in Somalia for its disproportionate air strikes and other unreported excesses.

JFJ approached the KDF spokesmen for comment but KDF referred all questions to AMISOM, a convenient way of avoiding direct accountability.

“Why did KDF go to Kismayo?” the serving KDF General asked JFJ, “For sure it was not to do with security.”¹⁰⁹ This is the question Kenyans are asking and for which this report hopes to provide some answers.

The illicit black and white trade is perverting Kenya's national interests, and enriching a small circle of individuals at the expense of national security. This needs to change. The cartel should be dismantled, and the country should commit to upholding UN sanctions and international law in Somalia by stopping the illegal importation of sugar.

To the extent that KDF is carrying out combat operations, these should be conducted in accordance with the laws of war and human rights abuses, whether rape, mistreatment or arbitrary detention should be investigated and punished. On the face of the available evidence so far, the policy of airstrikes appears to be counterproductive and should be reconsidered.

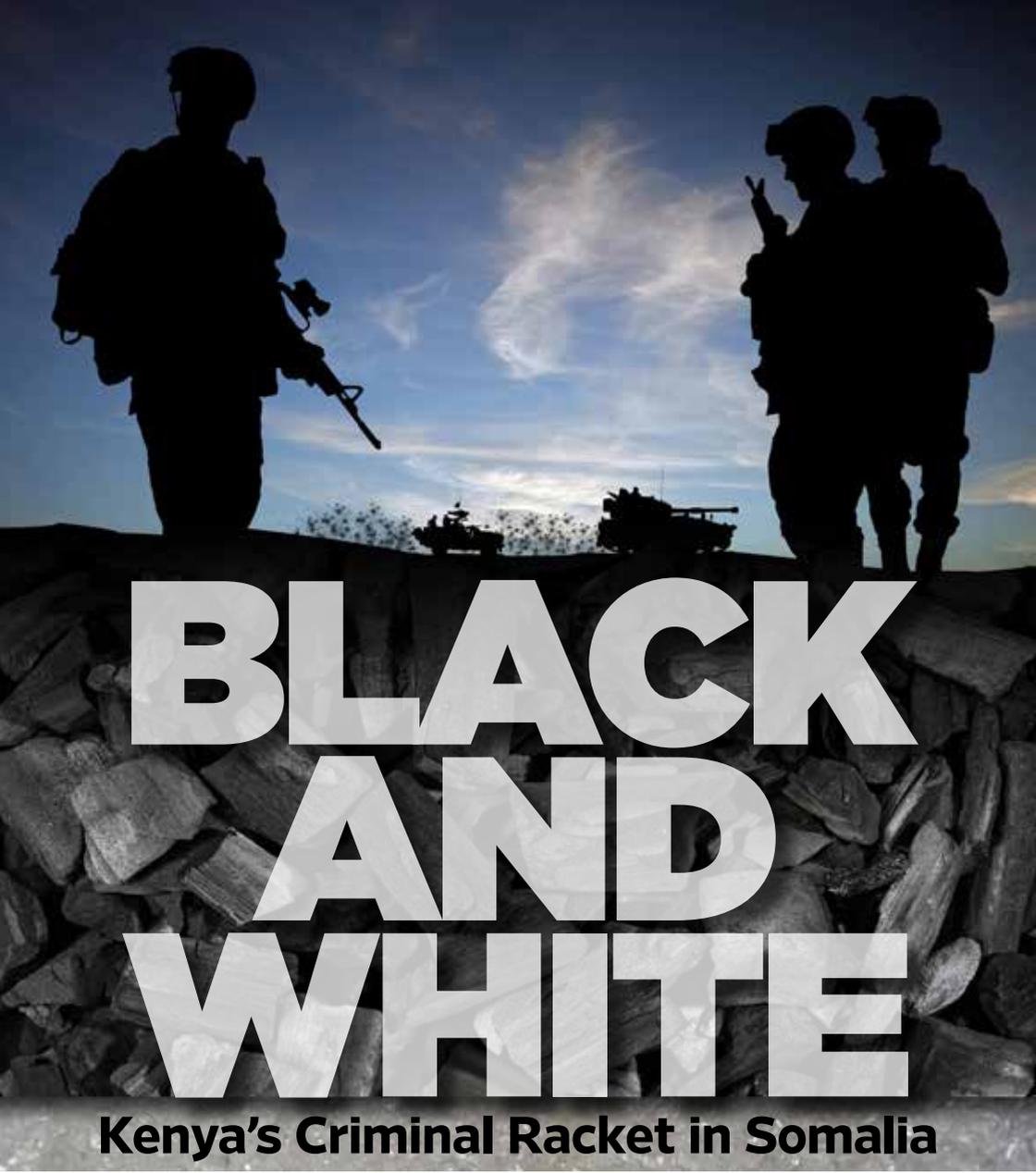
Kenya has a problem in Somalia, but it is not al-Shabaab in isolation. The problem is that Kenya's own governmental institutions do not appear to be fit for purpose in addressing the challenge posed by al-Shabaab. Ultimately, the solution lies with fundamental reform of Kenya's national security apparatus and its ongoing crisis of governance. Breaking the cycle of corruption will be key to building a lasting peace in Somalia and improving the prospects of the sugar industry in Kenya: both policy goals that the government claims to support. The irony is that tackling corruption within its own ranks might be harder for the Kenyan government than defeating al-Shabaab on the battlefield.

“Why did KDF go to Kismayo?” the serving KDF General asked JFJ, “For sure it was not to do with security.”

¹⁰⁹ JFJ Interview with KDF General, June 2015.

Bibliography

- AMISOM Sexual Exploitation and Abuse Investigation Report, April 21, 2015.
- Anderson, David and Jacob McKnight, "Kenya at War: Al-Shabaab and its enemies in Eastern Africa", *African Affairs*, January 2015.
- Government of Kenya, Geneva Conventions Act, Government Printer, 1968
- Government of Kenya, International Crimes Act, Government Printer, 2008
- Government of Kenya, Kenya Defence Forces Act, Government Printer, 2012,
- Government of Kenya, Kenya Defence Forces Act, Government Printer, 2012,
- Kenya Defence Forces, *Operation Linda Nchi*, Ministry of Defence, 2015.
- UN Security Council Resolution 2036 (2012)
- UN Somalia Eritrea Monitoring Group, 2013
- UN Somalia Eritrea Monitoring Group, 2014
- UN Somalia Eritrea Monitoring Group, 2015



BLACK AND WHITE

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