

AL SHABAAB AND THE REFUGEE CONVENTION

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PAPER PRESENTED BY:

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AND

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SUBJECT:

**CHALLENGES POSED BY AL SHABAAB IN THE HORN OF AFRICA
INCLUDING IN MATTERS OF MIGRATION AND ASYLUM SEEKING**

TALKING NOTES

Introduction

- When I spoke at the 9th World Conference at Lake Bled, Slovenia on 8th September 2011, I stated as follows:

“In Kenya, the threat of terrorist attacks are heightened every time a refugee influx is experienced and the Al Shabaab Terrorist Group is blamed for these threats.”

I also stated that;

“the Government and relevant NGOS should be part of the [RSD] process and while security laws should be tightened, they should not be used to bar genuine asylum seekers from entry into a host country nor should they be used in violation of the principle of non-refoulement.”

- Between that presentation and today, my words have come to pass if one considers the following incidents:
 - (i) In early October 2011, troops from Kenya crossed into Somalia to stem incursions by Al Shabaab militants into Kenya. On 24th October 2011, the first retaliatory attacks within Kenya occurred and in grenade blasts, 7 people were killed and over 70 were injured. Many other attacks occurred that year including in churches, military convoys and hotels.
- In 2012, attacks in January, February, April, May, June, July, August, September, October November and December left no doubt that the militant group was not receding in its attacks within Kenya.
- The same pattern was repeated in 2013 with the deadliest attack being the one on 21st September 2013 at the Westgate Shopping Mall in

Nairobi. 69 lives were lost including a nephew of the President of Kenya.

- I must pause here to explain this fact and why a discussion about Al Shabaab is not misplaced at a Conference whose theme is “*Asylum and Migration Law 20 years later*”: In the Westgate attack, it was found that one of the attackers, Hassan Abdi Dhuhulow, a Norwegian citizen and who had migrated to Norway in 1999 from Somalia had died in the attack.
- Why is this important? It is important because in Kenya, the Government, fearful that the Daadab and Ifo Refugee Camps were breeding and hiding grounds for members of the militia including some foreigners like Hassan Abdi, took two very drastic steps:
 - (i) On 18th December 2014, the Kenyan Parliament passed the Security Laws (Amendment Act) which *inter alia* limited the number of refugees and asylum seekers in Kenya to 150,000 persons in any year.
 - (ii) The Government of Kenya orchestrated a political campaign of near forced repatriation of existing refugees and refused to receive any new asylum seekers citing refugee fatigue and security concerns.
- Judicial and UNHCR intervention saved the day when the High Court of Kenya in **Constitutional and Human Rights Petition No.12 of 2015** the Court (a five Judge bench) invalidated some Sections of the Security Laws (Amendment) Act including the provisions on the ceiling in the number of refugees. The UN High Commissioner for Refugees also engaged in personal diplomatic visits to quieten an angry Kenyan Government.

- One of the difficulties facing the Kenya Government is this; it suspects, without much evidence, that refugee camps are often used as places for Al Shabaab fighters to cool their heels with relatives when the heat in Somalia becomes too much.
- It also suspects that refugee camps are used as breeding grounds for members of the militia and that terrorist cells exist therein. Little evidence has however been unearthed in this regard. Of the many cases that have gone to court in Kenya little linkage of that fact has been made.
- Turning to Article 1F of the Convention, without evidence that an asylum seeker has committed a crime in his/her Country of origin, it is very difficult to turn away even suspected Al Shabaab militia men when they cross into Kenya or elsewhere.

Conclusion

- Al Shabaab's influence is waning but it has a way of mutating and regrouping in the most unexpected ways. Somalia is in some semblance of normalcy but for how long, one cannot tell.
- Let us not assume for a minute however that any part of the world is safe from terrorists. Samantha Lewthwaite *aka* the White Widow was born in 1983 to a former British soldier who served in the 19th/12th Royal Lancers. She is a member of the Al Shabaab. Unlike returnee Somali migrants who leave Europe to go and “**rescue**” the homeland from God knows what, she is a Briton who chose that path for herself who knows to what end or peril for humanity.
- The Al Shabaab and its elder brothers Al Qaeda and ISIS should worry all of us wherever and whenever. A concerted approach including by

those dealing with asylum seekers and migrants, such as some of you here will make it easier to detect terrorist elements in the Global Village.

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