



OPERATIONAL GUIDANCE NOTE

SOMALIA

CONTENTS

1. Introduction	1.1 – 1.3
2. Country assessment	2.1 – 2.2
Actors of protection	2.3
Internal relocation	2.4
Caselaw	2.5
3. Main categories of claims	3.1
General country situation in southern and central regions	3.6
Members of major clan families or related sub-clans	3.7
Bajunis	3.8
Benadiri (Rer Hamar) or Bravanese	3.9
Midgan, Tumul, Yibir or Galgala	3.10
Women	3.11
Female Genital Mutilation (FGM)	3.12
Prison conditions	3.13
4. Discretionary Leave	4.1
Minors claiming in their own right	4.2
Medical treatment	4.3
5. Returns	5.1 – 5.9

1 Introduction

- 1.1. This document provides UKBA case owners with guidance on the nature and handling of the most common types of claims received from nationals/residents of Somalia, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Case owners must refer to the relevant Asylum Instructions for further details of the policy on these areas.
- 1.2. Case owners must not base decisions on the country of origin information in this guidance; it is included to provide context only and does not purport to be comprehensive. The conclusions in this guidance are based on the totality of the available evidence, not just the brief extracts contained herein, and case owners must likewise take into account all available evidence. It is therefore essential that this guidance is read in conjunction with the relevant COI service country of origin information and any other relevant information.

COI Service information is published on Horizon and on the internet at:

http://www.homeoffice.gov.uk/rds/country_reports.html

- 1.3. Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the Asylum Instructions on Article 8 ECHR. If, following

consideration, a claim is to be refused, case owners should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.

2. Country assessment

- 2.1** Case owners should refer to the relevant COI Service country of origin information material. An overview of the country situation including headline facts and figures about the populations, capital city, currency as well as geography, recent history and current politics can also be found in the relevant FCO country profile at:

<http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/>

The situation in Somalia is evolving with ongoing security issues and violent conflict in different areas of the country. Claims should be considered with the most up-to-date and relevant country of origin information.

- 2.2** An overview of the human rights situation in certain countries can also be found in the FCO Annual Report on Human Rights which examines developments in countries where human rights issues are of greatest concern:

<http://fcohrdreport.readandcomment.com/>

2.3 Actors of protection

- 2.3.1** Case owners must refer to the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Case owners should also take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.

Transitional Federal Government (TFG)/Somali Government

- 2.3.2** In September 2011 Somali political leaders agreed a 'road map' for the formation of a government to replace the TFG by August 2012. The adoption of the plan, which was based on four major benchmarks - security, the constitution, political outreach, and reconciliation and good governance - was the culmination of a three-day consultative meeting on ending the transition in Somalia, held under tight security in Mogadishu. The road map called for a new constitution to be adopted by 1st July 2012, with parliamentary elections to take place on 20 August 2012. The document was signed on 6 September 2011 by the prime minister, Abdiweli Mohamed Ali; the interim president, Sheikh Sharif Sheikh Ahmed; and the parliamentary speaker, Sharif Hasan Sheikh Aden, as well as representatives of the semi-autonomous

regions of Puntland and Galmudug and a pro-TFG Islamist militia group, Ahlu Sunnah Wal-Jamaacah. Representatives of the UN, the African Union, the Arab League and the Inter-Governmental Authority on Development also signed the agreement. The road map was welcomed by participants at a high-level meeting on Somalia that was convened in New York by the UN secretary-general, Ban Ki-moon, on 23 September 2011.¹

- 2.3.3** On 1 August 2012 the National Constituent Assembly (NCA) approved a new Constitution. In welcoming this, the UK Foreign Office Minister for Africa said that the fact that 96% of those present in the NCA voted in favour of the new Constitution reflected the decisive national will to move forward with the political process. This landmark decision bodes well for Somalia's future and is as a particular achievement, for which credit is due to the AMISON and TFG forces, that the NCA was able to complete its deliberations in Mogadishu despite the ongoing security challenges. The next step in Somalia's political transition is for the nation's traditional elders to select a new parliament that will elect a speaker and president by 20 August 2012.²
- 2.3.4** Somalia's first formal parliament in more than 20 years was sworn in on 20 August 2012 marking an end to the eight-year transitional period. ³ The election for Somalia's next president was set for 10 September 2012 and some 60 people were said to have indicated they would run for president, including the incumbent, Sheikh Sharif Sheikh Ahmed ⁴. The election process was marred by allegations of vote-buying and was criticized for not being sufficiently democratic, but the results have been widely accepted.⁵ On 10 September 2012 Hassan Sheikh Mohamud, a moderate Islamist academic, was sworn as President immediately after it was announced that he had beaten his predecessor, Sheikh Sharif Sheikh Ahmed by 190 to 79 votes in a ballot of newly elected MPs. Accepting his defeat, former President Ahmed said it was the first fair election in Mogadishu for 42 years - since Mohamed Siad Barre took over in 1969.⁶ Two days later Al-Shabaab launched a suicide attack at the gates of the hotel in Mogadishu where the new president was staying. A BBC reporter said at least seven people died in the attack, including the two bombers who targeted the hotel. President Hassan Sheikh Mohamud was unharmed.⁷
- 2.3.5** The internationally-recognised Transitional Federal Government (TFG) was reported to have had only a fragile grip on power in the capital, Mogadishu, and had been battling an Islamist insurgency campaign waged by the powerful Al-Qaeda

¹ COIS Somalia Country Report 17 January 2012 (para 4.15)

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

Economist Intelligence Unit, Somalia, Country Report – Main Report, 1 November 2011, subscription – hard copy available on request.

² FCO Press release “Minister for Africa welcomes approval of a new national constitution for Somalia” 2 August 2012 <http://www.fco.gov.uk/en/news/latest-news/?view=News&id=796459982>

Voice of America “Moving Somalia Toward Lasting Stability” 8 August 2012

<http://www.voanews.com/policy/editorials/Moving-Somalia-Toward-Lasting-Stability--165199636.html>

³ BBC News “Somali: MPs sworn in to historic parliament” 20 August 2012 <http://www.bbc.co.uk/news/world-africa-19314308>

⁴ Voice of America News, Somali Presidential Vote Set for September 10, 31 August 2012

http://www.voanews.com/content/somali_presidential_vote_set_for_september_ten/1499285.html

⁵ IRIN, SOMALIA: Mammoth task ahead for new president, 12 September 2012

<http://www.irinnews.org/Report/96291/SOMALIA-Mammoth-task-ahead-for-new-president>

⁶ BBC News. Somali election of Hassan Sheikh a 'great step' 1 September 2012. <http://www.bbc.co.uk/news/world-africa-19557884>

⁷ BBC News. Somali President Mohamud's hotel targeted by bombers 12 September 2012 <http://www.bbc.co.uk/news/world-africa-19568315>

linked Al Shabaab militia and allied groups. The TFG has its own armed forces, police force and intelligence agency and is supported by various militia groups, some of which operate nominally under the authority of TFG forces. Sustained pressure by TFG forces and AMISOM peacekeeping troops during 2011 led to Al Shabaab fighters being pushed out of most areas of Mogadishu.⁸

- 2.3.6** The TFG controls several thousand trained army soldiers. Other various TFG-allied groups throughout Somalia are estimated to control militias ranging in strength from hundreds to thousands. The TFG and some groups possess limited inventories of older armoured vehicles and other heavy weapons, and small arms are prevalent throughout Somalia. In September 2009, 500 naval recruits graduated to form Somalia's first naval force in over 2 decades. The TFG plans to use the force to combat piracy off Somalia's coastline.⁹
- 2.3.7** The TFG has been building up the strength of the Somali Police Force (SPF) based in Mogadishu with international assistance. It is proposed that the force will have strength of 10,000. A police training team arrived in Mogadishu in 2009 under the auspices of the African Union's peace support body AMISOM (African Union Mission in Somalia) to help with training the police force. A police school has been operating in Mogadishu and senior officers have also been trained in Uganda. In June 2010, AMISOM announced plans to train 500 Somali officers in Djibouti. During 2010, more than 900 Somali police personnel completed training in Ethiopia, under a programme financed by the German government - although German media reports claimed they subsequently deserted. It was reported in the latter part of 2011 that more than 3,000 police officers had been trained under a programme supported and assisted by the UN, EU, AMISOM and others. The structure of the force includes a Criminal Investigation Department. The Police Commissioner is General Sharif Shekuna Maye.¹⁰
- 2.3.8** The United Nations Development Programme (UNDP) has supported the rehabilitation of police stations, the training of a Special Police Unit and traffic police.¹¹
- 2.3.9** It was reported that by the end of 2011, the TFG military had reached the estimated strength of 10,000 men; its police had reached 7,000. However, there were concerns that the Transitional Federal Institutions remain under-supported in some key security areas and that additional funds are necessary to make basic security a priority. At the same time, lack of effective command and control structures and poor discipline among some TFG troops were a serious concern and have resulted in recurring violence. Poor command and control over Transitional Federal Government forces and the loose integration of soldiers with militia and clan-based

⁸ COIS Somalia Country Report 17 January 2012 (para 9.01) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/> Jane's Sentinel Country Risk Assessment (JSCRA), Somalia, Security and Foreign Forces, updated 27 October 2011, available in hard copy on request

⁹ COIS Somalia Country Report 17 January 2012 (para 9.03) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/> US Department of State, Background Note: Somalia, Defense, 26 September 2011, <http://www.state.gov/r/pa/ei/bgn/2863.htm>

¹⁰ COIS Somalia Country Report 17 January 2012 (para 9.04) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/> Jane's Sentinel Country Risk Assessment, Somalia, Security and Foreign Forces, updated 5 October 2010, available in hard copy on request

¹¹ COIS Somalia Country Report 17 January 2012 (para 9.04) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/> Jane's Sentinel Country Risk Assessment, Somalia, Security and Foreign Forces, updated 5 October 2010, available in hard copy on request

affiliation had led to a series of incidents resulting in violence not directly resulting from the conflict.¹²

- 2.3.10** In February 2012, a Danish Fact Finding Mission to Somalia was told by Mohamoud Nur Ahmed, the Mayor of Mogadishu/Governor of Benadir Region, that “the only real protection mechanism which people will have at their disposal is their own arms as well as their traditional clan protection mechanisms. People cannot rely on protection by the authorities; the police force does not even have cars at its disposal. In addition police officers are badly paid or not paid at all. People have to protect themselves with their own guns.”¹³ UNHCR Somalia stated that “in general police forces are unable to protect minorities in South-Central Somalia, and there is no reason to believe that this will change in a foreseeable future”.¹⁴
- 2.3.11** In May 2012 the UN Independent Expert on the situation of human rights in Somalia, stated that “I am deeply concerned about the total collapse of the institutions for law enforcement and the administration of justice, in particular in Mogadishu and the South-Central region”¹⁵. He further noted that “Threats, intimidation and attacks against judicial personnel are an almost daily occurrence. Lack of personnel, equipment, and infrastructure, and poor professional training make the judiciary in Somalia a virtually paralyzed entity.”¹⁶
- 2.3.12** In August 2012 the UN Secretary-General reported that “In areas under the control of the Transitional Federal Government, poor discipline among the security forces had a negative impact on the population. While the Transitional Federal Government sought to address violence committed by its troops in Afgooye, there were continuing reports of incidents of extrajudicial killings, theft and rape”.¹⁷ Similarly the U.S State Department reported that during 2011 “there were some media reports that TFG troops engaged in indiscriminate firing on civilians, arbitrary arrests and detention, extortion, looting, and harassment”.¹⁸ Sexual exploitation and

¹² COIS Somalia Country Report 17 January 2012 (para 9.05)

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/> UN Human Rights Council, Report of the independent expert on the situation of human rights in Somalia, Shamsul Bari, 29 August 2011, p6-7, http://reliefweb.int/sites/reliefweb.int/files/resources/A.HRC_.18.48_en.pdf

¹³ Danish Immigration Service, Security and human rights issues in South-Central Somalia, including Mogadishu; Report from Danish Immigration Service’s fact finding mission to Nairobi, Kenya and Mogadishu, Somalia; 30 January to 19 February 2012, April 2012, 1.1.4 Daily life and security in Mogadishu http://www.nyidanmark.dk/NR/ronlyres/90821397-6911-4CEF-A8D0-6B8647021EF2/0/Security_human_rights_issues_South_CentralSomalia_including_Mogadishu.pdf

¹⁴ Danish Immigration Service, Security and human rights issues in South-Central Somalia, including Mogadishu; Report from Danish Immigration Service’s fact finding mission to Nairobi, Kenya and Mogadishu, Somalia; 30 January to 19 February 2012, April 2012, 1.1.4 Daily life and security in Mogadishu http://www.nyidanmark.dk/NR/ronlyres/90821397-6911-4CEF-A8D0-6B8647021EF2/0/Security_human_rights_issues_South_CentralSomalia_including_Mogadishu.pdf

¹⁵ OHCHR, UN rights expert urges re-establishment of legitimate justice system in Mogadishu and South Central Somalia, 2 May 2012

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12103&LangID=E>

¹⁶ OHCHR, UN rights expert urges re-establishment of legitimate justice system in Mogadishu and South Central Somalia, 2 May 2012

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12103&LangID=E>

¹⁷ United Nations, Report of the Secretary-General on Somalia, 22 August 2012, *C. Human rights and the protection of civilians, paragraph 65* <http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Somalia%20S%202012%20643.pdf>

¹⁸ US State Department, Country Reports on Human Rights Practices for 2011: Somalia, 24 May 2012, Role of the Police and Security Apparatus <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?did=186241>

abuse by AMISOM was also reported, in spite of their prohibition by the AMISOM Code of Conduct.¹⁹

2.3.13 If the ill-treatment/persecution is at the hands of non-state agents, then the provision of state protection is unlikely to be available due to the structural weakness of the security services and the criminal justice system and also the widespread existence of corruption in state institutions. Case owners should assess the availability of effective protection on a case by case basis taking into account the specific characteristics of the claimant, the area of operation of the particular group; and evidence of effective State intervention against any criminal activity or human rights violations perpetrated by these agents.

African Union Mission to Somalia (AMISOM)

2.3.14 In January 2007, the African Union Peace and Security Council authorised a peacekeeping mission in Somalia, known as AMISOM. It was proposed that the military element would involve the deployment of nine infantry battalions of 850 troops each and accompanying support elements. The UN Security Council (UNSC) officially authorised the operation in February 2007. The mission was initially only mandated for six months, but the UN has repeatedly renewed the mandate. The European Union and the US have both provided financial support for the mission. According to the UN, AMISOM was mandated to support transitional governmental structures, implement a national security plan, train the Somali security forces and assist in creating a secure environment for the delivery of humanitarian aid.²⁰

2.3.15 AMISOM consists of a civilian component, essentially a political affairs unit which has the role of assisting the Transitional Federal Government (TFG) in the re-establishment of functioning state institutions; a police component which has the role of training, mentoring and advising the Somali Police Force (SPF); and a main element, the military component. Of the 8,000 troops planned, about 4,300 were deployed in early 2009, split between the two contributor nations, Burundi and Uganda. By September 2010, the strength of AMISOM had risen to 7,200, with the force consisting of eight battalions, five from Uganda and three from Burundi. In late 2011, the strength was reported to be more than 9,000, and the UN Security Council called on African Union countries to urgently increase the strength to the mandated level of 12,000, so that AMISOM could better carry out its mandate to stabilise the strife-torn country. The force is based at Mogadishu airport and the surrounding areas, and protects facilities such as the presidential palace from Islamist insurgents. Counter-insurgency training, financed by the US and the UN, has been provided to the AMISOM troops by mentors from the US private security contractor, Bancroft Global Development.²¹

2.3.16 Following the adoption of UN Security Council resolution 2036 (2012) requesting 'the African Union to increase AMISOM's force strength from 12,000 to a maximum of 17,731 uniformed personnel, comprised of troops and personnel of formed police

¹⁹ United Nations, Report of the Independent Expert on the situation of human rights in Somalia, Shamsul Bari, 22 August 2012, D. Violence against women, paragraphs 66-68

http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A.HRC.21.61_en.pdf

²⁰ COIS Somalia Country Report 17 January 2012 (para 9.11)

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>Jane's Sentinel Country Risk Assessment, Somalia, Security and Foreign Forces, updated 27 October 2011, available in hard copy on request

²¹ COIS Somalia Country Report 17 January 2012 (para 9.11)

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>Jane's Sentinel Country Risk Assessment (JSCRA), Somalia, Security and Foreign Forces, updated 27 October 2011, available in hard copy on request

units'²², the United Nations held consultations with the African Union and AMISOM to discuss the implementation of the resolution and the revised concept of operations, including the delivery of the expanded United Nations logistical support package for AMISOM. The United Nations Office to the African Union, with the United Nations Support Office for AMISOM (UNSOA), supported the African Union Commission's development of AMISOM operational benchmarks to monitor the implementation of UN resolution 2036 (2012).²³

2.3.17 AMISOM troops continue to improve freedom of movement in Mogadishu through the disposal of landmines, explosive remnants of war and improvised explosive devices. From 9 December 2011 to 31 March 2012, 1,098 items of unexploded ordnance and 48 improvised explosive devices were destroyed. As AMISOM troops rotated into the city, training in explosive ordnance disposal was provided by the United Nations for about 100 Burundian and Ugandan troops. The Mine Action Service of the Department of Peacekeeping Operations supported the deployment of the force in the new sectors, which requires explosive ordnance disposal capacities to mitigate explosive threats and meet mobility requirements.²⁴

2.3.18 Public opinion polling in Mogadishu demonstrates an increasingly favourable trend in public perception and approval of AMISOM, the transitional federal institutions and the international community. The African Union-United Nations Information Support Team was reinforced to ensure support across the sectors. Work continued on the expansion of the Radio Bar-Kulan transmission network, and on the establishment of a Somali public service radio broadcaster.²⁵

2.3.19 In July 2012 AMISOM announced that they had assumed formal command of the Kenyan forces in southern Somalia comprising a total of 4664 Kenyan personnel bringing the AMISOM force strength to slightly over 17,000 troops out of a total authorized strength of 17,731. The Kenyan contingent joined those from Burundi, Djibouti and Uganda, with Sierra Leone due to send a battalion in the near future²⁶

Somaliland

2.3.20 In Somaliland, a degree of relative stability and functioning institutions have permitted some positive developments. In January 2011, the Act establishing the Somaliland National Human Rights Commission was promulgated by the President,

²² UN Security Council, Resolution 2036 (2012), Adopted by the Security Council at its 6718th meeting, 22 February 2012, http://www.new-york-un.diplo.de/Vertretung/newyorkvn/en/_pr/press-releases/2012/20120222-amisom-resolution.html Date accessed 22 June 2012

²³ COIS Somalia Bulletin: Security Situation in Southern and Central Somalia August 2012 (para 2.04) <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/coi/somalia/report-17-08.pdf?view=Binary> UN Security Council, Report of the Secretary-General on Somalia, p6-7 1 May 2012, http://reliefweb.int/sites/reliefweb.int/files/resources/Full_Report_3949.pdf

²⁴ COIS Somalia Bulletin: security Situation in Southern and Central Somalia August 2012 (para 1.16) <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/coi/somalia/report-17-08.pdf?view=Binary> UN Security Council, Report of the Secretary-General on Somalia, p6-7 1 May 2012, http://reliefweb.int/sites/reliefweb.int/files/resources/Full_Report_3949.pdf

²⁵ COIS Somalia Bulletin: security Situation in Southern and Central Somalia August 2012 (para 2.04) <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/coi/somalia/report-17-08.pdf?view=Binary> UN Security Council, Report of the Secretary-General on Somalia, p6-7 1 May 2012, http://reliefweb.int/sites/reliefweb.int/files/resources/Full_Report_3949.pdf

²⁶ COIS Somalia Bulletin: Security Situation in Southern and Central Somalia August 2012 (para 2.05) <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/coi/somalia/report-17-08.pdf?view=Binary> African Union Mission in Somalia (AMISOM), AMISOM assumes formal command of Kenyan forces in Somalia, 6 July 2012, <http://amisom-au.org/2012/07/amisom-assumes-formal-command-of-kenyan-forces-in-somalia/> Date accessed 19 July 2012

and an Acting Chairperson was appointed.²⁷ Since then the Somaliland National Human Rights Commission has become gradually operational. Though not fully compliant, it was close to the spirit of international standards. The Human rights Unit of the UN Political Office for Somalia (UNPOS) has assisted the Commission in carrying out an assessment of its strengths and weaknesses as a baseline for the development of its future strategy.²⁸

2.3.21 The Somaliland authorities continue to take progressive steps towards strengthening the justice and security sectors. In June 2011, the Ministry of Justice launched, with the support of the UN Development Programme (UNDP), a national justice strategy, which sought to harmonize traditional law (Xeer), religious law (sharia) and formal justice policy, to strengthen the capacity of the judiciary and to ensure their independence in conformity with human rights standards. It led to the dismantlement of the regional committees, which had caused serious human rights violations in the past. There was, however, concern about certain patterns of intimidation, arrest and detention of journalists to curb freedom of expression and opinion and the rights of media. In July 2011, the Ministry of Justice, with the support of the UN Office on Drugs and Crime (UNODC), conducted a study on the situation of detainees in Somaliland. According to the study, 70 % of prison inmates were sentenced by first instance court without the opportunity to appeal against their conviction.²⁹

Puntland

2.3.22 The UN Human Rights Council's independent expert on human rights in Somalia has complimented the Puntland President on the achievements of his Government particularly in initiating and supporting a democratisation process and moving towards a multiparty political system, demonstrated by the establishment of an electoral commission, which had facilitated the process leading to the enactment of a law on political association and the ratification of the transition Constitution. He also acknowledged the security challenges that Puntland faced in the light of reports of Al-Shabaab elements entering its territory as they fled from south-central Somalia. He emphasized, however, the need to accord suspects due process and their fair trial rights in accordance with the Puntland Constitution.³⁰

2.3.23 The independent expert commended the Puntland authorities for the gender-neutral language adopted in the recently ratified Constitution. He raised concerns however that some of its provisions did not comply with international human rights standards and principles.³¹ In November 2011, the Puntland legislature passed the Human

²⁷ UN Human Rights Council, Report of the independent expert on the situation of human rights in Somalia, Shamsul Bari, 29 August 2011, p10,

http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A.HRC.18.48_en.pdf

²⁸ UN Human Rights Council. Report of the Independent Expert on the situation of human rights in Somalia. (para 28) 22 August 2012

http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A.HRC.21.61_en.pdf

²⁹ UN Human Rights Council. Report of the Independent Expert on the situation of human rights in Somalia. (para 29) 22 August 2012

http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A.HRC.21.61_en.pdf

³⁰ UN Human Rights Council. Report of the Independent Expert on the situation of human rights in Somalia. (para 35) 22 August 2012

http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A.HRC.21.61_en.pdf

³¹ UN Human Rights Council. Report of the Independent Expert on the situation of human rights in Somalia. (para 36) 22 August 2012

http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A.HRC.21.61_en.pdf

Rights Defender Act, although a human rights defender has yet to be appointed.³² The independent expert however conveyed his concern to the President about the practice of the appointment and dismissal of judges, which, left to the exclusive discretion of the executive and the legislature, was likely to affect the independence of the judiciary.³³

2.3.24 While Al-Shabaab continued to lose ground in south-central Somalia, there were reports of it strengthening its alliance with militias in the Galgala mountain area in Puntland. Insurgents reportedly aligned with Al-Shabaab clashed with local authorities. Puntland's security situation was also characterised by renewed hostility against foreign involvement in the exploitation of natural resources.³⁴

“Khatuumo State” / Sool, Sanaag and Cayn regions

2.3.25 A long-standing dispute exists over the territories of Cayn, Sool and Sanag, with both Somaliland and Puntland claiming them and the Sool-Sanag-Cayn alliances fighting to remain part of the original state of Somalia. General insecurity resulting from armed violence continues to be the main protection concern in the North-West regions of Somaliland³⁵ and there has also been an increase in violence and assassinations in Puntland, since the beginning of 2011, mostly in Galkayo, Bossaso and areas around Galgala.³⁶

2.3.26 In January 2012 a group of politicians, diaspora figures, elders and religious leaders from the Dulbahante subclan of Darod announced the formation of a semi-autonomous federal State of Somalia bringing together the Sool, Sanaag and Cayn regions, known as “Khatuumo State”. The territory is claimed by both Somaliland and Puntland. The “Khatuumo administration” announced that it supported the unity of Somalia. The President of the Transitional Federal Government initially announced the recognition of Khatuumo State, but this was subsequently withdrawn.³⁷

2.3.27 The political and security situation in the region remains tense. Clashes have occasionally broken out between Somaliland forces and armed groups aligned to Khatuumo State, leading to numerous deaths and civilians casualties. On 26 January 2012, fighting reportedly broke out between Somaliland forces and the Dulbahante clan militias in a village near Buuhoodle, in Cayn. This resulted in several deaths and casualties. In February 2012, fighting flared up again between Somaliland forces and forces aligned to the Khatuumo administration near the

³² UN Human Rights Council. Report of the Independent Expert on the situation of human rights in Somalia. (para 37) 22 August 2012

http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A.HRC.21.61_en.pdf

³³ UN Human Rights Council. Report of the Independent Expert on the situation of human rights in Somalia. (para 38) 22 August 2012

http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A.HRC.21.61_en.pdf

³⁴ COIS Somalia Bulletin: Security Situation August 2012 (para1.16)

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/coi/somalia/report-17-08.pdf?view=Binary> UN Security Council, Report of the Secretary-General on Somalia, p1, 1 May 2012, http://reliefweb.int/sites/reliefweb.int/files/resources/Full_Report_3949.pdf

³⁵ IRIN, Somaliland clashes displace thousands, 10/02/2011

<http://www.irinnews.org/report.aspx?ReportID=91887>

³⁶ United Nations Human Rights Council, Report of the independent expert on the situation of human rights in Somalia, Shamsul Bari* 29/08/2011 VIII. Human rights situation in Puntland, paragraph 53

http://reliefweb.int/sites/reliefweb.int/files/resources/A.HRC.18.48_en.pdf

³⁷ UN Human Rights Council. Report of the Independent Expert on the situation of human rights in Somalia. (para 41) 22 August 2012

http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A.HRC.21.61_en.pdf

border town of Buuhoodle, resulting in deaths and casualties among the civilian population and forcing some residents to flee.³⁸

2.4 Internal relocation.

- 2.4.1** Case owners must refer to the Asylum Policy Instructions on both Internal Relocation and Gender Issues in the asylum claim and apply the test set out in paragraph 339O of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.
- 2.4.2** The UNHCR Eligibility Guidelines (May 2010) conclude that where the examination of an Internal Flight Argument/Internal Relocation Argument is a requirement under domestic law, it should be examined on a case-by-case basis, taking into consideration the specific circumstances of the asylum-seeker within the UNHCR guidelines.³⁹ In accordance with those guidelines, caseowners should carefully consider the appropriateness of internal relocation on a case by case basis taking full account of the individual circumstances of the particular claimant.
- 2.4.3** While travel within Al-Shabaab controlled areas of southern and central Somalia is possible, the existence of frequent Al-Shabaab checkpoints means that those who do not comply with the social norms established by Al-Shabaab or who are considered to be un-Islamic or suspected of opposing Al-Shabaab are at risk of suffering serious harm. In this context, the Upper Tribunal concluded in the country guidance case of [AMM and others](#) (see section 2.5), that travel by land across southern and central Somalia to a home area or proposed place of relocation controlled by Al-Shabaab is not feasible for those who have had no history of living under Al-Shabab, and that internal relocation to an area not controlled by Al-Shabab is in general unlikely to be an option, if the place of proposed relocation is stricken by famine or near famine. Women travelling without male friends or relatives are in general likely to face a real risk of sexual violence. .
- 2.4.4** [AMM and others](#) also considered that for someone at real risk in a home area in southern or central Somalia, an internal relocation alternative to Mogadishu is in general unlikely to be available, given the risk of indiscriminate violence in the city, together with the present humanitarian situation. Relocation to an IDP camp in the Afgoye Corridor will, as a general matter, likewise be unreasonable, unless there is evidence that the person concerned would be able to achieve the lifestyle of those better-off inhabitants of the Afgoye Corridor settlements. However since the determination in [AMM and others](#) was handed down there has been a sustained

³⁸ UN Human Rights Council. Report of the Independent Expert on the situation of human rights in Somalia. (para 43) 22 August 2012

http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A.HRC.21.61_en.pdf

³⁹ UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Somalia 5 May 2010 E. Internal Flight or Relocation Alternative (IFA/IRA

<http://www.unhcr.org/refworld/docid/4be3b9142.html>

and significant improvement in the situation in Mogadishu and case owners should consider the new country of origin information and the individual circumstances of each claimant to establish whether the guidance contained in AMM in relation to internal relocation to Mogadishu remains applicable to the individual claimant concerned..

- 2.4.5** In July 2012 OCHA reported that “the number of Somali refugees in the Horn of Africa and Yemen reached 1 million, according to the latest UNHCR data. The most recent refugees cite insecurity and declining food resources as the main reasons for their flight”.⁴⁰ According to the August 2012 report of the UN Secretary-General, “with the intensification of fighting in southern Somalia, internal displacement rates remained high. The advance of AMISOM and the forces of the Transitional Federal Government into the Afgooye corridor resulted in the displacement of up to 90,000 people. Mogadishu’s total population of internally displaced persons is now estimated at over 200,000. Reports of forced recruitment into armed groups and food insecurity are causing an increasing flow of people leaving the southern regions of Somalia towards the Ethiopian border”.⁴¹
- 2.4.6** Somaliland and Puntland, are in general relatively safe. There are however major protection concerns around IDP settlements both in Puntland and Somaliland, which include overcrowding, severe levels of malnourishment, economic exploitation of children and a lack of physical security, rapes, gang rapes and other instances of sexual and gender-based violence.⁴²
- 2.4.7** In its May 2010 Eligibility Guidelines, UNHCR considered that the generally deplorable living conditions of displaced persons in Puntland and Somaliland indicates that internal relocation was generally not available for individuals from southern and central Somalia in these territories.⁴³ However, it also stated that whether an internal flight argument exists in Puntland or Somaliland will depend on the circumstances of the individual case, including whether the individual is a member of a majority or minority clan and whether the individual originates from the territory to which they are seeking to relocate. There are major protection concerns around IDP settlements both in Puntland and Somaliland, which include overcrowding, severe levels of malnourishment, economic exploitation of children and a lack of physical security, rapes, gang rapes and other instances of sexual and gender-based violence.⁴⁴ UNOCHA reported in its August 2012 Humanitarian

⁴⁰ UNOCHA, Humanitarian Bulletin Somalia; Issue 10; 1 - 31 July 2012, Number of Somali refugees hits one million, but displacement slows <http://reliefweb.int/sites/reliefweb.int/files/resources/Humanitarian%20Bulletin%20%2310%2C%20July%202012.pdf>

⁴¹ United Nations, Report of the Secretary-General on Somalia, 22 August 2012, *A Humanitarian Situation*, paragraph 53 <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Somalia%20S%202012%20643.pdf>

⁴² Office of the United Nations High Commissioner for Human Rights (OHCHR), Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kalin on his mission to Somalia, 21/01/2010 <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/103/96/PDF/G1010396.pdf?OpenElement>

⁴³ UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Somalia 5 May 2010, E. Internal Flight or Relocation Alternative (IFA/IRA) <http://www.unhcr.org/refworld/docid/4be3b9142.html>

⁴⁴ Office of the United Nations High Commissioner for Human Rights (OHCHR), Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kalin on his mission to Somalia, 21/01/2010 <http://www.ohchr.org/EN/Issues/IDPersons/Pages/Visits.aspx>

Bulletin an increase of gender-based violence in Galkayo, Puntland, with many of the incidences occurring in the IDP settlements that host minority clans.⁴⁵

2.4.8 The authorities in Somaliland will only admit failed asylum seekers returning from European countries who originate from their territory or those who have close affiliations to the territory through clan membership. In the case of majority clan affiliates, this means those associated with the Isaaq in Somaliland. In Somaliland taxis and 4x4 vehicles can easily travel from Hargeisa, Burao, Lasanod and Garowe. The main transportation between Somaliland and South Central is by lorry. People travel by air between Mogadishu and Hargeisa.⁴⁶ The Tribunal in AMM and others (see section 2.5) also found that a person from Somaliland will not, in general, be able without real risk of serious harm to travel overland from Mogadishu International Airport to a place where he or she might be able to obtain an unofficial travel document for the purposes of gaining entry to Somaliland, and then by land to Somaliland. This is particularly the case if the person is female. A proposed return by air to Hargeisa, Somaliland (whether or not via Mogadishu International Airport) will in general involve no such risks.

2.5 Caselaw.

[Supreme Court. RT \(Zimbabwe\) & others v Secretary of State for the Home Department \[2012\] UKSC 38 \(25 July 2012\)](#)

The Supreme Court ruled that the rationale of the decision in [HJ \(Iran\)](#) applies to cases concerning imputed political opinion. Under both international and European human rights law, the right to freedom of thought, opinion and expression protects non-believers as well as believers and extends to the freedom not to hold and not to express opinions. Refugee law does not require a person to express false support for an oppressive regime, any more than it requires an agnostic to pretend to be a religious believer in order to avoid persecution. Consequently an individual cannot be expected to modify their political beliefs, deny their opinion (or lack thereof) or feign support for a regime in order to avoid persecution.

[AMM and others \(conflict; humanitarian crisis; returnees; FGM\) Somalia CG \[2011\] UKUT 00445 \(IAC\)](#). In its determination of 25 November 2011, the Upper Tribunal took full account of the European Court of Human Rights judgment in the case *Sufi & Elmi v UK* (see below) and gave the following country guidance:

1. Mogadishu

1.1 Despite the withdrawal in early August 2011 of Al-Shabab conventional forces from at least most of Mogadishu, there remains in general a real risk of Article 15(c) harm for the majority of those returning to that city after a significant period of time abroad. Such a risk does not arise in the case of a person connected with powerful actors or belonging to a category of middle class or professional persons, who can live to a reasonable standard in circumstances where the Article 15(c) risk, which exists for the great majority of the population, does not apply.

⁴⁵ UNOCHA, Humanitarian Bulletin Eastern Africa Issue 13; 17 - 31 August 2012, Renewed Protection Concerns in South Central Somalia
<http://reliefweb.int/sites/reliefweb.int/files/resources/Eastern%20Africa%20Humanitarian%20Bulletin%20%2313%20OCHA%20EA.pdf>

⁴⁶ FCO letter 5 May 2010 (hard copy available)

- 1.2 The armed conflict in Mogadishu does not, however, pose a real risk of severe Article 3-level harm in respect of any person in that city, regardless of circumstances. The humanitarian crisis in southern and central Somalia has led to a declaration of famine in IDP camps in Mogadishu; but a returnee from the United Kingdom who is fit for work or has family connections may be able to avoid having to live in such a camp. A returnee may, nevertheless, face a real risk of Article 3 harm, by reason of his or her individual vulnerability.
- 1.3 Except as regards the issue of female genital mutilation (FGM), it is unlikely that a proposed return to Mogadishu at the present time will raise Refugee Convention issues.
2. Southern and central Somalia, outside Mogadishu
 - 2.1 Outside Mogadishu, the fighting in southern and central Somalia is both sporadic and localised and is not such as to place every civilian in that part of the country at real risk of Article 15(c) harm. In individual cases, it will be necessary to establish where a person comes from and what the background information says is the present position in that place. If fighting is going on, that will have to be taken into account in deciding whether Article 15(c) is applicable. There is, likewise, no generalised current risk of Article 3 harm as a result of armed conflict.
 - 2.2 In general, a returnee with no recent experience of living in Somalia will be at real risk of being subjected to treatment proscribed by Article 3 in an Al-Shabab controlled area. "No recent experience" means that the person concerned left Somalia before the rise of Al-Shabab in 2008. Even if a person has such experience, however, he or she will still be returning from the United Kingdom, with all the adverse assumptions likely to be made, so far as Al-Shabab perceptions are concerned, but he or she will be less likely to be readily identifiable as a returnee. Even if he or she were to be so identified, the evidence may point to the person having struck up some form of accommodation with Al-Shabab, whilst living under their rule. On the other hand, although having family in the Al-Shabab area of return may alleviate the risk, the rotating nature of Al-Shabab leadership and the fact that punishments are meted out in apparent disregard of local sensibilities mean that, in general, it cannot be said that the presence of family is likely to mean the risk ceases to be a real one.
 - 2.3 Al-Shabab's reasons for imposing its requirements and restrictions, such as regarding manner of dress and spending of leisure time are religious and those who transgress are regarded as demonstrating that they remain in a state of kufr (apostasy). The same is true of those returnees who are identified as returning from the West. Accordingly, those at real risk of such Article 3 ill-treatment from Al-Shabab will in general be refugees, since the persecutory harm is likely to be inflicted on the basis of imputed religious opinion.
 - 2.4 Although those with recent experience of living under Al-Shabab may be able to "play the game", in the sense of conforming with Al-Shabab's requirements and avoiding suspicion of apostasy, the extreme nature of the consequences facing anyone who might wish to refuse to conform (despite an ability to do so) is such as to attract the principle in RT (Zimbabwe). The result is that such people will also in general be at real risk of persecution by Al-Shabab for a Refugee Convention reason.

- 2.5 The same considerations apply to those who are reasonably likely to have to pass through Al-Shabab areas.
- 2.6 For someone at real risk in a home area in southern or central Somalia, an internal relocation alternative to Mogadishu is in general unlikely to be available, given the risk of indiscriminate violence in the city, together with the present humanitarian situation. Relocation to an IDP camp in the Afgoye Corridor will, as a general matter, likewise be unreasonable, unless there is evidence that the person concerned would be able to achieve the lifestyle of those better-off inhabitants of the Afgoye Corridor settlements.
- 2.7 Internal relocation to an area controlled by Al-Shabab is not feasible for a person who has had no history of living under Al-Shabab in that area (and is in general unlikely to be a reasonable proposition for someone who has had such a history). Internal relocation to an area not controlled by Al-Shabab is in general unlikely to be an option, if the place of proposed relocation is stricken by famine or near famine.
- 2.8 Within the context of these findings, family and/or clan connections may have an important part to play in determining the reasonableness of a proposed place of relocation. The importance of these connections is likely to grow if the nature of the present humanitarian crisis diminishes and if Al-Shabab continues to lose territory.
- 2.9 Travel by land across southern and central Somalia to a home area or proposed place of relocation is an issue that falls to be addressed in the course of determining claims to international protection. Such travel may well, in general, pose real risks of serious harm, not only from Al-Shabab checkpoints but also as a result of the present famine conditions. Women travelling without male friends or relatives are in general likely to face a real risk of sexual violence.
- 2.10 An issue that may have implications for future Somali appeals is the availability of air travel within Somalia (including to Somaliland). Flying into Mogadishu International Airport is sufficiently safe. There is no evidence to indicate a real risk to commercial aircraft flying to other airports in Somalia.

3. Somaliland and Puntland

- 3.1 The present appeals were not designed to be vehicles for giving country guidance on the position within Somaliland or Puntland. There is no evidential basis for departing from the conclusion in NM and others, that Somaliland and Puntland in general only accept back persons who were former residents of those regions and were members of locally based clans or sub clans. In the context of Somali immigration to the United Kingdom, there is a close connection with Somaliland.
- 3.2 A person from Somaliland will not, in general, be able without real risk of serious harm to travel overland from Mogadishu International Airport to a place where he or she might be able to obtain an unofficial travel document for the purposes of gaining entry to Somaliland, and then by land to Somaliland. This is particularly the case if the person is female. A proposed return by air to Hargeisa, Somaliland (whether or not via Mogadishu International Airport) will in general involve no such risks.

4. Female genital mutilation

4.1 The incidence of FGM in Somalia is universally agreed to be over 90%. The predominant type of FGM is the “pharaonic”, categorised by the World Health Organisation as Type III. The societal requirement for any girl or woman to undergo FGM is strong. In general, an uncircumcised, unmarried Somali woman, up to the age of 39, will be at real risk of suffering FGM.

4.2 The risk will be greatest in cases where both parents are in favour of FGM. Where both are opposed, the question of whether the risk will reach the requisite level will need to be determined by reference to the extent to which the parents are likely to be able to withstand the strong societal pressures. Unless the parents are from a socio-economic background that is likely to distance them from mainstream social attitudes, or there is some other particular feature of their case, the fact of parental opposition may well as a general matter be incapable of eliminating the real risk to the daughter that others (particularly relatives) will at some point inflict FGM on her.

[Sufi & Elmi v United Kingdom \(ECtHR\) 28 June 2011. Applications 8319/07 and 11449/07.](#) This judgment became final on 28 November 2011 following refusal of the UK’s application for the case to be referred to the Grand Chamber of the European Court and must now be read in light of [AMM and others \(conflict; humanitarian crisis; returnees; FGM\) Somalia CG \[2011\] UKUT 00445 \(IAC\).](#)

In summary the ECtHR concluded:

- In conclusion, the Court considers that the situation of general violence in Mogadishu is sufficiently intense to enable it to conclude that any returnee would be at real risk of Article 3 ill-treatment solely on account of his presence there, unless it could be demonstrated that he was sufficiently well connected to powerful actors in the city to enable him to obtain protection (see paragraph 249).
- Nevertheless, Article 3 does not preclude the Contracting States from placing reliance on the internal flight alternative provided that the returnee could travel to, gain admittance to and settle in the area in question without being exposed to a real risk of Article 3 ill-treatment. In this regard, the Court accepts that there may be parts of southern and central Somalia where a returnee would not necessarily be at real risk of Article 3 ill-treatment solely on account of the situation of general violence (see paragraph 270, above). However, in the context of Somalia, the Court considers that this could only apply if the applicant had close family connections in the area concerned, where he could effectively seek refuge. If he has no such connections, or if those connections are in an area which he could not safely reach, the Court considers that there is a likelihood that he would have to have recourse to either an IDP or refugee camp (see paragraph 266).
- If the returnee’s family connections are in a region which is under the control of Al-Shabaab, or if it could not be accessed except through an Al-Shabaab controlled area, the Court does not consider that he could relocate to this region without being exposed to a risk of ill-treatment unless it could be demonstrated that he had recent experience of living in Somalia and could therefore avoid coming to the attention of Al-Shabaab (see paragraph 276).
- Where it is reasonably likely that a returnee would find himself in an IDP camp, such as those in the Afgooye Corridor, or in a refugee camp, such as the

Dadaab camps in Kenya, the Court considers that there would be a real risk that he would be exposed to treatment in breach of Article 3 on account of the humanitarian conditions there (see paragraph 295). In assessing the article 3 risk, the Court concluded that the humanitarian conditions in Somalia were not solely attributable to poverty or the State's lack of resources in dealing with a naturally occurring phenomenon such as a drought; the crisis is predominantly due to the direct and indirect action of the parties to the conflict (see paragraph 282).

- Consequently the Court considered that its approach should be that adopted in [M.S.S. v Belgium and Greece – 30696/09 \[2011\] ECHR \(21 January 2011\)](#) and not the previously articulated approach in [N v UK](#) that humanitarian conditions would only breach Article 3 in very exceptional cases where the grounds were compelling. Rather, it took the MSS approach, which requires it to have regard to an applicant's ability to cater for his most basic needs, his vulnerability to ill-treatment and the prospect of his situation improving within a reasonable time-frame (see paragraph 283).

[HH \(Somalia\) & Others \[2010\] EWCA Civ 426](#) The Court of Appeal considered the cases of HH, AM, J and MA concerning return to Somalia and made the following findings:

- HH - The AIT had made errors in its application of Article 15c Qualification Directive but these errors were not material and accordingly the appeal of HH was rejected. The decision that it is safe to return HH is now obsolete in light of the later conditions described in AM and AM and should not be relied on (paragraph 40)
- MA - This appeal was upheld but turned on its individual facts and does not have wider application.
- AM and J - These individuals' arguments were that the AIT failed to consider the safety of the route and return to the areas of Somalia where they were considered to be safe. They argued not only that (1) where the route and manner of return are known or can be implied, the First Tier Tribunal must consider whether the applicant would be put at risk if returned by that route (as in their cases), but further argued that (2) the Qualification and Procedures Directives read together require that issues of safety during return should always be considered as part of the decision on entitlement to protection made by the SSHD.
- The Court agreed with submission (1). Its finding of general application which is now binding in UK law is that in any case in which it can be shown either directly or by implication what route and method of return is envisaged, the First Tier Tribunal is required by law to consider and determine any challenge to the safety of that route or method. In the present cases, the route and method of return was known, and so should have been considered. The appeals were therefore allowed (paragraph 58).
- The Court did not consider it necessary to make a definitive ruling on submission (2), but did express the view that AM and J were right that the Directives read together required that the issues of safety during return (as opposed to technical obstacles to return such as documentation issues/availability of flights) should be considered as part of the decision on entitlement to protection. In the Court's view, the Tribunal must always consider that question whenever the applicant puts it in issue. However this is not a binding statement and the possibility of future argument on this point (including to the ECJ) is left open (paragraph 84).

- AM was remitted to the Tribunal (see above) for it to be re-evaluated in light of the law as it now stands. This will mean taking into account safety issues arising from the implicit method of return, and also the current interpretation of Article 15c set out by the European Court of Justice and Court of Appeal in [Elgafaji](#) and [QD](#) respectively.

AM & AM (armed conflict: risk categories) Somalia CG [2008] UKAIT 00091.

This country guidance case considered safety of return to Somalia, in particular, routes of return to and via Mogadishu and whether an internal armed conflict existed in Somalia with reference to Article 15 (c) of the Qualification Directive. The AIT found that:

1. When considering the question of whether a person is eligible for refugee protection on the basis of exposure to armed conflict, [Adan \[1998\] 2 WLR 702](#) does not permit decision makers to reject their claims per se.
2. A person may be able to succeed in a claim to protection based on poor socio-economic or dire humanitarian living conditions under the Refugee Convention or Article 15 of the Qualification Directive or Article 3, although to succeed on this basis alone the circumstances would have to be extremely unusual.
3. In the context of Article 15(c) the serious and individual threat involved does not have to be a direct effect of the indiscriminate violence; it is sufficient if the latter is an operative cause.
4. The [Opinion of the Advocate General in Elgafaji, 9 September 2008 \(Case C-465/07\)](#), does not afford an adequately reasoned basis for departing from the guidance given on the law in the reported cases of the Tribunal on Article 15(c), namely [HH and others](#) and [KH \(Article 15\(c\) Qualification Directive\) Iraq CG \[2008\] UKAIT 00023](#).
5. Before the Tribunal will take seriously a challenge to the historic validity of a Tribunal country guidance case, it would need submissions which seek to adduce all relevant evidence, for or against, the proposed different view. The historic validity of the guidance given in [HH and others](#) is confirmed.
6. However, as regards the continuing validity of the guidance given in [HH and others](#), the Tribunal considers that there have been significant changes in the situation in central and southern Somalia, such that the country guidance in that case is superseded to the following extent:
 - (i) There is now an internal armed conflict within the meaning of international humanitarian law (IHL) and Article 15(c) of the Refugee Qualification Directive throughout central and southern Somalia, not just in and around Mogadishu. The armed conflict taking place in Mogadishu currently amounts to indiscriminate violence at such a level of severity as to place the great majority of the population at risk of a consistent pattern of indiscriminate violence. On the present evidence Mogadishu is no longer safe as a place to live in for the great majority of returnees whose home area is Mogadishu;
 - (ii) Assessment of the extent to which internally displaced persons (IDPs) face greater or lesser hardships, at least outside Mogadishu (where security considerations are particularly grave,) will vary significantly depending on a number of factors;
 - (iii) For those whose home area is not Mogadishu, they will not in general be able to show a real risk of persecution or serious harm or ill treatment simply on the basis that they are a civilian or even a civilian internally displaced person (IDP) and from such and such a home

- area, albeit much will depend on the precise state of the background evidence relating to their home area at the date of decision or hearing;
- (iv) As regards internal relocation, whether those whose home area is Mogadishu (or any other part of central and southern Somalia) will be able to relocate in safety and without undue hardship will depend on the evidence as to the general circumstances in the relevant parts of central and southern Somalia and the personal circumstances of the applicant. Whether or not it is likely that relocation will mean that they have to live for a substantial period in an IDP camp, will be an important but not necessarily a decisive factor;
 - (v) As a result of the current conflict between the TFG/Ethiopians and the insurgents, the Sheikhal clan (including the Sheikhal Logobe), by virtue of the hostile attitude taken towards them by Al Shabab, is less able to secure protection for its members than previously, although both as regards their risk of persecution and serious harm and their protection much will depend on the particular circumstances of any individual clan member's case.

7. Where a particular route and method of return is implicit in an immigration decision it is within the jurisdiction of the Tribunal to deal with issues of en route safety on return: see [AG \(Somalia\) \[2006\] EWCA Civ 1342](#). But in the context of Somali appeals currently, the method of return is far too uncertain and so any opinion the Tribunal expresses on such issues can only be given on an obiter basis.

See also Court of Appeal findings in [HH \(Somalia\) & Others \[2010\] EWCA Civ 426](#) above.

[HY \(Yibir – YS and HA applied\) Somalia \[2006\] UKAIT 00002](#) . The Tribunal found that a Midgan who had lost the protection of a local patron or patrons, and who had not found alternative protection in the city would be vulnerable to persecution is good law and applies to Yibir as well (para 17). Where the only 'protection' available takes the form of forced labour, if not servitude, the appellant is at risk of inhuman or degrading treatment (para 18). Internal relocation is not an option (para 17).

[MA \(Galgale – Sab clan\) Somalia CG \[2006\] UKAIT 00073](#).. The Tribunal found that the Galgala is a "sab" or low caste clan, similar to the Tumul, Yibir or Midgan Clans. There are, however, two significant aspects of difference. There are no designated areas in which the Galgala may live; and they can no longer look to a major clan as patron. They may therefore have less expectation of protection than others. These two differences mean that members of the Galgala in general would, on return, face a real risk of persecution and treatment contrary to Article 3.

[NM and Others \(Lone women – Ashraf\) Somalia CG \[2005\] UKIAT 00076](#) . The Tribunal found that the starting point is that male and female members of minority clans from the south will, in general, be at risk of breaches of their Article 3 rights, and will be refugees, in the absence of evidence that they have a clan or personal patron and the means to access that area of safety without a real risk. Were such evidence to exist, which at present would be unusual, their return would involve no breach of either Convention (paragraph 117).

The Tribunal found that where the claimant, male or female, from Southern Somalia, is not found to be a minority clan member, there is a likely to be a location

in southern Somalia in which the majority clan is able to afford protection sufficiently for neither Convention to apply. Although lone females will be at greater risk than males, they will not be able to show that, simply as lone females from the UK, they have no place of clan safety (paragraph 119). A majority clan is characterised as one which has its own militia. The strongly clan and family nature of Somali society makes it reasonably likely that a militia escort could sufficiently protect a returnee from Mogadishu through the road blocks and en route banditry to the clan home area. This is enabled by pre-arranged transportation from the airport. Unwillingness on the part of the claimant to make such an arrangement is irrelevant (paragraph 122). Being a single woman returnee is not of itself a sufficient differentiator although the risks they face are greater and call for careful individualised consideration on the material which is accepted (paragraph 125).

Internal relocation is not in general a viable option for members of minority clans except where they may be able to obtain majority clan protection in a secure area. In respect of majority clan members, this may be a viable option for those whose majority clans have a secure location elsewhere within southern Somalia than where the claimant came from, if the home area were not or had ceased to be one where the majority clan was sufficiently strong to provide protection. Here, however, there would need to be an assessment of whether clan militia escort protection could be obtained. As regards the question of whether returnees could relocate to Somaliland or Puntland (or the Bay and Bakool regions), we have affirmed that the findings made in AJH remain valid, subject to a possible addition in relation to young men returning to Puntland (paragraph 128).

Professor Lewis' evidence made clear that the Ashraf were a minority clan which was especially vulnerable to targeting by majority clan militias and that for members of this clan there would be three particular problems afflicting any travel within Somalia. Firstly, most Ashraf could be picked out by their appearance, being relatively light-skinned. Secondly, the Ashraf had no clan militia and so would be particularly at risk from militias manning checkpoints both at any airport in southern Somalia they might land at and along any route they might take by land to the Hamar Wayne area of Mogadishu or to any other part of southern Somalia such as Gedo or Afgoye. Thirdly, lack of clan militia meant that there was no area of southern Somalia which would be a safe destination for Ashraf, including Gedo [para 131].

YS and HA (Midgan – not generally at risk) Somalia CG [2005] UKIAT 00088

- (i) This decision should be seen as superseding four previous Country Guidance determinations:
 - MA (Risk – Jaaji Clan –Benadiri) Somalia CG [2002] UKIAT 04084 (previously known as Amin [2002] UKIAT 04084);
 - IJ (Risk - Midgan) Somalia CG [2002] UKIAT 06314 (previously known as Ibrahim Abdi Jama [2002] UKIAT 06314); and
 - FB (Risk – Class – Midgan) Somalia CG [2002] UKIAT 06753 (previously known as Beldeq [2002] UKIAT 06753)
 - AH (Midgan – Disabled Woman – Relocation – Mogadishu) Somalia CG [2002] UKIAT 07343 (previously known as Hirsi [2002] UKIAT 07343).
- (ii) Each appeal must be decided on its own facts but the following should be treated as authoritative guidance on cases concerning the Midgan (also called the Migden, Midgaan and Madhiban and Madiban) in Somalia. One version of their name translates as "harmless".
- (iii) This decision is also authoritative guidance for the consideration of cases of members of other small caste groups identified in paragraph 42 above.

- (iv) Midgan are expected to perform low status jobs in Somali society and are usually poor. However, they are not slaves.
- (v) Midgan living in rural communities can generally expect to receive patronage and therefore protection from noble clans.
- (vi) Midgan who have left rural communities to settle in cities will sometimes have gained the patronage and protection of noble clans.
- (vii) Midgan who enjoyed the patronage and protection of a noble clan when they left Somalia can normally be expected to regain such patronage and protection in the event of their return. The protection afforded would extend to provision being made upon return for their internal safe travel back to rural areas.
- (viii) A Midgan who has lost the protection of a local patron (or local patrons) and who had not found alternative protection in a city would be vulnerable to persecution.
- (ix) A Midgan who has lost protection from a noble clan patron or patrons in his or her home area would not be able to relocate safely within Somalia.
- (x) Being a female Midgan increases the level of risk on return but does not on its own increase it to the level of real risk under the Refugee Convention and the ECHR.

[KS \(Minority Clans - Bajuni - ability to speak Kibajuni \) Somalia CG \[2004\]](#)

[UKIAT 00271](#) The Tribunal found that the background evidence on Somalia shows that members of certain clans or groups, such as the Bajuni, are likely to be able to demonstrate a risk of persecution on return (paragraph 35). For such persons, clan membership will usually be determinative but may not be in cases where there are features and circumstances which indicate that the claimant is not in fact at the same risk as that faced generally by other clan members (for example where a female marries into a majority clan she may have protection from her husband's clan) (paragraph 37). The decision contains (at paras 40 to 44) further guidance on assessing the credibility of claims of Bajuni ethnicity, looking in particular at the issue of the language(s) spoken by the claimant.

[A \(Somalia\) \[2004\] UKIAT 00080.](#) The Tribunal found that, even if the claimant was a Benadiri, he was not at any real risk of persecution if he was returned to the Somaliland part of Somalia (which is where he had come from). The claimant had lived there without encountering persecution, and had established a family network there. The Tribunal recognised that the claimant was in an unusual position as he would not be returning to the areas where Benadiri usually live (i.e. between Mogadishu and Kismayo) but to another part of the country, which was not an option open to most people of his ethnicity.

[AJH \(Minority group - Swahili speakers\) Somalia CG \[2003\] UKIAT](#)

[00094](#) Persons of Bajuni or Bravanese ethnicity are likely to face persecution and cannot reasonably relocate, particularly if they are female. This case sets out the test (at paragraph 33 of the determination) for caseworkers assessing the credibility of claims of Bajuni ethnicity but can be applied to all minority group claims. Essentially, what is required in cases involving Somali nationals of Bajuni ethnicity, is assessment of two separate issues (firstly the claimant's ethnicity and secondly their nationality). This assessment will include examination of at least 3 different factors:

- i) knowledge of Kibajuni (or other relevant dialect if other than Bajuni)
- ii) knowledge of Somali (varying depending on the applicant's personal history)
- iii) knowledge of matters to do with life in Somalia for Bajuni (geography, customs, operations)

The assessment must not treat any one of these factors as decisive - caseworkers should always have regard to whether the applicant's personal history explains any discrepancy in the results.

With non-Bajuni minority group claims, caseworkers should substitute the relevant dialect for Kibajuni.

3. Main categories of claims

3.1 This Section sets out the main type of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in Somalia. It also contains any common claims that may raise issues covered by the Asylum Instruction on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the guidance below.

3.2 Each claim should be assessed to determine whether there are reasonable grounds for believing that the claimant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in [Karanakaran](#) should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Instruction on Considering the Asylum Claim).

3.3 If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the claimant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.

3.4 All Asylum Instructions can be accessed on the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:

<http://www.ukba.homeoffice.gov.uk/documents/asylumpolicyinstructions/>

3.5 Credibility

3.5.1 This guidance is not designed to cover issues of credibility. Case owners will need to consider credibility issues based on all the information available to them. For guidance on credibility see Establishing the facts of the claim (material and non-material facts) in the Asylum Instruction Considering the protection (asylum) claim' and assessing credibility. Case owners must also ensure that each asylum application has been checked against previous UK visa applications. Where an asylum application has been biometrically matched to a previous visa application, details should already be in the Home Office file. In all other cases, the case owner should satisfy themselves through CRS database checks that there is no match to anon-biometric visa. Asylum applications matches to visas should be investigated prior to the asylum interview, including obtaining the Visa Application Form (VAF) from the visa post that processed the application.

3.6 General country situation in southern and central regions

- 3.6.1** Some claimants will make an asylum and/or human rights claim based on the security and/or humanitarian situation in southern and central Somalia.
- 3.6.2 Treatment.** Somalia has been without a central government since 1991. Continued conflict has led to the division of the country into three distinct regions: the self-declared Republic of Somaliland, the semi-autonomous state of Puntland, and south and central Somalia (including the capital, Mogadishu) where the Transitional Federal Government (TFG) is based.⁴⁷
- 3.6.3** The conflict is mainly located in south and central Somalia, where the TFG, supported by African Union peacekeepers (AMISOM), is opposed by Islamist insurgents, al-Shabaab.⁴⁸ Al-Shabaab have come under increasing pressure by AMISOM in Mogadishu and in August 2011 Al-Shabaab made what it called a tactical retreat from Mogadishu, and since then the allied forces of AMISOM, the TFG, Ethiopia and Kenya have launched an offensive against Al-Shabaab in many other areas of south and central Somalia. This offensive has so far had the outcome that Al-Shabaab no longer has the military control of Mogadishu and in many other cities and areas in south and central Somalia. Al-Shabaab is continuously being pushed out of its former areas of control, and the allied forces are gaining military influence in an increasingly larger part of south and central Somalia.⁴⁹
- 3.6.4** The Foreign and Commonwealth Office (FCO), Human Rights and Democracy 2011 Report noted in June 2012 that the security landscape in Somalia is changing rapidly. Over the last year, Somali defence forces, together with AMISOM and Somalia's neighbours, have driven the militant group Al Shabaab out of a number of urban centres, including Mogadishu, Baidoa, Beletweyn, El Buur and Gedo. In May/June 2012, Afgoye and Afmadow were recovered from Al Shabaab. The UK and our international partners are now working to deliver urgent stabilisation assistance in the newly-recovered areas. Ultimately this should create the space for improved governance standards and greater protection of human rights.⁵⁰
- 3.6.5** During 2011 conflict-related abuses, including killings, displacement, and restriction of humanitarian assistance continued to severely impact civilians. According to the UN, there were 1.36 million internally displaced persons (IDPs) in the country and 955,000 persons had taken refuge in other countries, primarily due to conflict, famine, and drought. Approximately 300,000 Somali refugees arrived in Kenya, Ethiopia, Djibouti, and Yemen during the year. The rule of law was largely

⁴⁷ UNHCR. 2012 UNHCR country operations profile – Somalia <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e483ad6>

⁴⁸ UNHCR. 2012 UNHCR country operations profile – Somalia <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e483ad6>

⁴⁹ COIS Somalia Bulletin: Security Situation in Southern and Central Somalia August 2012 (para1.01) <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/coi/somalia/report-17-08.pdf?view=Binary> Danish Immigration Service, Security and human rights issues in South-Central Somalia, including Mogadishu Report from Danish Immigration Service's fact finding mission to Nairobi, Kenya and Mogadishu, Somalia 30 January to 19 February 2012, published April 2012.

http://www.nyidanmark.dk/NR/rdonlyres/90821397-6911-4CEF-A8D0-6B8647021EF2/0/Security_human_rights_issues_South_CentralSomalia_including_Mogadishu.pdf

⁵⁰ COIS Somalia Bulletin: Security Situation in Southern and Central Somalia August 2012 (para1.03) <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/coi/somalia/report-17-08.pdf?view=Binary> Foreign and Commonwealth Office, Human Rights and Democracy 2011 report, Quarterly Update: Somalia, 30 June 2012, <http://fcohrdreport.readandcomment.com/human-rights-incountries-of-concern/somalia/quarterly-updates-somalia/?showall=1>

nonexistent. Al-Shabaab controlled most of the south and central regions, where it committed human rights abuses including killings, torture, restriction of humanitarian assistance, and extortion. Before al-Shabaab's withdrawal from Mogadishu in August 2011, it conducted almost daily attacks against the TFG and AMISOM in Mogadishu; there were numerous reports of civilian deaths from these attacks and from TFG and AMISOM responses. International human rights observers accused all parties to the conflict of indiscriminate attacks, deployment of forces in densely populated areas, and failure to take steps to minimize civilian harm. After withdrawing from Mogadishu on in August 2011, al-Shabaab increased hit-and-run attacks. On 4 October 2011, a vehicle-borne improvised explosive device exploded in a compound housing several TFG ministries. The explosion killed more than 100 people, including several university students who were waiting in line to receive examination results for Turkish government scholarships. Al-Shabaab claimed responsibility for the attack.⁵¹

3.6.6 A Danish Immigration Service fact finding mission in February 2012 were told that that civilian casualties and weapon related injuries in Mogadishu have decreased since August 2011 and that Mogadishu is now a much safer environment in terms of civilian casualties. The international Committee of the Red Cross (ICRC) stated that there is generally no exact number of civilian casualties in Mogadishu or in other locations in south and central Somalia due to weak reporting and patient registration in Somalia. However, ICRC supports two medical facilities specialised in war wounded patients in Mogadishu, namely Medina Hospital and Kesaney Hospital and ICRC do have relatively accurate records of persons being admitted to these two hospitals. In 2012 [up to early March 2012], both hospitals have treated some 4.200 war-wounded people.⁵²

3.6.7 The UN Security Council's Report of 1 May 2012 noted that the security situation remained volatile as military operations continued on the outskirts of Mogadishu and parts of south-central Somalia. Gains against the insurgency continued, although the period also saw an increasing number of non-conventional attacks by Al-Shabab. In the Mogadishu area, Al-Shabaab terrorist attacks remained constant, though many were prevented or failed as pressure mounted from reinforced Government and AMISOM forces. The threat of Al-Shabaab terrorism was heightened by a public statement against the UN Political Office for Somalia (UNPOS) on 25 January 2012 and, more significantly, the announcement on 9 February 2012 of a strengthened alliance with Al-Qaida. Some elements of Al-Shabaab reportedly do not embrace the alliance. The UN was directly targeted in three hand grenade attacks against its sites in January 2012, without casualties. Attacks on Villa Somalia, the presidential compound, were carried out on 14 March 2012 by an Al-Shabaab suicide bomber and on 19, 20 and 26 March 2012 with the firing of mortar rounds, claiming several lives. On 4 April 2012, another Al-Shabaab

⁵¹ COIS Somalia Bulletin: Security Situation in Southern and Central Somalia August 2012 (para1.09) <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/coi/somalia/report-17-08.pdf?view=Binary> US State Department, Country Reports on Human Rights Practices for 2011, 24 May 2012, p1, 13-14, <http://www.state.gov/documents/organization/186453.pdf>

⁵² COIS Somalia Bulletin: Security Situation in Southern and Central Somalia August 2012 (para1.14) <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/coi/somalia/report-17-08.pdf?view=Binary> Danish Immigration Service, Security and human rights issues in South-Central Somalia, including Mogadishu, Report from Danish Immigration Service's fact finding mission to Nairobi, Kenya and Mogadishu, Somalia 30 January to 19 February 2012', published April 2012, p20-21, http://www.nyidanmark.dk/NR/ronlyres/90821397-6911-4CEF-A8D0-6B8647021EF2/0/Security_human_rights_issues_South_CentralSomalia_including_Mogadishu.pdf

suicide bomber set off an explosion at the National Theatre of Mogadishu, killing 10 people, including several officials of the Transitional Federal Government.⁵³

- 3.6.8** The UN Human Rights Council's independent expert on human rights in Somalia reported that despite the withdrawal of Al-Shabaab from Mogadishu, however, heavy armed clashes between AMISOM, the Transitional Federal Government and allied forces against Al-Shabaab continued elsewhere through December 2011 and January 2012. The clashes were mainly confined to the city's outer districts. Thereafter, the frequency and effectiveness of insurgent attacks started to decline as pressure mounted from reinforced Government and AMISOM forces, culminating in a successful mid-February incursion towards the Afgooye corridor. This extended Government and AMISOM influence beyond Mogadishu, which continues to be the case.⁵⁴
- 3.6.9** The arrival of Kenyan forces in October 2011 was another new development. They were officially brought under AMISOM control on 6 July 2012. They played an important role, including through air strikes, in capturing recovering territories in the south-central region from Al-Shabaab, who tried to hinder their in military advances by hit-and-run attacks.⁵⁵
- 3.6.10** In the August 2012 report by UN Human Rights Council's independent expert it was noted that the end of active combat in Mogadishu has brought improvement to the situation of civilians living in the capital. The number of weapon-related casualties had decreased significantly as against those of 2011, when in May alone 1,590 people were admitted to Mogadishu hospitals with weapon-related injuries, 735 cases being children under 5 years. Against this, the number of casualties stood at about 500 people in the course of the month of January 2012, with 43 cases involving children under the age of 5. The prohibition of direct fire and the identification of no-fire zones by AMISOM also contributed to the reduction of civilian casualties. The introduction of a civilian casualty tracking cell by AMISOM was expected to contribute to a further reduction. The number of injuries or loss of life resulting from unconventional warfare, violence and insecurity remained very high. Al-Shabaab had publicly stated its intention to continue such attacks and claimed responsibility for the October 2011 attack in Mogadishu, which killed about 70 people, many of them students applying for scholarships, and in February 2012, which killed 15 people near the Muna Hotel. The high number of strikes by Al-Shabaab was indicative of its disregard for the rules of war traditionally embedded in Somali culture. It had reportedly announced that it would continue to use improvised explosive devices, a tactic that accounted for a significant percentage of casualties. On 27 February 2012, for example, such a device exploded during a football game in Wardhigley District, killing five people and injuring 12.⁵⁶

⁵³ COIS Somalia Bulletin: Security Situation August 2012 (para 1.16) <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/coi/somalia/report-17-08.pdf?view=Binary> UN Security Council, Report of the Secretary-General on Somalia, p1, 1 May 2012, http://reliefweb.int/sites/reliefweb.int/files/resources/Full_Report_3949.pdf Date accessed 22 June 2012

⁵⁴ UN Human Rights Council. Report of the Independent Expert on the situation of human rights in Somalia. (para 14) 22 August 2012

http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A.HRC.21.61_en.pdf

⁵⁵ UN Human Rights Council. Report of the Independent Expert on the situation of human rights in Somalia. (para 16) 22 August 2012

http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A.HRC.21.61_en.pdf

⁵⁶ UN Human Rights Council, Report of the Independent Expert on the situation of human rights in Somalia, 22 August 2012, A/HRC/21/61, available at: <http://www.unhcr.org/refworld/docid/5051ae442.html>

- 3.6.11** The UN Secretary General reported in August 2012 that in Mogadishu, armed clashes between Al-Shabaab and AMISOM and the forces of the Somali National Army occurred daily during April and May 2012, but most fighting stopped after late May, when allied forces launched an offensive pushing Al-Shabaab's combat units into the middle and lower Shabelles. On 27 July 2012, a bomb exploded near the venue of the National Constituent Assembly, but did not result in injuries. As the end of the transition approached, tensions rose again in the capital. Terrorist attacks continued, demonstrating Al-Shabaab's persistent covert infiltration and the overstretched capability of the allied forces. Throughout the area of operations, United Nations staff mobility remained an issue of serious concern.⁵⁷
- 3.6.12** In central Somalia, Ethiopian troops concentrated heavy combat elements around the border towns of Luuq and Dolo in January 2012, and launched an offensive into Bay Region on 18 February 2012, forcing Al-Shabaab out of key strongholds, including the town of Baidoa. Ethiopian troops led the capture of Beledweyne, Xuddur and Ceel Buur. In southern Somalia, despite numerous air strikes in Juba Dhexe and Juba Hoose, military advances were hindered by continuing insurgent hit-and-run attacks.⁵⁸ Research by Human Rights Watch, published in March 2012, found that fighting and abuses against civilians by Al-Shabaab militants continued in the border towns and regions that Kenya claimed to have liberated and that local people were fleeing those areas rather than returning to them.⁵⁹
- 3.6.13** In September 2012 it was being reported that AMISON and Somali government forces were advancing on Kismayo, al-Shabaab's last stronghold, and that hundreds of civilians had fled the city.⁶⁰ The BBC reported on 24 September that that following a militant attack six civilians had been shot dead by a Kenyan soldier advancing towards Kismayo and that the soldier has been detained pending an investigation. The same report noted that the Hizbul Islam group had announced that it is leaving al-Shabaab, which is seen as a significant setback for al-Shabaab, following recent military defeats. Hizbul Islam spokesman Mohamed Moalim told the BBC that his group still wanted the African Union mission to leave Somalia but welcomed the new president and parliament as a "positive development".⁶¹
- 3.6.14** The Somalia Report website began publishing a 'Weekly Security Roundup' from the week commencing 22 April 2012. Somalia Report assembles these weekly incidents from a variety of sources and numbers may vary. The website gives the total number of reported deaths between 22 April 2012 and 29 June 2012 as 457, with a total of 542 reported injuries.⁶²
- 3.6.15** Reporting on progress one year on from Al Shabaab's withdrawal from Mogadishu, The Telegraph reported on 5 August 2012 that since al-Shabaab left the city to

⁵⁷ UN Security Council, Report of the Secretary-General on Somalia, 22 August 2012, S/2012/643, available at: <http://www.unhcr.org/refworld/docid/505324fb2.html>

⁵⁸ COIS Somalia Bulletin: Security Situation in southern and central Somalia August 2012 (para1.16) <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/coi/somalia/report-17-08.pdf?view=Binary> UN Security Council, Report of the Secretary-General on Somalia, p1, 1 May 2012, http://reliefweb.int/sites/reliefweb.int/files/resources/Full_Report_3949.pdf Date accessed 22 June 2012

⁵⁹ Human Rights Watch. Kenya: Somalia Unsafe for Refugees to Return March 30, 2012 <http://www.hrw.org/news/2012/03/30/kenya-somalia-unsafe-refugees-return>

⁶⁰ IRIN SOMALIA: Kismayo feels the heat ahead of AMISOM assault 6 September 2012 <http://www.irinnews.org/Report/96253/SOMALIA-Kismayo-feels-the-heat-ahead-of-AMISOM-assault>

⁶¹ BBC Kenyan Amisom soldier kills six Somali civilians 24 September 2012 <http://www.bbc.co.uk/news/world-africa-19698348>

⁶² COIS Somalia Bulletin: Security Situation in Southern and Central Somalia August 2012 (para1.23) <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/coi/somalia/report-17-08.pdf?view=Binary>

government forces, there has been cautious hope that a measure of peace may finally be taking root, as reflected in an increase in commerce, new building, infrastructure repairs, as well as new scheduled flights from Turkey, Dubai and Kenya to Mogadishu. The article went on:

"This used to be a place where misdirected mortars always fell and people were killed daily," said Nur Ibrahim Adan, a stallholder at Bakara Market, Mogadishu's largest and once an al-Shabaab stronghold.

"Now there is a great change. There is no fear, there are few casualties. There are new buildings, new customers. Already my profit is much higher." ... "Now truly there is opportunity here and I have many new customers," said Farah Jimale, owner of Cosmetics Centre at Bur Ubox in Bakara Market.

But then he paused. And in that pause is the largely unspoken reality that all this change is tenuous and fragile.

"Al-Shabaab, though, it is a group full of clever tactics," Mr Jimale said. "I am concerned they can come back. Already they are killing government officials. It is hard not to worry."

Mohamed Ali, Somalia's deputy defence minister, agreed that al Shabaab remained a threat, but insisted that it could be contained.

"Now you can see that Somalis, they hate Shabaab," he said. "They are giving the government information about it, where to find it. The tide has turned."⁶³

3.6.16 The August 2012 report of the UN Secretary-General concluded that "The security situation in many southern and central areas remained unpredictable, however, with insurgents increasingly resorting to dangerous asymmetric attacks and intimidating locals, including in areas held by Transitional Federal Government and allied forces".⁶⁴ Two days after the new President of Somalia, Hassan Sheikh Mohamud was announced, the hotel where he was giving a press conference was attacked by suicide bombers, killing one AMISOM soldier and wounding three others.⁶⁵

3.6.17 The UN report also noted that "Targeted attacks against civilians, Government officials and security personnel continued... The majority of deaths were attributed to the continued use of improvised explosive devices and targeted killings by Al-Shabaab."⁶⁶ With regards to Mogadishu the report noted that "As the end of the transition approached, tensions rose again in the capital. Terrorist attacks

⁶³ The Telegraph, Mogadishu transforms one year on from al-Shabaab exit, 5 August 2012 <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/somalia/9453668/Mogadishu-transforms-one-year-on-from-al-Shabaab-exit.html> Date accessed 31 August 2012

⁶⁴ United Nations, Report of the Secretary-General on Somalia, 22 August 2012, A Security Situation, paragraph 26 <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Somalia%20S%202012%20643.pdf>

⁶⁵ UN News Centre, Somalia: UN Assembly President condemns attack on president's hotel, 13 September 2012 <http://www.un.org/apps/news/story.asp?NewsID=42884&Cr=somalia&Cr1=#.UFJiL1F2Mxl>

⁶⁶ United Nations, Report of the Secretary-General on Somalia, 22 August 2012, A Security Situation, paragraph 26 <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Somalia%20S%202012%20643.pdf>

continued, demonstrating Al-Shabaab's persistent covert infiltration and the overstretched capability of the allied forces".⁶⁷

3.6.18 In April 2012, the UN noted that continued fighting has rendered children more vulnerable to rape and sexual violence, particularly in open and unprotected internally displaced person settlements and especially in Mogadishu. The Transitional Federal Government and allied militia were the main alleged perpetrators in Mogadishu and border areas".⁶⁸ In July 2012, the UN also reported "Women and girls in Mogadishu remain at great risk of sexual violence while collecting firewood".⁶⁹

Humanitarian situation

3.6.19 UNHCR has estimated that almost 63,000 people, mostly IDPs who had fled insecurity and fighting in Mogadishu, have returned to the city Mogadishu since the August 2011 departure of Al-Shabaab insurgents. According to Mogadishu local authorities, at least 80 percent of the properties occupied by squatters during the war have been restored to their rightful owners. The local authorities are reported to be standing by to help people reclaim their properties. Meanwhile, the northern Mogadishu districts of Karan, Shibis and Bondhere, which had previously been empty because of fighting, are now bustling.⁷⁰ From afar the city glints with shiny new tin roofs dotted among dust-covered ruins and camps. Private operators are offering electricity in the old town for US\$30 a month. Fishermen are enjoying a healthy demand for shark-fins from Dubai and the Middle East, with a shark fetching as much as \$500. Building materials lie in piles on street corners, where camel's milk and cappuccino vendors ply their wares. International NGO and diplomatic missions are also coming back - according to a UN source, Britain has already identified the plot for its permanent diplomatic base on the airport compound - and property prices have spiked. According to a local businessman, a 100-square metre plot near the city centre sold recently for \$2million.⁷¹

3.6.20 In May 2012 it was being reported that the population of Mogadishu, had increased from 1.8 million to 2 million after AMISOM and TFG forces drove out al-Shabaab from the capital. Most of the arrivals had come during 2011 in search of food after drought and famine struck in 2011. It was said that "Twice a day, crowds of hungry people line up outside feeding centres all across Mogadishu.... Anyone who shows up is fed". UN officials were reported as saying that at that time 100,000 were receiving what is called wet, or cooked, food. Another 200,000 were receiving nutritional assistance in other forms. Authorities said families who came to Mogadishu during the famine in 2011 have been slow to go back to their homes.

⁶⁷ United Nations, Report of the Secretary-General on Somalia, 22 August 2012, A Security Situation, paragraph 27

<http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Somalia%20S%202012%20643.pdf>

⁶⁸ United Nations, Children and armed conflict Report of the Secretary-General, 26 April 2012, Somalia, Paragraph 101 <http://daccess-ods.un.org/TMP/1584472.95427322.html>

⁶⁹ UNOCHA, Humanitarian Bulletin Somalia; Issue 10; 1 - 31 July 2012, Fuel-efficient stoves offer protection and sustainability <http://reliefweb.int/sites/reliefweb.int/files/resources/Humanitarian%20Bulletin%20%2310%2C%20July%202012.pdf>

⁷⁰ IRIN. UN Office for the Coordination of Humanitarian Affairs. Somalia: Return to Mogadishu: 17 July 2012 <http://www.irinnews.org/Report/95886/SOMALIA-Return-to-Mogadishu>

⁷¹ COIS Somalia Bulletin: Security Situation August 2012 (3.16)

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/coi/somalia/report-17-08.pdf?view=Binary> IRIN News, SOMALIA: Mogadishu on the up, 29 May 2012, <http://www.irinnews.org/Report/95480/SOMALIA-Mogadishu-on-the-up>

Food, basic medical services and even rudimentary schools are available in Mogadishu, all commodities rare in the rural areas. And there are jobs, as the city starts rebuilding.⁷²

- 3.6.21** Also in May 2012, the UN is reported as having said that as a result of better rains, reduced conflict, stable food prices, and international help, the situation is much improved and there is little to no chance of a repeat of the 2011 famine. It was also said that pasture and water is available for livestock; the condition of the animals is very good, prices are favourable, and exports are up 42 percent compared to the same time last year. The report did however go on to say that there were still 2.5 million Somalis, mostly in al-Shabaab controlled areas, who are officially classified as in “emergency” or “crisis”; almost a quarter of children aged under five are “acutely malnourished”; and there were warnings that rainfall in some farming areas in south Somalia would be up to 20% below average, which could affect crop production and may cause localised food shortages.⁷³
- 3.6.22** However, in June 2012, UNOCHA reported that the food security situation was expected to deteriorate in agropastoral parts of southern Somalia, including in the Bay, Bakool and Gedo regions, as well as parts of Lower and Middle Juba and Lower and Middle Shabelle in the months leading up to the harvest in August.⁷⁴ In its July Bulletin, it further reported that in addition to the likely deterioration in agropastoral parts of southern Somalia, pastoralists in coastal areas of Somaliland and Puntland are at risk due to the poor performance of the rains”.⁷⁵ UNOCHA also noted that the risks associated with the delivery of humanitarian assistance remain high in South Central Somalia and on-going military operations and sporadic clashes make access difficult, specifically in By, Bakool and Lower Shabelle.⁷⁶ Al-Shabab has banned many aid agencies from Kismayo, and general insecurity in the area has also impeded humanitarian access.⁷⁷
- 3.6.23** It is important that case owners ensure that they refer to the COIS Somalia Bulletin: Security Situation August 2012 and obtain the latest information about the situation in the relevant part of Somalia and take that into full account in reaching decisions on asylum claims made by Somalis.

See also: **[Actors of protection](#)** (section 2.3 above)
 [Internal relocation](#) (section 2.4 above)
 [Caselaw](#) (section 2.5 above)

⁷² Voice of America News, Mogadishu Feeding Centers Keep Hundreds of Thousands from Starvation, 8 May 2012, http://www.voanews.com/content/mogadishu_feeding_centers_keep_hundreds_of_thousands_from_starvation/369844.html

⁷³ Christian Science Monitor, Somalia famine has ended, but many still hungry, 31 May 2012, <http://www.csmonitor.com/World/Africa/2012/0531/Somalia-famine-has-ended-but-many-stillhungry>

⁷⁴ UNOCHA, Humanitarian Bulletin Somalia; Issue 9 June 2012 <http://reliefweb.int/sites/reliefweb.int/files/resources/Humanitarian%20Bulletin%20%239%2C%20June%202012.pdf>

⁷⁵ UNOCHA, Humanitarian Bulletin Somalia; Issue 10; 1 - 31 July 2012, Taking stock one year after the famine <http://reliefweb.int/sites/reliefweb.int/files/resources/Humanitarian%20Bulletin%20%2310%2C%20July%202012.pdf>

⁷⁶ UNOCHA, Humanitarian Access Update 01, 30 June 2012 <http://reliefweb.int/sites/reliefweb.int/files/resources/Access%20Paper%20June%202012.pdf>

⁷⁷ IRIN, Next stop Kismayo, 15 August 2012 <http://www.irinnews.org/Report/96110/SOMALIA-Next-stop-Kismayo>

3.6.24 Conclusion. The Supreme Court held in [RT \(Zimbabwe\)](#) that the rationale of the decision in [HJ \(Iran\)](#) extends to the holding of political opinions. An individual should not be expected to modify or deny their political belief, or the lack of one, in order to avoid persecution.

3.6.25 A state of civil instability and/or where law and order has sometimes broken down does not of itself give rise to a well-founded fear of persecution for a Convention reason.

3.6.26 In the country guidance case of [AMM and others](#) (see section 2.5 above) promulgated in November 2011, the Upper Tribunal concluded that:

Mogadishu

- (a) Despite the withdrawal in early August 2011 of Al-Shabab conventional forces from at least most of Mogadishu, there remains in general a real risk of Article 15(c) harm for the majority of those returning to that city after a significant period of time abroad. Such a risk does not arise in the case of a person connected with powerful actors or belonging to a category of middle class or professional persons, who can live to a reasonable standard in circumstances where the Article 15(c) risk, which exists for the great majority of the population, does not apply.

Caseowners should note that in reaching that conclusion the Upper Tribunal did not say that the reduction in violence following al-Shabaab's withdrawal from Mogadishu was insufficient to show that there was no longer a general Article 15(c) risk; what they said was that it was too early to show that the reduction in violence was durable. In paragraph 363 of the determination the Upper Tribunal said "Before leaving the issue of Article 15(c) in Mogadishu, it is necessary to say something with an eye to the use that will be made of our country guidance findings in the next few weeks and months. In assessing cases before them, judicial fact-finders will have to decide whether the evidence is the same or similar to that before us (Practice Direction 12). To the extent it is not, they are not required to regard our findings as authoritative. As we have emphasised, it is simply not possible on the evidence before us to state that the changes resulting from Al-Shabaab's withdrawal from Mogadishu are sufficiently durable. Far too much is presently contingent. As time passes, however, it may well be that judicial fact-finders are able to conclude that the necessary element of durability has been satisfied. How, if at all, that impacts on the assessment of risk on return will, of course, depend on all the other evidence."

As Lord Justice Carnwath (now Lord Carnwath) noted in [TK \(Tamils – LP updated\) Sri Lanka CG \[2009\] UKAIT 00049](#) "... country guidance is not inflexible; it must be applied by reference to new evidence as it emerges." The current evidence as set out in the COIS Somalia Bulletin: Security Situation August 2012 and elsewhere is that the lower level of violence has been sustained over the past year, and that the violence that does exist is generally targeted at government, security forces and international bodies. In the circumstances the situation in Mogadishu should no longer be regarded as presenting a general risk of Article 15(c) harm. Instead, for a claim to succeed under Article 15(c), an individual would need to show that their personal circumstances are such that they would be at real risk and that there was no internal relocation option open to them. A claim under Article

15(c) should succeed if a claimant establishes that particular factors place him or her at additional risk above that which applies to the civilian population generally, such that he or she is at real risk of serious harm from the levels of indiscriminate violence that do exist and that internal relocation to a place where there is not a real risk of serious harm is not reasonable.

- (b) The Upper Tribunal went on to conclude that the armed conflict in Mogadishu does not, however, pose a real risk of Article 3 harm in respect of any person in that city, regardless of circumstances. The humanitarian crisis in southern and central Somalia has led to a declaration of famine in IDP camps in Mogadishu; but a returnee from the United Kingdom who is fit for work or has family connections may be able to avoid having to live in such a camp. A returnee may, nevertheless, face a real risk of Article 3 harm, by reason of his or her individual vulnerability.

Outside Mogadishu

- (c) Fighting in southern and central Somalia is both sporadic and localised and is not such as to place every civilian in that part of the country at real risk of Article 15(c) harm. In individual cases, it will be necessary to establish where a person comes from and what the background information says is the present position in that place. If fighting is going on, that will have to be taken into account in deciding whether Article 15(c) is applicable. There is, likewise, no generalised current risk of Article 3 harm as a result of armed conflict.
- (d) In general, a returnee with no recent experience of living in Somalia will be at real risk of being subjected to treatment proscribed by Article 3 in an Al-Shabab controlled area. "No recent experience" means that the person concerned left Somalia before the rise of Al-Shabab in 2008. Even if a person has such experience, however, he or she will still be returning from the United Kingdom, with all the adverse assumptions likely to be made, so far as Al-Shabab perceptions are concerned, but he or she will be less likely to be readily identifiable as a returnee. Even if he or she were to be so identified, the evidence may point to the person having struck up some form of accommodation with Al-Shabab, whilst living under their rule. On the other hand, although having family in the Al-Shabab area of return may alleviate the risk, the rotating nature of Al-Shabab leadership and the fact that punishments are meted out in apparent disregard of local sensibilities mean that, in general, it cannot be said that the presence of family is likely to mean the risk ceases to be a real one.
- (e) Al-Shabab's reasons for imposing its requirements and restrictions, such as regarding manner of dress and spending of leisure time, are religious and those who transgress are regarded as demonstrating that they remain in a state of kufr (apostasy). The same is true of those returnees who are identified as returning from the West. Accordingly, those at real risk of such Article 3 ill-treatment from Al-Shabab will in general be refugees, since the persecutory harm is likely to be inflicted on the basis of imputed religious opinion.
- (f) Although those with recent experience of living under Al-Shabab may be able to "play the game", in the sense of conforming with Al-Shabab's requirements and avoiding suspicion of apostasy, the extreme nature of the consequences facing anyone who might wish to refuse to conform (despite an ability to do so) is such as to attract the principle in [RT \(Zimbabwe\)](#). The result is that such people will

also in general be at real risk of persecution by Al-Shabab for a Refugee Convention reason.

- (g) The same considerations apply to those who are reasonably likely to have to pass through Al-Shabab areas.
- (h) For someone at real risk in a home area in southern or central Somalia, an internal relocation alternative to Mogadishu is in general unlikely to be available, given the risk of indiscriminate violence in the city, together with the present humanitarian situation. Relocation to an IDP camp in the Afgoye Corridor will, as a general matter, likewise be unreasonable, unless there is evidence that the person concerned would be able to achieve the lifestyle of those better-off inhabitants of the Afgoye Corridor settlements.

However, as noted above, the sustained improvement in the security situation in Mogadishu since the Upper Tribunal promulgated its determination is such that it can no longer be said that there is a general Article 15(c) risk in Mogadishu. Case owners should therefore consider the new country of origin information and the individual circumstances of each claimant to establish whether the guidance contained in [AMM and others](#) in relation to internal relocation to Mogadishu remains applicable to the individual claimant concerned.

- (i) Internal relocation to an area controlled by Al-Shabab is not feasible for a person who has had no history of living under Al-Shabab in that area (and is in general unlikely to be a reasonable proposition for someone who has had such a history). Internal relocation to an area not controlled by Al-Shabab is in general unlikely to be an option, if the place of proposed relocation is stricken by famine or near famine.

With regard internal relocation caseowners should keep in mind that as set out in para 225 of the determination in [AMM and others](#), the legal burden does not rest with the caseowner to prove that there is a part of the country of nationality of an appellant, who has established a well-founded fear in one area thereof, to which the claimant could reasonably be expected to go and live. The person who claims international protection bears the legal burden of proving that he or she is entitled to it. What that burden entails will, however, very much depend upon the circumstances of the particular case. In practice, the issue of an internal relocation alternative needs to be raised by the caseowner, either in the letter of refusal or (subject to issues of procedural fairness) during any appeal proceedings. In many cases, the caseowner will point to evidence regarding the general conditions in the proposed place of relocation. It will then be for the claimant to make good an assertion that, notwithstanding those conditions, it would not be reasonable to relocate there. Those reasons may often be ones about which only the claimant could know; for example, whether there are people living in the area of proposed relocation who might identify the appellant to those in his home area whom he fears. The Secretary of State clearly cannot be expected to lead evidence on such an issue.

- (j) Within the context of these findings, family and/or clan connections may have an important part to play in determining the reasonableness of a proposed place of relocation. The importance of these connections is likely to grow, if the present humanitarian crisis diminishes and if Al-Shabab continues to lose territory.

- (k) Travel by land across southern and central Somalia to a home area or proposed place of relocation is an issue that falls to be addressed in the course of determining claims to international protection. Such travel may well, in general, pose real risks of serious harm, not only from Al-Shabab checkpoints but also as a result of the present famine conditions. Women travelling without male friends or relatives are in general likely to face a real risk of sexual violence.
- (l) An issue that may have implications for future Somali appeals is the availability of air travel within Somalia (including to Somaliland). Flying into Mogadishu International Airport is sufficiently safe. There is no evidence to indicate a real risk to commercial aircraft flying to other airports in Somalia.

Somaliland and Puntland

- (m) The present appeals were not designed to be vehicles for giving country guidance on the position within Somaliland or Puntland. There is no evidential basis for departing from the conclusion in [NM and others](#), that Somaliland and Puntland in general only accept back persons who were former residents of those regions and were members of locally based clans or sub clans. In the context of Somali immigration to the United Kingdom, there is a close connection with Somaliland.
- (n) A person from Somaliland will not, in general, be able without real risk of serious harm to travel overland from Mogadishu International Airport to a place where he or she might be able to obtain an unofficial travel document for the purposes of gaining entry to Somaliland, and then by land to Somaliland. This is particularly the case if the person is female. A proposed return by air to Hargeisa, Somaliland (whether or not via Mogadishu International Airport) will in general involve no such risks.

3.6.27 Caseowners should note that the Upper Tribunal in the country guidance case of [AMM and others](#) took full account of the European Court of Human Rights (ECtHR) judgment in the case [Sufi & Elmi v UK](#). The Upper Tribunal found that they were not bound by the ECtHR's assessment and made some important findings which differed from those in [Sufi & Elmi v UK](#) such as (a) the categories of persons who would be able to return to Mogadishu without being subject to a breach of Article 15(c) of the Qualification Directive; (b) that there is no general Article 3 risk in Mogadishu; (c) the ECtHR was wrong to find that the warring parties in Somalia had caused the breakdown of economic, social, political infrastructure; and (d) the Upper Tribunal also rejected ECtHR's criticism of the UKBA fact finding missions' use of anonymised sources.

3.7 Members of major clans or their sub-clans

3.7.1 Some claimants will make an asylum and/or human rights claim based on their fear of mistreatment at the hands of an individual and/or sub-group of a rival clan family due to their membership of a particular clan or sub-clan.

3.7.2 Treatment. The clan is the single most important element that has defined the identity and social relations of Somalis for centuries. Most Somalis identify themselves in terms of their lineage or clan. Historically, it was the basis that structured law and order and social activities within and between the various clans. While in the past, clan politics and rivalry between various warlords fuelled and entrenched the conflict, in recent times the conflict has increasingly taken the shape

of a conflict between those that allegedly advance different forms of Islam.⁷⁸ A 2008 International Crisis Group report stated that the classical clan system was fraying. Clan elders were being targeted in the violence then sweeping the country.⁷⁹ However, the same source noted that large swathes of the country had reverted back to a style of clan government that predates colonialism. A 2009 Landinfo report noted that observers have pointed out that traditional leaders are losing their hold on power but that the system still worked, albeit to varying degrees.⁸⁰

- 3.7.3** Clan families are sub-divided into clans and many sub-clans. Clan members are classified as ethnic Somali and minority groups are usually classified as non-ethnic Somali. The clan structure comprises four major “noble” clan-families; Darod, Hawiye, Isaaq and Dir. “Noble” refers to the widespread Somali belief that members of the major clans are descended from a common Somali ancestor, and that the minority groups have a different, usually mixed, parentage. Two further clans, the Digil and Mirifle (also collectively referred to as Rahanweyn), take, in many aspects, an intermediate position between the main Somali clans and the minority groups.⁸¹
- 3.7.4** More than 85 percent of the population shared a common ethnic heritage, religion, and nomad-influenced culture. In most areas members of groups other than the predominant clan were excluded from effective participation in governing institutions and were subject to discrimination in employment, judicial proceedings, and access to public services.⁸²
- 3.7.5** Minority groups and low-caste clans included the Bantu (the largest minority group), the Benadiri, Rer Hamar, Brawanese, Swahili, Tumul, Yibir, Yaxar, Madhiban, Hawrarsame, Muse Dheryo, Faqayaqub, and Gabooye. Inter-marriage between minority groups and mainstream clans was restricted by custom. Minority groups, often lacking armed militias, continued to be disproportionately subject to killings, torture, rape, kidnapping for ransom, and looting of land and property with impunity by faction militias and majority clan members. Many minority communities continued to live in deep poverty and suffer from numerous forms of discrimination and exclusion.⁸³
- 3.7.6** A 2009 Landinfo report noted that individual security has traditionally been dependent on the clan. This situation has not changed significantly in modern times and the clan remains the safety net of the Somali population. Vulnerability and protection are closely linked to a clan’s strength. However weak clans or groups have traditionally been able to seek protection from and affiliation with the dominant clans in a specific area. Although clans are still important, affiliation to a dominant clan does not necessarily provide protection. Clan loyalty is superseded by political, ideological and international conditions. A clan’s ability to provide protection is

⁷⁸ Institute for Security Studies 01 Sep 2009: ISS Paper 198:

<http://www.issafrica.org/pgcontent.php?UID=8647>

⁷⁹ IGC ‘To move beyond the failed state’, 23 December 2008, 2. Clan dynamics,

[http://www.crisisgroup.org/~media/Files/africa/horn-of-africa/somalia/Somalia%20To%20Move%20Beyond%20the%20Failed%](http://www.crisisgroup.org/~media/Files/africa/horn-of-africa/somalia/Somalia%20To%20Move%20Beyond%20the%20Failed%20)

⁸⁰ COI Service Somalia Country Report January 2012 (para 19.04 & 19.07)

www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

⁸¹ ACCORD ‘Clans in Somalia’ December 2009, II. Clans and Minorities,

<http://www.unhcr.org/refworld/country,,ACCORD,,SOM,,4b29f5e82,0.html>

⁸² US State Department Country Reports on Human Rights Practices for : Somalia 24 May 2012 National/Racial/Ethnic/ Minorities

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186241>

⁸³ US State Department Country Reports on Human Rights Practices for : Somalia 24 May 2012 National/Racial/Ethnic/ Minorities

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186241>

contingent on the clan's military strength. In the current situation, in which Al-Shabaab and other groups control large parts of southern Somalia, protection from one's own clan in, for example, an Al-Shabaab controlled area is not realistic. Al-Shabaab has the support of various clans and minority groups in the areas it controls. Numerous dominant clans in many districts are therefore currently subordinate to Al-Shabaab and must, among other things, abide by Al-Shabaab's enforcement of Sharia law.⁸⁴ UNHCR Somalia reported to the February 2012 Danish Fact Finding Mission that "today there is no guarantee of clan protection in Somalia, in particular members of minority clans and ethnic minority groups are vulnerable. The authority of the clan elders has been undermined in many locations by warlords, Al-Shabaab and criminals, and as a consequence the clan conflict resolution mechanisms have been weakened. Clan disputes more often lead to blood feuds due to the inability of clan elders to reach agreement by peaceful means and negotiations, and the whole conflict resolution process also takes longer time".⁸⁵

3.7.7 In the country guidance case of [AMM and others](#) (see section 2.5 above) the Upper Tribunal noted with regard to the possibility of internal relocation to an area not controlled by Al-Shabaab (paras 504) that "...the importance of clan connections remains, notwithstanding the enormous strains placed on the clan system. Landinfo (June 2009) suggested that clan protection "is still relevant, albeit primarily in relation to ordinary crime" and that clans continue to be important in relation to where a person flees. The evidence of Tony Burns suggested this was true even in Al-Shabab-controlled areas. The Landinfo report quoted one source as follows:-

"Scarce resources and natural disasters such as floods and droughts limit the possibility for and willingness to support new arrivals in an area, even where they belong to the same clan. However, great efforts are still made to help relatives and neighbours. ...it is common to find families consisting of six to eight members, opening their homes to a further six to eight relatives. They share the little they have, but without the money transfers from abroad, the already difficult living conditions would be significantly worse for the large majority of the population."

3.7.8 The country guidance case of [AMM and others](#) (went on to note at para 505 that "Population movement tracking reports from UNOCHA estimate the numbers of journeys carried out on the basis of seeking clan/social support. Monthly figures range between 11,000 and 22,000 but with 69,000 in January 2010 and 48,000 in March 2010. Albeit looking at a slightly earlier time, the Danish Immigration Service in 2007 recorded an international organisation as saying that "any Somali has the opportunity to attain security within his or her clan. This is even applicable if a person does not have any close relatives in the country. As long as a person is living inside the traditional area of the clan he or she enjoys the protection of that clan."

3.7.9 The determination in [AMM and others](#) (also noted that a senior researcher in the Institute for Security Studies, reporting on 11 July 2011, stated that, following the

⁸⁴ COI Service Somalia Country Report January 2012 (para 19.11)

www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

⁸⁵ Danish Immigration Service, Security and human rights issues in South-Central Somalia, including Mogadishu; Report from Danish Immigration Service's fact finding mission to Nairobi, Kenya and Mogadishu, Somalia; 30 January to 19 February 2012, April 2012, 5.1 Clan protection

http://www.nyidanmark.dk/NR/rdonlyres/90821397-6911-4CEF-A8D0-6B8647021EF2/0/Security_human_rights_issues_South_CentralSomalia_including_Mogadishu.pdf

failure of the Somali state “over the years, a variety of local and smaller government structures have emerged in that country – as opposed to large-scale actors – which are often to a considerable extent effective in governing smaller parts of the country. In recent times, what has emerged along the coast could be likened to a loose bunch of city states” (paragraph 506).

3.7.10 The Upper Tribunal in [AMM and others](#) (found that a person who has a clan or strong family connection with a particular area in south or central Somalia, not controlled by Al-Shabab, particularly a town, may, in the light of all this, have an internal relocation alternative to that place. In the light of the present humanitarian crisis, the cogency of the indicators pointing to such a position would need to be powerful (paragraph 507).

See also: [Actors of protection](#) (section 2.3 above)

[Internal relocation](#) (section 2.4 above)

[Caselaw](#) (section 2.5 above)

3.7.11 Conclusion. Large parts of northern Somalia are in general relatively safe regardless of clan membership. Somaliland and Puntland remain generally safe despite some armed violence and targeted assassinations. In other parts of Somalia it is unlikely than any Somali belonging to one of the major clan-families – their immediate clan groups or associated sub clans - would be able to demonstrate that they have a well-founded fear of ill-treatment on return on the basis of their clan affiliation alone. However each case should be given careful consideration on its individual circumstances including whether effective protection is available and if internal relocation is available.

3.7.12 With regard to the possibility of internal relocation to an area not controlled by Al-Shabaab in southern Somalia , the Tribunal found in [AMM and others](#) that “family and/or clan connections may have an important part to play in determining the reasonableness of a proposed place of relocation”. However, this should be considered alongside the other findings in [AMM and others](#) and the fact that the influence of Al-Shabaab has impacted on the ability of majority clans to provide effective support and protection to minority clan members. AMM also re-confirmed that Somaliland and Puntland in general only accept back persons who were former residents of those regions and were members of locally based clans or sub clans.

3.8 Bajunis

3.8.1 Some Somalis will make an asylum and/or human rights claim based on mistreatment at the hands of major clan and sub-clan militias or other clan-based controlling groups in southern/ central Somalia on account of their underclass status as members of the Bajuni minority group.

3.8.2 Treatment. More than 85% of the population shared a common ethnic heritage, religion, and nomad-influenced culture. In most areas members of groups other than the predominant clan were excluded from effective participation in governing institutions and were subject to discrimination in employment, judicial proceedings, and access to public services. Minority groups, often lacking armed militias, continued to be disproportionately subject to killings, torture, rape, kidnapping for ransom, and looting of land and property with impunity by faction militias and

majority clan members. Many minority communities continued to live in deep poverty and suffer from numerous forms of discrimination and exclusion.⁸⁶

- 3.8.3** The Bajuni are a small independent ethnic community of perhaps 3,000 or 4,000 who are predominantly sailors and fishermen. They live in small communities along the Indian Ocean coastline (including Somalia and Kenya) and on some of the larger offshore islands between Kismayo and Mombasa, Kenya. They live in Kismayo and the islands of Jula, Madoga, Satarani, Raskamboni, Bungabo, Dudey, Koyoma and Jovay (Bajuni Islands).⁸⁷
- 3.8.4** The small Bajuni population in Somalia suffered considerably at the hands of Somali militia, principally Marehan militia who tried to force them off the islands. Though Marehan settlers still have effective control of the islands, Bajuni can work for the Marehan as paid labourers. This is an improvement on the period during the 1990s when General Morgan's forces controlled Kismayo and the islands, when the Bajuni were treated by the occupying Somali clans as little more than slave labour. Essentially the plight of the Bajuni is based on the denial of economic access by Somali clans, rather than outright abuse.⁸⁸ Approximately 2,000 Bajuni voluntarily repatriated to Kismayo and islands from Jomvu refugee camp in Kenya in 1997 following Kenya's decision to close all 3 refugee camps. They have no patron clans.⁸⁹
- 3.8.5** According to a 2009 Landinfo report, weak clans or groups have traditionally been able to seek protection from and affiliation with the dominant clans in a specific area. Although clans are still important, affiliation to a dominant clan does not necessarily provide protection. A clan's ability to provide protection is contingent on the clan's military strength. In the current situation, in which Al-Shabaab and other groups control large parts of southern Somalia (including Kismayo), protection from one's own clan in, for example, an Al-Shabaab controlled area is not realistic. Al-Shabaab has the support of various clans and minority groups in the areas it controls. Numerous dominant clans in many districts are therefore currently subordinate to Al-Shabaab and must, among other things, abide by Al-Shabaab's enforcement of Sharia law.⁹⁰
- 3.8.6** Minority Rights Group research has shown that "minority communities in Somalia fall outside the traditional clan structure and also therefore the protection afforded by such systems. Because of social segregation, economic deprivation and political manipulation, minorities are more vulnerable to rape, attack, abduction, property seizure and the consequences of drought".⁹¹ Furthermore, UNHCR Somalia explained that "today there is no guarantee of clan protection in Somalia, in particular members of minority clans and ethnic minority groups are vulnerable. The authority of the clan elders have been undermined in many locations by warlords, Al-Shabaab and criminals, and as a consequence the clan conflict resolution

⁸⁶ US State Department, Country Reports on Human Rights Practices for 2011: Somalia, 24 May 2012, National/Racial/Ethnic Minorities,

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186241>

⁸⁷ Madhibaan, A Study on minorities in Somalia Undated <http://www.madhibaan.org/in-depth/in-depth-a-study.htm>

⁸⁸ Madhibaan, Somalia country report 2003 <http://www.madhibaan.org/faq/report-2003-4.htm>

⁸⁹ Madhibaan, A Study on minorities in Somalia Undated <http://www.madhibaan.org/in-depth/in-depth-a-study.htm>

⁹⁰ COI Service Somalia Country Report January 2012 (para 19.11)

www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

⁹¹ Minority Rights Group International, State of the World's Minorities and Indigenous Peoples 2012, Somalia p.69 <http://www.minorityrights.org/download.php?id=1112>

mechanisms have been weakened.”⁹² UNHCR Somalia also stated that when IDPs comprise a minority in a particular area they cannot expect clan protection, unless it is explicitly offered to them by the majority clan following an elaborate negotiation process, which is a rare occurrence.⁹³

- 3.8.7** Al-Shabaab’s strict law enforcement does not necessarily afford protection to minority groups, as they may also be the subject of arbitrary, summary and cruel punishments by Al-Shabaab for minor transgressions of imposed social norms. UNHCR Somalia emphasized that people living and travelling in areas controlled by Al-Shabaab mostly accept the rules and punishments by Al-Shabaab out of fear and adaptation, and not out of sympathy or respect for the organisation⁹⁴. In August 2012, the Independent Expert on the situation of human rights in Somalia, noted numerous reports of civilians being accused of collaborating with the Transitional Federal Government and assassinated by Al-Shabaab. In June 2012, Al-Shabaab reportedly beheaded ten people suspected of spying for their enemies in the Galguduud region.⁹⁵
- 3.8.8** The Jamestown Foundation reports that “Clan identity and Islam are central pillars of Somali society, with clan dynamics and inter-clan rivalries magnified by decades of state collapse. Al-Shabaab - the dominant Islamist militia controlling much of southern and central Somalia - claims to “transcend clan politics,” yet reality on the ground belies this claim, revealing that al-Shabaab seeks to manipulate local clan alliances and remains deeply influenced by clan politics”.⁹⁶ There are also reports that al-Shabaab has continued to forcibly recruit minorities to fight.⁹⁷ UNDP Somalia reported that “in Al-Shabaab controlled areas the strength of the traditional conflict resolution mechanisms depends on if and how Al-Shabaab interferes in traditional clan conflict resolution mechanisms. It could be very difficult for councils of elders to interfere in for example cases of forced recruitment to Al-Shabaab. The families involved would simply not have any other choice than to give up their son to Al-Shabaab”.⁹⁸ UNHCR considers the Bajuni to be at risk of persecution on the

⁹² Danish Immigration Service, Security and human rights issues in South-Central Somalia, including Mogadishu; Report from Danish Immigration Service’s fact finding mission to Nairobi, Kenya and Mogadishu, Somalia; 30 January to 19 February 2012, April 2012, 5.1 Clan protection
http://www.nyidanmark.dk/NR/ronlyres/90821397-6911-4CEF-A8D0-6B8647021EF2/0/Security_human_rights_issues_South_CentralSomalia_including_Mogadishu.pdf

⁹³ Danish Immigration Service, Security and human rights issues in South-Central Somalia, including Mogadishu; Report from Danish Immigration Service’s fact finding mission to Nairobi, Kenya and Mogadishu, Somalia; 30 January to 19 February 2012, April 2012, 5.1 Clan protection
http://www.nyidanmark.dk/NR/ronlyres/90821397-6911-4CEF-A8D0-6B8647021EF2/0/Security_human_rights_issues_South_CentralSomalia_including_Mogadishu.pdf

⁹⁴ Danish Immigration Service, Security and human rights issues in South-Central Somalia, including Mogadishu; Report from Danish Immigration Service’s fact finding mission to Nairobi, Kenya and Mogadishu, Somalia; 30 January to 19 February 2012, April 2012, 3.1 Human rights issues in Al-Shabaab controlled areas
http://www.nyidanmark.dk/NR/ronlyres/90821397-6911-4CEF-A8D0-6B8647021EF2/0/Security_human_rights_issues_South_CentralSomalia_including_Mogadishu.pdf

⁹⁵ United Nations, Report of the Independent Expert on the situation of human rights in Somalia, Shamsul Bari, 22 August 2012, IV. Developments in the field of human rights A. Right to life, paragraphs 55 and 56
http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A.HRC.21.61_en.pdf

⁹⁶ The JamesTown Foundation, Clan and Conflict in Somalia: Al-Shabaab and the Myth of “Transcending Clan Politics”, 4 November 2011
[http://www.jamestown.org/single/?no_cache=1&tx_ttnews\[tt_news\]=38628](http://www.jamestown.org/single/?no_cache=1&tx_ttnews[tt_news]=38628)

⁹⁷ Minority Rights Group International, State of the World’s Minorities and Indigenous Peoples 2012, *Somalia* p.69
<http://www.minorityrights.org/download.php?id=1112>

⁹⁸ Danish Immigration Service, Security and human rights issues in South-Central Somalia, including Mogadishu; Report from Danish Immigration Service’s fact finding mission to Nairobi, Kenya and Mogadishu, Somalia; 30 January to 19 February 2012, April 2012, 5.1 Clan protection
http://www.nyidanmark.dk/NR/ronlyres/90821397-6911-4CEF-A8D0-6B8647021EF2/0/Security_human_rights_issues_South_CentralSomalia_including_Mogadishu.pdf

ground of their ethnicity/race as they lack the military capabilities to defend themselves and do generally not benefit from the protection of war-lords and militias of the large clans.⁹⁹

See also: [Actors of protection](#) (section 2.3 above)

[Internal relocation](#) (section 2.4 above)

[Caselaw](#) (section 2.5 above)

3.8.9 Conclusion. The Bajuni do not only originate from Somalia but also other countries along the Indian Ocean coast, notably Kenya.¹⁰⁰ Case owners should therefore pay particular attention to establish both the claimant's nationality as well as ethnicity.

3.8.10 Members of minority groups may be able in some circumstances to secure protection from major or sub related clans in some areas. However the Bajuni have historically been vulnerable to discrimination and social exclusion and In the case of [AJH](#) (see section 2.5 above) it was found that "Persons of Bajuni or Bravanese ethnicity are likely to face persecution and cannot reasonably relocate, particularly if they are female." Each case should be given careful and detailed consideration on its individual circumstances. For those Bajuni claimants who have demonstrated a reasonable likelihood that they have encountered or will encounter on return ill treatment amounting to persecution a grant of asylum will be appropriate.

3.9 Benadiri (Rer Hamar) or Bravanese

3.9.1 Some claimants will make an asylum and/or human rights claim based on mistreatment at the hands of dominant clan and sub-clan militias or other clan-based controlling groups in southern/central Somalia on account of their underclass status as member of one of the Benadiri (Rer Hamar) or Bravanese minority groups.

3.9.2 Treatment. More than 85 percent of the population shared a common ethnic heritage, religion, and nomad-influenced culture. In most areas members of groups other than the predominant clan were excluded from effective participation in governing institutions and were subject to discrimination in employment, judicial proceedings, and access to public services. Minority groups, often lacking armed militias, continued to be disproportionately subject to killings, torture, rape, kidnapping for ransom, and looting of land and property with impunity by faction militias and majority clan members. Many minority communities continued to live in deep poverty and suffer from numerous forms of discrimination and exclusion.¹⁰¹ Benadiri and other minority groups are diminishing in size, as thousands move to camps for internally displaced people's (IDPs) camps in Somaliland and Puntland and refugee camps in Kenya, where they face renewed discrimination.¹⁰²

⁹⁹ United Nations High Commissioner for Refugees (UNHCR), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Somalia, 05/05/2010, B. Main Groups at Risk on the on the Basis of Article 1(a) of the 1951 Convention and/or Article I(1) of the OAU Convention, d) Members of Minority Clans
http://reliefweb.int/sites/reliefweb.int/files/resources/map_1253.pdf

¹⁰⁰ Landinfo Topical Note 'Somalia: The Bajuni Islands 16 February 2010 <http://www.landinfo.no/id/168.0>

¹⁰¹ US State Department, Country Report on Human Rights Practices for 2010: Somalia
www.state.gov/g/drl/rls/hrrpt/2010/af/154369.htm

¹⁰² Minority Rights Group, Annual report on current situation of minorities, 06/07/2011
www.minorityrights.org/download.php?id=1018

- 3.9.3** The Benadiri is an umbrella term for a number of minority groups from the coastal area roughly between Mogadishu and Kismayo who share an urban culture and are of mixed origin. . A 2000 Joint British, Danish and Dutch Fact Finding Mission noted that they are also known as Reer Hamar or Reer Brava¹⁰³ and there are many sub-groups including the Ashraf.¹⁰⁴ Before the war, they lived in the Hamar Weyne, Shingani and Bondere districts of Mogadishu but now live in all districts. Benadiri intermarry but 'light-skinned' Benadiri do not marry 'black-skinned' Benadiri.¹⁰⁵ They are an urban and educated people who work almost exclusively in commercial occupations. Some are medical doctors, businessmen, bankers, engineers or economists.¹⁰⁶ A 2009 Jane's Information Group Risk Assessment report noted that they were among the wealthiest which caused resentment¹⁰⁷ and they suffered particularly badly during the war as they were targeted by looters who considered them rich. According to the Fact Finding Mission report many Benadiri women were raped or forced into marriage.¹⁰⁸
- 3.9.4** A December 2009 ACCORD report states that the Rer Hamar are 'not without power' and manage to play a part in the political game with the major clans. They are no longer subject to the kind of targeted violence committed with impunity by the major warring clans that was the case during the early civil war years when they were targeted partly due to their influence and positions in the past Somali government and because they lost any protection with the collapse of rule of law in 1990. This does not mean that they are no longer subject to discrimination but rather that there are now mitigating factors to their benefit. For example, they now hold political positions within the transitional government and a number of key positions with the regional administration of Benadir and local government of Mogadishu.¹⁰⁹
- 3.9.5** ACCORD further noted that some have established relations with 'noble' clans such as the Hawiye Abgal and Habr Gedir through marriage. The Benadiri in Merka have learned to compromise and negotiate with the stronger clans through which they have received a level of protection. The Rer Hamar do live in Hamarweyne and Shangani, where they do own property. But, they may not find it easy to move elsewhere in Somalia, buy property or achieve clan protection there.¹¹⁰ Rer Hamar business people in Mogadishu may be employing armed protection as do all other Somali business people.¹¹¹
- 3.9.6** The Asharaf are frequently categorised as a minority who most often live integrated with the people they have settled with, the Digil-Mirifle or Benadiri, and are usually protected by the group they live with. They are not targeted as a minority as such but may suffer the same problems as their 'host' clans – thus Benadiri Asharaf were targeted with the Benadiri people during the early civil war (1990-1992). At present the Digil-Mirifle/Asharaf may be targeted by Al-Shabaab partly because Al-Shabaab does not recognise their religious status and partly because they oppose the Shariff

¹⁰³ COI Service Somalia Country Report 17 January 2012 (para 19.61)

www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

¹⁰⁴ COI Service Somalia Country Report 17 January 2012 (para 19.64)

www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

¹⁰⁵ COI Service Somalia Country Report 17 January 2012 (para 19.65)

www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

¹⁰⁶ COI Service Somalia Country Report 17 January 2012 (para 19.66)

www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

¹⁰⁷ COI Service Somalia Country Report, 17 January 2012 (para 19.67)

www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

¹⁰⁹ ACCORD 'Clans in Somalia' December 2009 http://www.unhcr.no/Pdf/protect/Somalia_nov_2005.pdf

¹¹⁰ ACCORD 'Clans in Somalia' December 2009 http://www.unhcr.no/Pdf/protect/Somalia_nov_2005.pdf

¹¹¹ ACCORD 'Clans in Somalia' December 2009 http://www.unhcr.no/Pdf/protect/Somalia_nov_2005.pdf

Hassan who was the driving force in the 2008 Djibouti agreement with President Sheikh Shariff.¹¹²

- 3.9.7** According to a 2009 Landinfo report, “Weak clans or groups have traditionally been able to seek protection from and affiliation with the dominant clans in a specific area. Although clans are still important, affiliation to a dominant clan does not necessarily provide protection. A clan’s ability to provide protection is contingent on the clan’s military strength. In the current situation, in which Al-Shabaab and other groups control large parts of southern Somalia, protection from one’s own clan in, for example, an Al-Shabaab controlled area is not realistic. Al-Shabaab has the support of various clans and minority groups in the areas it controls. Numerous dominant clans in many districts are therefore currently subordinate to Al-Shabaab and must, among other things, abide by Al-Shabaab’s enforcement of Sharia law.”¹¹³
- 3.9.8** Minority Rights Group research has shown that “minority communities in Somalia fall outside the traditional clan structure of the majority and also therefore the protection afforded by such systems. Because of social segregation, economic deprivation and political manipulation, minorities are more vulnerable to rape, attack, abduction, property seizure and the consequences of drought”.¹¹⁴ The same source reports that “Minority groups including the Bantu, Benadiri and Christian communities are attacked for practising their religious beliefs”.¹¹⁵
- 3.9.9** Furthermore, UNHCR Somalia explained that “today there is no guarantee of clan protection in Somalia, in particular members of minority clans and ethnic minority groups are vulnerable. The authority of the clan elders have been undermined in many locations by warlords, Al-Shabaab and criminals, and as a consequence the clan conflict resolution mechanisms have been weakened”.¹¹⁶ UNHCR Somalia also stated that when IDPs comprise a minority in a particular area they cannot expect clan protection, unless it is explicitly offered to them by the majority clan following an elaborate negotiation process, which is a rare occurrence.¹¹⁷
- 3.9.10** Al-Shabaab’s strict law enforcement does not afford protection to minority groups, as they may also be the subject of arbitrary, summary and cruel punishments by Al-Shabaab for minor transgressions of imposed social norms. UNHCR Somalia emphasized that people living and travelling in areas controlled by Al-Shabaab mostly accept the rules and punishments by Al-Shabaab out of fear and adaptation,

¹¹² ACCORD ‘Clans in Somalia’ December 2009 http://www.unhcr.no/Pdf/protect/Somalia_nov_2005.pdf

¹¹³ COI Service Somalia Country Report January 2012 (para 19.11)

www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

¹¹⁴ Minority Rights Group International, State of the World’s Minorities and Indigenous Peoples 2012, Somalia p.69 <http://www.minorityrights.org/download.php?id=1112>

¹¹⁵ Minority Rights Group International, State of the World’s Minorities and Indigenous Peoples 2012, Somalia p.69 <http://www.minorityrights.org/download.php?id=1112>

¹¹⁶ Danish Immigration Service, Security and human rights issues in South-Central Somalia, including Mogadishu; Report from Danish Immigration Service’s fact finding mission to Nairobi, Kenya and Mogadishu, Somalia; 30 January to 19 February 2012, April 2012, 5.1 *Clan protection*

http://www.nyidanmark.dk/NR/rdonlyres/90821397-6911-4CEF-A8D0-6B8647021EF2/0/Security_human_rights_issues_South_CentralSomalia_including_Mogadishu.pdf

¹¹⁷ Danish Immigration Service, Security and human rights issues in South-Central Somalia, including Mogadishu; Report from Danish Immigration Service’s fact finding mission to Nairobi, Kenya and Mogadishu, Somalia; 30 January to 19 February 2012, April 2012, 5.1 *Clan protection*

http://www.nyidanmark.dk/NR/rdonlyres/90821397-6911-4CEF-A8D0-6B8647021EF2/0/Security_human_rights_issues_South_CentralSomalia_including_Mogadishu.pdf

and not out of sympathy or respect for the organisation¹¹⁸. According to the August 2012 Report of the Independent Expert on the situation of human rights in Somalia, reports of civilians being assassinated by Al-Shabaab accused of collaborating with the Transitional Federal Government abound. In June 2012 Al-Shabaab reportedly beheaded ten people suspected of spying for their enemies in the Galguduud region.¹¹⁹

3.9.11 The Jamestown Foundation reports that “Clan identity and Islam are central pillars of Somali society, with clan dynamics and inter-clan rivalries magnified by decades of state collapse. Al-Shabaab - the dominant Islamist militia controlling much of southern and central Somalia - claims to “transcend clan politics,” yet reality on the ground belies this claim, revealing that al-Shabaab seeks to manipulate local clan alliances and remains deeply influenced by clan politics”.¹²⁰ There are also reports that al-Shabaab has continued to forcibly recruit minorities to fight.¹²¹ Laurel Patterson, UNDP Somalia reported that “in Al-Shabaab controlled areas the strength of the traditional conflict resolution mechanisms depends on if and how Al-Shabaab interferes in traditional clan conflict resolution mechanisms. It could be very difficult for councils of elders to interfere in for example cases of forced recruitment to Al-Shabaab. The families involved would simply not have any other choice than to give up their son to Al-Shabaab”.¹²² UNHCR considers the Ashraf and Bravanese to be at risk of persecution on the ground of their ethnicity/race as they lack the military capabilities to defend themselves and do generally not benefit from the protection of war-lords and militias of the large clans¹²³.

See also: [Actors of protection](#) (section 2.3 above)

[Internal relocation](#) (section 2.4 above)

[Caselaw](#) (section 2.5 above)

3.9.12 Conclusion. In [NM and Others](#) the Tribunal found that male and female members of minority clans from the south will, in general, be at risk of breaches of their Article 3 rights, and will be refugees, in the absence of evidence that they have a clan or personal patron and the means to access that area of safety without a real risk.

¹¹⁸ Danish Immigration Service, Security and human rights issues in South-Central Somalia, including Mogadishu; Report from Danish Immigration Service’s fact finding mission to Nairobi, Kenya and Mogadishu, Somalia; 30 January to 19 February 2012, April 2012, 3.1 Human rights issues in Al-Shabaab controlled areas http://www.nyidanmark.dk/NR/ronlyres/90821397-6911-4CEF-A8D0-6B8647021EF2/0/Security_human_rights_issues_South_CentralSomalia_including_Mogadishu.pdf

¹¹⁹ United Nations, Report of the Independent Expert on the situation of human rights in Somalia, Shamsul Bari, 22 August 2012, IV. Developments in the field of human rights A. Right to life, paragraphs 55 and 56 http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A.HRC.21.61_en.pdf

¹²⁰ The JamesTown Foundation, Clan and Conflict in Somalia: Al-Shabaab and the Myth of “Transcending Clan Politics”, 4 November 2011 [http://www.jamestown.org/single/?no_cache=1&tx_ttnews\[tt_news\]=38628](http://www.jamestown.org/single/?no_cache=1&tx_ttnews[tt_news]=38628)

¹²¹ Minority Rights Group International, State of the World’s Minorities and Indigenous Peoples 2012, Somalia p.69 <http://www.minorityrights.org/download.php?id=1112>

¹²² Danish Immigration Service, Security and human rights issues in South-Central Somalia, including Mogadishu; Report from Danish Immigration Service’s fact finding mission to Nairobi, Kenya and Mogadishu, Somalia; 30 January to 19 February 2012, April 2012, 5.1 Clan protection http://www.nyidanmark.dk/NR/ronlyres/90821397-6911-4CEF-A8D0-6B8647021EF2/0/Security_human_rights_issues_South_CentralSomalia_including_Mogadishu.pdf

¹²³ United Nations High Commissioner for Refugees (UNHCR), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Somalia, 05/05/2010, B. Main Groups at Risk on the on the Basis of Article 1(a) of the 1951 Convention and/or Article I(1) of the OAU Convention, d) Members of Minority Clans <http://www.unhcr.org/refworld/docid/4be3b9142.html>

Some members some members of minority groups including the Benadiri are able to secure protection from major or sub related clans in some areas. The Benadiri are no longer subject to the targeted violence they suffered previously. Although some discrimination may remain, they nevertheless play a role in politics, have established relationships with dominant clans, have inter-married and established businesses. Internal relocation is unlikely to be possible for members of the Benadiri. However, that is likely to vary from place to place and may also depend on what the individual can contribute.

- 3.9.13** Case owners should consider each case carefully on its individual merits. Some Benadiri will qualify for refugee status based on their personal circumstances and experiences.

3.10 Midgan, Tumul, Yibir or Galgala

- 3.10.1** Some applicants will make an asylum and/or human rights claim based on mistreatment at the hands of major clan and sub-clan militias or other clan-based controlling groups on account of their lowly status as members of one of the occupational castes: the Midgan, Tumul, Yibir or Galgala.

3.10.2 Treatment. The Gaboye, Tumul, Yibir and Galgala are ethnically associated with the Samale, which forms a dominant clan in Somalia. However, cultural stigma and traditions have excluded them as outcastes from the Samale clan. They engage in the activities of blacksmithing and shoemaking, as well as being hunters/gatherers. They live mainly in central and northern Somalia¹²⁴ although they are also found scattered in southern Somalia.¹²⁵ Discrimination and abuses against minorities and vulnerable groups continued unabated and Somali minorities such as the Benadir/Rer Hamar, Midgan (Gadoye) and Tomal continued to face abuses and human rights violations.¹²⁶ UNHCR found that members of certain minority clans, such as the Midgan, Tumul and Yibir may be able to call upon the protection of majority clans, if a historical relationship exists. However, given the breakdown in clan protection mechanisms due to the ongoing conflict, as a result of which members of majority clans may no longer be able to rely on such protection, the situation of members of minority clans living together with majority clans will be precarious too.¹²⁷

- 3.10.3** Most of the minority groups have assimilated into other Somalia clans with whom they live. For example, the Galgala have assimilated into the Abgal in Jowhar and Mogadishu. However, they identify themselves as Nuh Mohamud, a sub clan of the Majerten clan. Some Gaboye, Tumul and Yibir assimilated into the Isak in Somaliland, while others yet have assimilated into the Darod in Puntland and central regions. There are also other Gaboye, Tumul and Yibir who assimilated with Hawadle, Murasade and Marehan clans in Galgadud region.¹²⁸

¹²⁴ Madhibaan; A study on minorities in Somalia Undated <http://www.madhibaan.org/in-depth/in-depth-a-study.htm>

¹²⁵ ACCORD 'Clans in Somalia' December 2009, 4.1 Gabooye/Midgan <http://www.unhcr.org/refworld/country,,ACCORD,,SOM,,4b29f5e82,0.html>

¹²⁶ UN Human Rights Council, Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1, 21/02/2011 http://www.ecoi.net/file_upload/1930_1314297449_g1110950.pdf

¹²⁷ United Nations High Commissioner for Refugees (UNHCR), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Somalia, 05/05/2010 B Main Groups at Risk on the Basis of Article 1(a) of the 1951 Convention and/or Article 1(1) of the OAU Convention d) Members of Minority Clans <http://www.unhcr.org/refworld/docid/4be3b9142.html>

¹²⁸ Madhibaan; A study on minorities in Somalia (undated), Gaboye, Tumul, Yibir and Galagala <http://www.madhibaan.org/in-depth/in-depth-a-study.htm>

3.10.4 With the exception of the Bantu, Rerhamar, Bravanese, Bajuni and Eyle who have distinct "non-Somali" physical appearance, all other minorities have physical appearances similar to that of the dominant clans, as well as having ethnic and cultural similarities. What distinguish the assimilated minorities are their distinct economic livelihoods.¹²⁹

3.10.5 The Yibr live along the coast in Mogadishu. They are often claimed to be descendants of early Hebrews who settled in the Horn of Africa. With the presence of radical Islamic groups like al-Shabaab with strong anti-Jewish attitudes, the Yibr have been increasingly suspected by Somalis with a radical Islamic orientation. Therefore members of the Yibr may be targeted in south central Somalia despite the fact that they are Muslims today.¹³⁰

See also: [Actors of protection](#) (section 2.3 above)

[Internal relocation](#) (section 2.4 above)

[Caselaw](#) (section 2.5 above)

3.10.6 Conclusion. Members of the Midgan, Tumul Yibir or Galgala groups traditionally settle in areas where they can obtain a degree of protection from the dominant clan and engage in economic activity. Most have assimilated into major clan or sub-clan groups. While they may from time to time encounter discrimination and abuse from other clan groups due to their lowly social status, they may be able to avail themselves of the protection of their patron clan, if a historical relationship exists. However in [HY](#) and [YS and HA](#) the Tribunal found that a Midgan or Yibir who has lost the protection of a local patron (or local patrons) and who had not found alternative protection in a city would be vulnerable to persecution and would not be able to relocate safely within Somalia.

3.10.7 The grant of asylum in such cases is therefore likely to be appropriate unless the claimant is able to access the protection of a majority clan. In [MA](#) the Tribunal found that there are no designated areas in which the Galgala may live; and they can no longer look to a major clan as a patron. They may therefore have less expectation of protection than others. These two differences mean that members of the Galgala in general would, on return, face a real risk of persecution and treatment contrary to Article 3.

3.11 Women

3.11.1 Some women applicants may make a claim for asylum because they fear gender-based persecution (where the type of harm is related to their gender) or because the reason for persecution is their gender.

3.11.2 According to the 2011 USSD report "women did not have the same rights as men and were systematically subordinated. Polygamy was permitted. By law girls and women could inherit only half the amount of property to which their brothers were entitled. Similarly, according to Sharia and the local tradition of blood compensation, anyone found guilty of the death of a woman paid to the victim's family only half the

¹²⁹ Madhibaan; A study on minorities in Somalia(undated), Gaboye, Tumul, Yibir and Galagala
<http://www.madhibaan.org/in-depth/in-depth-a-study.htm>

¹³⁰ ACCORD 'Clans in Somalia' December 20094.1 Gabooye/Midgan
<http://www.unhcr.org/refworld/country,,ACCORD,,SOM,,4b29f5e82,0.html>

amount required for a male.¹³¹ Women formed a negligible part of those employed in both the formal public and private sectors because of girls' low education level. However, women were not discriminated against in owning or managing businesses, except in al-Shabaab-controlled areas. Al-Shabaab claimed women's participation in economic activities was anti-Islamic. There were no government programs in any region to combat economic discrimination against women."¹³²

- 3.11.3** Women in Somalia face considerable discrimination. Although outlawed, female genital mutilation is still practiced in some form on nearly all Somali girls. Sexual violence is rampant due to lawlessness and impunity for perpetrators, and rape victims are often stigmatized. While the TFC stipulates that women should make up at least 12 percent of parliamentarians, the current TFA fails to meet this quota; there are just 37 women among the 550 members of parliament.¹³³
- 3.11.4** Human Rights Watch reported that while all Somalis living under local Al-Shabaab administrations cope with onerous and repressive edicts, women bear the brunt of the group's repression and abuse. Al-Shabaab's rules have reinforced traditional and cultural prejudices while introducing an array of new ones.¹³⁴ Al-Shabaab remained in control of most of southern Somalia where every area of people's lives is regulated by an extreme form of Islamic law. Women and girls in particular have suffered from these harsh laws. Freedoms previously enjoyed by women in Somali culture have been severely curtailed to prevent them from mixing with men. This has also limited women's ability to engage in small-scale commercial enterprises.¹³⁵
- 3.11.5** Women refugee leaders complained of high illiteracy among women and girls which made it difficult to compete equally with men for jobs. High divorce rates and family breakdown among refugees led to loss of socio-economic support from husbands and fathers. Widows and orphans faced problems carrying responsibilities as heads of families, often leading to sexual and economic exploitation and early marriages. Marital rape and sexual violence was described as rampant.¹³⁶ Laws prohibiting rape exist in Puntland, Somaliland, and TFG-controlled areas; however, they were almost never enforced. There are no laws against spousal rape. The UNHCR and UNICEF documented patterns of rape perpetrated with impunity, particularly of women displaced from their homes due to civil conflict or who were members of minority clans. TFG forces and militia members engaged in rape. Traditional approaches to dealing with rape tended to ignore the victim's situation and instead communalized the resolution or compensation for rape through a negotiation between members of the perpetrator's and the victim's clans. The TFG, Puntland, and Somaliland prosecuted rape cases during the year. However, for the most part, formal structures were rarely used to address rape, particularly in TFG-controlled

¹³¹ COI Service Somalia Country Report 17 January 2012 (para 21.08)

www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

¹³² COI Service Somalia Country Report 17 January 2012 (para 21.26)

www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

¹³³ Freedom House, Freedom in the World 2012; Somalia <http://www.freedomhouse.org/report/freedom-world/2012/somalia>

¹³⁴ Human Rights Watch "Harsh war, harsh peace" 19 April 2010, Discrimination and Abuse against Women http://www.hrw.org/sites/default/files/reports/somalia0410webwcover_0.pdf

¹³⁵ Human Rights Watch, World report 2012; Somalia, Abuses in Opposition Controlled Areas <http://www.hrw.org/world-report-2012/world-report-2012-somalia>

¹³⁶ COI Service Somalia Country Report, 17 January 2012 (para 21.14) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

areas of the south and central regions. Victims suffered from subsequent discrimination based on the attribution of “impurity.”¹³⁷

3.11.6 The USSD reported that women and girls in IDP camps were especially vulnerable to sexual violence. In Somaliland gang rape continued to be a problem in urban areas, primarily perpetrated by youth gangs and male students. Many of these cases occurred in poorer neighbourhoods and among immigrants, refugee returnees, and displaced rural populations living in urban areas. In December the director of the Sexual Assault Referral Centre reported that the incidents of rape of women under the age of 20 were on the increase in Hargeisa. The centre, which had its offices inside the compound of Hargeisa general hospital, reported recording 10 rape cases on average per month. Many cases were not reported. Domestic violence against women remained a serious problem. There were no laws specifically addressing domestic violence; however, both sharia and customary law address the resolution of family disputes. Sexual violence in the home was reportedly a serious problem, linked to general gender discrimination. Women suffered disproportionately as a result of conflict.¹³⁸

3.11.7 The 2010 US State Department report notes that “Many Somali women have assumed a greater burden by becoming the sole bread winners for their families. Women form a negligible part of those employed in both the formal public and private sectors because of disparities in education. Women experience economic discrimination in areas under Al-Shabaab control because of Al-Shabaab’s extremist position which regards women’s participation in economic activities as anti-Islamic. Despite difficult economic conditions generally in Somalia, women were not discriminated against in terms of owning or managing businesses.”¹³⁹ Human Rights Watch reported in 2010 that “Somali women have traditionally engaged in a wide array of small-scale businesses such as selling tea, qat and fruit in kiosks, small shops and markets. But Al-Shabaab has ordered women to close their shops. In a country with a vast number of war widows and female-headed households, scarce employment options have left many families without crucial sources of income.”¹⁴⁰ The ongoing conflict has increased the risk of sexual violence for women and children. There are reports of Al-Shabaab recruiting girls for forced marriage to fighters, and allegations of rape by militias allied to the Government in southern central Somalia.”¹⁴¹

3.11.8 However women are still important breadwinners in families in Somalia.¹⁴² In 2009, Galgadud, Mogadishu and Mudug, 652 families (3,912 people) headed by women, who had lost their breadwinners as a result of armed conflict began earning an income again. They set up small businesses with basic items provided by the ICRC,

¹³⁷ US State Department, Country Reports on Human Rights Practices 2011: Somalia, 24 May 2012, Women, Rape and Domestic Violence

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186241>

¹³⁸ US State Department, Country Reports on Human Rights Practices 2011: Somalia, 24 May 2012, Women, Rape and Domestic Violence

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186241>

¹³⁹ COI Service Somalia Country Report, 17 January 2012 (para 21.26)

www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

¹⁴⁰ COI Service Somalia Country Report, 17 January 2012 (para 21.27)

www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

¹⁴¹ United Nations, Report of the Secretary-General on Somalia, 30/08/2011, E. Human rights and protection of civilians, paragraph 32 [http://unpos.unmissions.org/Portals/UNPOS/Repository%20UNPOS/S-2011-549%20\(30Aug\).pdf](http://unpos.unmissions.org/Portals/UNPOS/Repository%20UNPOS/S-2011-549%20(30Aug).pdf)

¹⁴² “Somalia: Women eke out a living among the shells”, 10 January 2011

<http://www.irinnews.org/report.aspx?reportid=91588>

such as milling machines or materials to open a tea shop.¹⁴³ Minority women spoke to Minority Rights Group about the social and economic obstacles they face, including the lack of employment, education, political representation, and access to health care, and discriminatory attitudes from major clan members.¹⁴⁴

3.11.9 Human Rights Watch reported in April 2010 that when women travel, they are often required to have a male escort. Male escorts must sit in a different seat if the woman is travelling in the vehicle however as Al-Shabaab bars men and women from sitting together.¹⁴⁵ The 2012 Minority Rights Group report notes that “Harsh restrictions are placed upon women, including their dress code, movement, economic activities and proscriptions on their associations with non-kin men of any kind, which places widows and single women at a severe disadvantage”.¹⁴⁶ Regarding protection of women and freedom of movement in South and Central Somalia, UNHCR Somalia explains that women and particularly IDP women are at particular risk of sexual violence when they move around. Traditional clan protection mechanisms are weak and cannot protect IDP women when they are outside the area of their own clan.¹⁴⁷

3.11.10 In August 2011, the United Nations official leading the fight against sexual violence in times of conflict voiced concern over reports that women and girls fleeing famine in Somalia were being raped or abducted and forced into marriage by bandits and other armed groups as they tried to reach refugee camps in Kenya¹⁴⁸ The Report of the Special Rapporteur on violence against women, its causes and consequences noted in May 2012 that Somali women and girl refugees fleeing to neighbouring countries are particularly at risk of being targeted for sexual violence, as during their flight to the border they must pass through areas controlled by insurgent militias.¹⁴⁹ The same source noted “alarming reports of sexual violence, especially against women in IDP camps in some areas of Somalia”.¹⁵⁰ The August 2012 Report of the UN Independent Expert on the situation of human rights in Somalia noted that “Victims of sexual and gender-based violence in camps for internally displaced persons identified “Somali armed men in khaki uniforms” as the perpetrators. Few cases were reported to the police owing to the perceived futility of reporting, stigma or fear of retaliation. Few victims sought medical attention

¹⁴³ ICRC annual report 2010, P66 <http://www.icrc.org/eng/resources/annual-report/index.jsp>

¹⁴⁴ Minority Rights Group International “No redress: Somalia’s forgotten minorities”, 23 November 2010, p22 <http://www.minorityrights.org/?lid=10370>

¹⁴⁵ Human Rights Watch “Harsh war, harsh peace”, Discrimination and Abuse against Women http://www.hrw.org/sites/default/files/reports/somalia0410webwcover_0.pdf

¹⁴⁶ Minority Rights Group International, State of the World’s Minorities and Indigenous Peoples 2012, Somalia p.69 <http://www.minorityrights.org/download.php?id=1112>

¹⁴⁷ Danish Immigration Service, Security and human rights issues in South-Central Somalia, including Mogadishu; Report from Danish Immigration Service’s fact finding mission to Nairobi, Kenya and Mogadishu, Somalia; 30 January to 19 February 2012, April 2012, 4.3 Freedom of movement for women http://www.nyidanmark.dk/NR/rdonlyres/90821397-6911-4CEF-A8D0-6B8647021EF2/0/Security_human_rights_issues_South_CentralSomalia_including_Mogadishu.pdf

¹⁴⁸ UN News Centre, UN official voices concern over reports of rape of Somali women fleeing famine, 11 August 2011 <http://www.un.org/apps/news/story.asp?NewsID=39282&Cr&Cr1>

¹⁴⁹ United Nations, Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, 14 May 2012, C. Sexual violence against refugee and internally displaced women, paragraph 25

http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-16-Add3_en.pdf

¹⁵⁰ United Nations, Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, 14 May 2012, C. Sexual violence against refugee and internally displaced women, paragraph 26

http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-16-Add3_en.pdf

because of the costs involved. Sexual exploitation and abuse by AMISOM was also reported, in spite of their prohibition by the AMISOM Code of Conduct.¹⁵¹ UNOCHA conducted an assessment in the Afgooye corridor in July in which it found “rising cases of sexual and gender-based violence (SGBV) among women and girls with a direct correlation between a lack of livelihoods for young men and enlistment to armed groups”.¹⁵² It also noted that “Women and girls in Mogadishu remain at great risk of sexual violence while collecting firewood”.¹⁵³ Sexual violence in Dadaab refugee camp has also been reported to have increased by 36 per cent between February and May 2012.¹⁵⁴ According to the Independent Expert on the situation of human rights in Somalia “because of the destruction of formerly functioning traditional clan structures, in many places women had no access to any form of protection”.¹⁵⁵

See also: [Actors of protection](#) (section 2.3 above)

[Internal relocation](#) (section 2.4 above)

[Caselaw](#) (section 2.5 above)

3.11.11 Conclusion. Given the generalised discrimination towards women in Somalia and the inability of the State to provide protection in many areas of south central Somalia, some applicants are likely to be able to demonstrate a need for international protection. Factors to be taken into account include the clan, age, health, economic status, family responsibilities and other individual circumstances of the applicant.

3.11.12 In [AMM and others](#) (the Tribunal found that not only do female returnees in particular face threats against the person in IDP camps, but that women travelling by land “without male friends or relatives are in general likely to face a real risk of sexual violence”. A “real risk of serious harm” would also occur for women returned to Mogadishu International Airport and travelling by land to Somaliland.

3.11.13 A woman returning to an area where she has clan or family support and/or other resources such as remittances from abroad or ability to work would clearly be in a different situation to a lone woman with no protectors or resources. There is evidence that women from minority clans are likely to face greater problems but the situation for minority clans is not clear cut. Some are able to enlist the support and protection of other clans, and the risk to the particular individual should be assessed

¹⁵¹ United Nations, Report of the Independent Expert on the situation of human rights in Somalia, Shamsul Bari, 22 August 2012, D. Violence against women, paragraphs 66-68

http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A.HRC.21.61_en.pdf

¹⁵² UNOCHA, Humanitarian Bulletin Somalia; Issue 10; 1 - 31 July 2012, Protection funding short of needs, including addressing child recruitment

<http://reliefweb.int/sites/reliefweb.int/files/resources/Humanitarian%20Bulletin%20%2310%2C%20July%202012.pdf>

¹⁵³ UNOCHA, Humanitarian Bulletin Somalia; Issue 10; 1 - 31 July 2012, Fuel-efficient stoves offer protection and sustainability

<http://reliefweb.int/sites/reliefweb.int/files/resources/Humanitarian%20Bulletin%20%2310%2C%20July%202012.pdf>

¹⁵⁴ Alert Net, Somali refugees risk militia recruitment as aid dries up – agencies, 20 July 2012

<http://www.trust.org/alertnet/news/somali-refugees-risk-militia-recruitment-as-aid-dries-up-agencies>

¹⁵⁵ UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, Addendum : Mission to Somalia, 14 May 2012, III. The status and situation of women, paragraph 10

<http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&docid=500810652&skip=0&coi=SOM&query=fgm&searchin=fulltext&display=10&sort=date>

carefully on a case by case basis. [AMM and others](#) (found that “family and/or clan connections may have an important part to play in determining the reasonableness of a proposed place of relocation” (paragraph 11). A person who has a clan or strong family connection with a particular area in south or central Somalia, not controlled by Al-Shabab, particularly a town, may, in the light of all this, have an internal relocation alternative to that place, but “in the light of the present humanitarian crisis, the cogency of the indicators pointing to such a position would need to be powerful” (paragraph 507).

3.11.14 Case owners should consider whether internal flight may be a relevant option for the individual applicant. Independent travel will be difficult given the specific risks facing women in Somalia, but the evidence does not suggest a complete prohibition on women travelling unaccompanied. Taking into account the general position of women in Somalia, who may not be able to survive economically or not able to depend on clan or family for economic support, internal relocation may be unduly harsh for some women. Case owners should contact Country of Origin Information Service to ascertain the most up-to-date country situation and consider the security or other risk on return on a case by case basis in light of the latest information at the date of decision.

3.11.15 Women who have a well founded fear of persecution as a result of their gender should be treated as being members of a particular social group as they are discriminated against in matters of fundamental human rights and may not be protected by the state. Women applicants who can demonstrate that they have a well founded fear of persecution as a result of their gender and that they have no recourse to state protection or internal relocation should be granted asylum.

3.12 Female Genital Mutilation (FGM)

3.12.1 Some claimants may make asylum and/or human rights claims on the basis that they would be forcibly required by family/ clan members to undergo Female Genital Mutilation (FGM) and/ or that FGM will be forced upon their children if they were to return to Somalia.

3.12.2 Treatment: FGM was widespread throughout the country. As many as 98 percent of women and girls had undergone FGM; the majority were subjected to infibulation, the most severe form of FGM. In Somaliland FGM is illegal, but the law was not enforced. International and local NGOs ran education awareness programs on the dangers of FGM, but there were no reliable statistics to measure the success of these programs. On 13 December 2011, Puntland’s president signed a bill into law that outlawed female circumcision with the exception of “Sunna circumcision (excising of part of the female genitals).¹⁵⁶

3.12.3 It is primarily girls aged between 4 and 11 who undergo the procedure. It was reported that young girls between the ages of 4 and 8 were subjected to “infibulations” to ensure their chastity until they were married. Reports also indicate that some young girls die from the shock and pain of the mutilation, which is normally done without anaesthesia, as well as from infections and massive blood loss.¹⁵⁷

¹⁵⁶ US State Department Human Rights Report 2011: Somalia
<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186241>

¹⁵⁷ UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, Addendum : Mission to Somalia, 14 May 2012 D. Female genital mutilation, paragraph 29 <http://www.unhcr.org/cgi->

- 3.12.4** Although the Somali Penal Code of 1962 covers “hurt”, “grievous hurt” and “very grievous hurt”, FGM nonetheless remains widespread in Somalia. It was reported that for a large number of women, this was an income-generation activity. The TFG has indicated its commitment to ban and eradicate this harmful practice, including by amending the Penal Code to insert specific provisions to prohibit this practice. The Special Rapporteur was also made aware of the need to find alternative sources of income for practitioners of this practice, to ensure the effective implementation of the proposed law. The Special Rapporteur recalls that Islam does not require women to undergo FGM and that several Islamic countries have outlawed all forms of FGM, and she encourages the authorities to follow such a route.¹⁵⁸
- 3.12.5** Although many women understand that the practice is harmful, they still believe that the custom should be preserved. There is massive pressure on mothers (and other female family members) in societies where religion, tradition, ideals of purity, fear of stigmatisation and absence of networks beyond the family or clan, plays a pervasive role. Whereas pressure is itself administered primarily by women, there is no doubt that the overall attitude towards FGM is strongly influenced by the requirements and ideals held by men and wider society towards virginity. Fear of exclusion from marriage and family contributes to the pressure.¹⁵⁹
- 3.12.6** Jesper Mørch, Representative, United Nations Children’s Fund (UNICEF) reported that the avoidance of FGM is dependent on the clan and whether a girl is from the town or the countryside. If a family lives in a major city it may be possible to avoid FGM so long as the parents agree (even if the rest of the family and/ or clan do not support the idea).¹⁶⁰ However, for a majority of the population, circumcision is a prerequisite for marriage. Prospective husbands pay a dowry and demand a circumcised wife. Fathers also play a key role – a daughter's chance to get married is poor unless she is circumcised and thus the father risks not getting a dowry. Families have limited means of preventing or impeding the genital mutilation of their daughters.¹⁶¹
- 3.12.7** Despite the fact that the practice of FGM is entrenched in Somali culture and custom, NGOs have made intensive efforts to educate the population about the dangers of the practice particularly those NGOs working with women’s or health issues. For example, the United Nations Development Fund for Women (UNIFEM) has worked together with local NGOs in Jilib and Mogadishu¹⁶² and the National

[bin/texis/vtx/refworld/rwmain?page=country&docid=500810652&skip=0&coi=SOM&query=fgm&searchin=fulltext&display=10&sort=date](http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&docid=500810652&skip=0&coi=SOM&query=fgm&searchin=fulltext&display=10&sort=date)

¹⁵⁸ UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, Addendum : Mission to Somalia, 14 May 2012 <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&docid=500810652&skip=0&coi=SOM&query=fgm&searchin=fulltext&display=10&sort=date>

¹⁵⁹ Landinfo – Female genital mutilation in Sudan and Somalia December 2008, 3.6 ATTITUDES TOWARDS GENITAL MUTILATION,

<http://www.unhcr.org/refworld/country,,LANDINFO,,SDN,456d621e2,498085871c,0.html>

¹⁶⁰ Report on the Human Rights and Security in Central and Southern Somalia: Joint British-Nordic Fact-Finding Mission to Nairobi 7-21 January 2004, published 17 March 2004, 4.5 Female Genital Mutilation (FGM)

<http://www.unhcr.org/refworld/country,,FACTFINDING,SOM,,405b2d804,0.html>

¹⁶¹ Landinfo Country of Origin Information Centre (Norway), Female genital mutilation in Sudan and Somalia, 15/12/2008, 3.6 ATTITUDES TOWARDS GENITAL MUTILATION and 3.7 PROTECTION AGAINST GENITAL MUTILATION, http://www.landinfo.no/asset/764/1/764_1.pdf

¹⁶² Report on the Human Rights and Security in Central and Southern Somalia: Joint British-Nordic Fact-Finding Mission to Nairobi 7-21 January 2004, published 17 March 2004.

<http://www.unhcr.org/home/RSDCOI/405b2d804.pdf>

Committee Against FGM and Save Somali Women and Children have also taken forward activities in various parts of the country.¹⁶³ However, there are no reliable statistics to measure the success of their programs.

3.12.8 UNIFEM has also indicated that a mother can only protect her daughter from FGM if she has her husband's support and he has some standing in the community to counter any opposition from the rest of the family. If the husband does not support his wife's decision, then her only option is to leave the community with the child, thereby foregoing her access to support and protection. In 2011 UNICEF reported about a programme to educate women in Somaliland about alternatives to FGM. The NGO, Tostan, reported that 28 communities had declared collective abandonment of FGM.¹⁶⁴

3.12.9 In August 2012 IRIN reported that activists had welcomed a ban on female genital mutilation/cutting (FGM/C) in the new constitution of Somalia but warn that translating the law into action will require more than just a legal declaration. "The fact that the new provisional constitution outlaws the circumcision of girls is a welcome development, but this will require education, awareness-raising and strong legal provisions. Without this, the provision will be little more than ink on a piece of paper," Fatima Jibrell, a women's advocate, told IRIN. The provisional constitution states, "Circumcision of girls is a cruel and degrading customary practice, and is tantamount to torture. The circumcision of girls is prohibited."¹⁶⁵

See also: [Actors of protection](#) (section 2.3 above)

[Internal relocation](#) (section 2.4 above)

[Caselaw](#) (section 2.5 above)

3.12.10 Conclusion: Though illegal in Somaliland and Puntland, the law on FGM in these areas is not enforced. The procedure is widely practised in the rest of Somalia where it is legal. FGM is generally considered a cultural issue in which the authorities do not interfere and therefore individuals are unlikely to be able to access sufficiency of protection.

3.12.11 In the country guidance case of [AMM and others](#), the Upper Tribunal concluded that the incidence of FGM in Somalia is universally agreed to be over 90%. The predominant type of FGM is the "pharaonic", categorised by the World Health Organisation as Type III. The societal requirement for any girl or woman to undergo FGM is strong. In general, an uncircumcised, unmarried Somali woman, up to the age of 39, will be at real risk of suffering FGM. The risk will be greatest in cases where both parents are in favour of FGM. Should both parents oppose FGM, the question of whether the risk will reach the requisite level will need to be determined by reference to the extent to which the parents are likely to be able to withstand the strong societal pressures. Unless the parents are from a socio-economic background that is likely to distance them from mainstream social attitudes, or there is some other particular feature of their case, the fact of parental opposition may

¹⁶³ Landinfo – Female genital mutilation in Sudan and Somalia December 2008
<http://www.unhcr.org/refworld/country,,LANDINFO,,SDN,456d621e2,498085871c,0.html>

¹⁶⁴ UNICEF, Intensive efforts reap progress towards ending female genital mutilation in Somalia, 2011
http://www.unicef.org/somalia/reallives_7723.html

¹⁶⁵ IRIN, Somalia: Activists laud ban on FGM/C, say implementation will require more, 13 August 2012
<http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&docid=502c65c06&skip=0&coi=SOM&query=si=fgm&searchin=fulltext&display=10&sort=date>

well as a general matter be incapable of eliminating the real risk to the daughter that others (particularly relatives) will at some point inflict FGM on her.

3.12.12 If it is considered that an individual could successfully internally relocate individually and/or with their daughters in order to avoid a threat of FGM, a grant of asylum or Humanitarian protection will not be appropriate. Women who have not undergone the procedure and who can demonstrate that they are at risk of such mistreatment and could not escape the risk by internal relocation should be granted asylum on the basis of their membership of a particular social group.

3.13 Prison conditions

3.13.1 Applicants may claim that they cannot return to Somalia due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in Somalia are so poor as to amount to torture or inhuman treatment or punishment.

3.13.2 The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of Humanitarian Protection. If imprisonment would be for a Refugee Convention reason or in cases where for a Convention reason a prison sentence is extended above the norm, the asylum claim should be considered first before going on to consider whether prison conditions breach Article 3 if the asylum claim is refused.

3.13.3 Consideration. The USSD reported that prison and detention centre conditions remained harsh and life threatening in all regions. Overcrowding; poor sanitation; lack of health care; and inadequate food, water, ventilation, and lighting were some of the harsh conditions that persisted in prisons and detention centres throughout the country. For example, in July 2011 a Puntland prison held some 500 inmates in a facility with a capacity of 200. Tuberculosis and pneumonia were widespread. Detainees' families and clans were generally expected to pay the costs associated with detention. In many areas prisoners depended on family members and relief agencies for food. Information on the prevalence of death in prison and pretrial detention centres was not available. The Transitional Federal Government (TFG) prison officials reported that there were an estimated 400 prisoners in Mogadishu central prison. In mid-November 2011 the Justice Ministry director general told media that there were approximately 2,000 prisoners and detainees in Somaliland. Data on the number of prisoners and detainees in Puntland was unavailable.¹⁶⁶

3.13.4 The August 2012 Report of the Independent Expert on the situation of human rights in Somalia noted he visited several detention centres in Puntland and Somaliland where he found, "in a significant number of cases, detentions were either unlawful or arbitrary, with prisoners detained without a legal basis. He was also shocked to find women and girls detained for "disobeying" their parents or husband. Detention conditions were close to inhumane, and water and sanitation were frequently lacking. Ventilation was poor, with only small slits for windows. Prisons were overcrowded and stifling hot. Inmates slept on bare floor. The principle of separation between juveniles and adults, criminals and others was not always respected."¹⁶⁷

¹⁶⁶ US State Department, Country Reports on Human Rights Practices for 2011: Somalia, 24 May 2012, Prison and Detention Centre Conditions, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186241>

¹⁶⁷ United Nations, Report of the Independent Expert on the situation of human rights in Somalia, Shamsul Bari, 22 August 2012 *G. Treatment of prisoners, paragraph 81* http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A.HRC.21.61_en.pdf

- 3.13.5** The August 2012 Report of the UN Secretary-General noted that in Baidoa, arbitrary arrests and detentions took place on suspicion of linkages to Al-Shabaab and that reports were received of abuse and violence against prisoners in detention.¹⁶⁸ The February 2012 Danish Fact-Finding Mission was informed that “there is a growing body of credible evidence, gathered by independent researchers, which show human right abuses in TFG-controlled areas of the city is routine and systematic. Violent interrogation techniques and torture is widespread. Much of the abuse takes place at secret detention facilities run by the TFG”.¹⁶⁹ An international NGO interviewed for the same Mission reported that “there are reports of the TFG security agency NSA arbitrarily arresting people in their homes and that these are subsequently accused for collaboration with Al-Shabaab and beaten or even killed in secret detention facilities”.¹⁷⁰
- 3.13.6** In prisons and detention centres, juveniles frequently were held with adults. Female prisoners were separated from males. Pre-trial detainees were often not separated from convicted prisoners, particularly in the south and central regions. The incarceration of juveniles at the request of families who wanted their children disciplined continued to be a problem.¹⁷¹
- 3.13.7** Prisoners and detainees had access to visitors and were permitted religious observance. The TFG denied the European Union and UN access to its national security detention centre in Mogadishu. Puntland and Somaliland authorities permitted prison monitoring by independent nongovernmental observers. There were no known visits by the International Committee of the Red Cross (ICRC) to prisons in the country during the year; however, in Somaliland a prisons conditions management committee organized by the UN Development Program and composed of medical doctors, government officials, and civil society representatives continued to visit prisons. Prisons did not have ombudsmen and did not take steps to improve recordkeeping.¹⁷²
- 3.13.8** In Somaliland authorities investigated credible allegations of inhumane conditions. During an annual assessment of prison conditions conducted between 13 July and 27 July, the House of Representatives’ Judicial, Justice, and Human Rights Committee, with UN support, visited prisons/detention centres in four of the six

¹⁶⁸ United Nations, Report of the Secretary-General on Somalia, 22 August 2012, C. Human rights and the protection of civilians, paragraph 67

<http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Somalia%20S%202012%20643.pdf>

¹⁶⁹ Danish Immigration Service, Security and human rights issues in South-Central Somalia, including Mogadishu; Report from Danish Immigration Service’s fact finding mission to Nairobi, Kenya and Mogadishu, Somalia; 30 January to 19 February 2012, April 2012 3.2 Human rights issues in TFG/AMISOM controlled areas

http://www.nyidanmark.dk/NR/ronlyres/90821397-6911-4CEF-A8D0-6B8647021EF2/0/Security_human_rights_issues_South_CentralSomalia_including_Mogadishu.pdf

¹⁷⁰ Danish Immigration Service, Security and human rights issues in South-Central Somalia, including Mogadishu; Report from Danish Immigration Service’s fact finding mission to Nairobi, Kenya and Mogadishu, Somalia; 30 January to 19 February 2012, April 2012 3.3.1 Treatment of Al-Shabaab defectors by the TFG and the NSA

http://www.nyidanmark.dk/NR/ronlyres/90821397-6911-4CEF-A8D0-6B8647021EF2/0/Security_human_rights_issues_South_CentralSomalia_including_Mogadishu.pdf

¹⁷¹ US State Department, Country Reports on Human Rights Practices for 2011: Somalia, 24 May 2012, Prison and Detention Centre Conditions,

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186241>

¹⁷² US State Department, Country Reports on Human Rights Practices for 2011: Somalia, 24 May 2012, Prison and Detention Centre Conditions,

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186241>

Somaliland regions. In its report to parliament, the committee detailed congestion; inadequate water, food, and sanitation; and the lack of facilities to hold women and children.¹⁷³

3.13.9 In Puntland a 2010 UN independent expert report referred to “terrible detention conditions of the central prison of Garowe, in particular keeping prisoners in shackles.” Al-Shabaab operated dilapidated detention centres in areas under its control in the south and central regions. No statistics were available, but observers estimated that thousands were incarcerated in inhumane conditions for relatively minor “offenses” such as smoking, listening to music, watching or playing soccer, or not wearing the hijab.¹⁷⁴

3.13.10 Conclusion. Prison conditions in Somalia are harsh and life threatening and due to overcrowding, prevalence of disease, lack of food, water, sanitation and the practice of torture are likely to breach the Article 3 threshold in individual cases. The individual factors of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3, relevant factors being the likely length of detention the likely type of detention facility and the individual’s age, gender and state of health. Where in an individual case treatment does reach the Article 3 threshold a grant of Humanitarian Protection will be appropriate.

4.1 Discretionary Leave

4.1.1 Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See API on Discretionary Leave) Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the Asylum Instructions on Article 8 ECHR.

4.1.2 With particular reference to Somalia the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL – see the Asylum Instructions on Discretionary Leave and on Article 8 ECHR.

4.2 Minors claiming in their own right

4.2.1 Somalia now has the world’s highest mortality rate for children under the age of five. Findings from the UN Inter-agency Group for Child Mortality Estimation show that Somalia’s child mortality rate in 2010, stood at 180 deaths per 1,000 live births.¹⁷⁵ UNICEF stated in October 2011 that the humanitarian crisis in Somalia has already resulted in the deaths of thousands of children.¹⁷⁶ In July 2012, a year after the UN declared famine in Somalia, UNICEF reported that “Eight million people across

¹⁷³ US State Department, Country Reports on Human Rights Practices for 2011: Somalia, 24 May 2012, Prison and Detention Centre Conditions, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186241>

¹⁷⁴ US State Department, Country Reports on Human Rights Practices for 2011: Somalia, 24 May 2012, Prison and Detention Centre Conditions, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186241>

Somalia, Ethiopia and Kenya are still in need of humanitarian assistance. Children, in particular, are threatened by a combination of poverty, insecurity, malnutrition, and disease” and “in some regions of the South, one in five children is suffering from life-threatening acute malnutrition”.¹⁷⁷ According to a 2012 WHO assessment, twenty per cent of children die before they reach the age of five, more than one third are underweight, and almost fifty per cent suffer from stunting.¹⁷⁸

4.2.2 The August 2012 Report of the UN Secretary-General noted that “The intensification of the conflict in southern and central Somalia resulted in an expansion of the scope and gravity of violations of child rights, in particular killing and maiming, rape and sexual violence and the recruitment and use of children by armed forces and groups involved in the conflict”.¹⁷⁹ It further reported that “Continued fighting has rendered children more vulnerable to rape and sexual violence, particularly in open and unprotected internally displaced person settlements and especially in Mogadishu. The Transitional Federal Government and allied militia were the main alleged perpetrators in Mogadishu and border areas”.¹⁸⁰ Reports continued of children being in the TFG’s national security forces and allied militias.¹⁸¹ In its 2012 annual report Amnesty International noted that “Al-Shabab continued to forcibly recruit boys, some as young as eight, into their forces before and during military operations. Many were sent to the front line. Girls were also recruited to cook and clean for al-Shabab forces or forced to marry its members”.¹⁸² Civil society sources in Mogadishu estimate there are between 1,000 and 2,000 children in the ranks of Al-Shabaab.¹⁸³ Reports by UNICEF indicated that in the first half of 2012, a total of 1,382 cases of recruitment of underage combatants were recorded. This shows a significant increase from 937 cases reported in 2011.¹⁸⁴ In February 2012, Human Rights Watch released a report documenting al-Shabaab’s targeting of children for recruitment as soldiers, forced marriage, and rape and how the group has targeted students, teachers, and school buildings for attack.¹⁸⁵ It also reported that children have suffered disproportionately from the conflict, are often

¹⁷⁵ UNICEF, Most difficult place to grow up: Somalia has the world’s highest child mortality rate, 16/09/2011 http://www.unicef.org/infobycountry/media_59840.html

¹⁷⁶ UNICEF, Response to the Horn of Africa emergency: a crisis affecting life, livelihoods and ways of life, 20/10/2011, Executive summary, http://www.unicef.org/esaro/HOA_3_month_2011_Report_Final.pdf

¹⁷⁷ UNICEF, Horn of Africa crisis one year on – famine reversed, countless lives saved, but situation of millions of women and children still grave, 20 July 2012 http://www.unicef.org/somalia/media_11477.html

¹⁷⁸ World Health Organisation, Child Health in Somalia: Situation Assessment, 9 March 2012, Executive Summary http://reliefweb.int/sites/reliefweb.int/files/resources/layout_childhealth_9mar.pdf

¹⁷⁹ United Nations, Report of the Secretary-General on Somalia, 22 August 2012, D. Child protection, paragraph 71

<http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Somalia%20S%202012%20643.pdf>

¹⁸⁰ United Nations, Children and armed conflict Report of the Secretary-General, 26 April 2012, Somalia, Paragraph 101 <http://daccess-ods.un.org/TMP/1584472.95427322.html>

¹⁸¹ US State Department, Country Reports on Human Rights Practices for 2011: Somalia, 24 May 2012, Child Soldiers <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186241>

¹⁸² Amnesty International, World Report 2012: Somalia, 24 May 2012, Child soldiers <http://www.amnesty.org/en/region/somalia/report-2012>

¹⁸³ IRIN News, Tempted with a phone to carry a gun, 18/10/2011 <http://www.irinnews.org/report.aspx?ReportID=93998>

¹⁸⁴ UNOCHA, Humanitarian Bulletin Somalia; Issue 10; 1 - 31 July 2012, Protection funding short of needs, including addressing child recruitment

<http://reliefweb.int/sites/reliefweb.int/files/resources/Humanitarian%20Bulletin%20%2310%2C%20July%202012.pdf>

¹⁸⁵ Human Rights Watch, No Place for Children: Child Recruitment, Forced Marriage, and Attacks on Schools in Somalia, February 2012 <http://www.hrw.org/fr/node/105168>

the main victims of the indiscriminate artillery and small arms fire and are also the most affected by the ongoing humanitarian crisis.¹⁸⁶

- 4.2.3** Minors claiming in their own right who have not been granted asylum or HP can only be returned where there are adequate reception, care and support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, care and support arrangements in place in Somalia.
- 4.2.4** Minors claiming in their own right without a family to return to, or where there are no adequate reception, care and support arrangements, should if they do not qualify for leave on any more favourable grounds be granted Discretionary Leave for a period as set out in the relevant Asylum Instructions.
- 4.3 Medical treatment**
- 4.3.1** Applicants may claim they cannot return to Somalia due to a lack of specific medical treatment. See the IDI on Medical Treatment, which sets out in detail the requirements for Article 3 and/or Article 8 to be engaged.
- 4.3.2** The World Health Organisation reported in 2010 that after 19 years of conflict, the health care system in Somalia remains underdeveloped, poorly resourced, inequitable and unbalanced. It struggles to provide services to a limited number of Somalis against crushing constraints. The public health care network is small. It mostly relies on national and international NGOs that tend to be concentrated in towns and in secure areas. The health workforce is small, under-skilled and ageing, often engaged in dual (public and private) practices. Private health care outlets have proliferated throughout the country and are now estimated to be with thousands with large variations in size, type of services offered, staff qualifications and performance. The 2000 UNDP's Human Development Report (HDR) ranked Somalia lowest in all health indicators, except life expectancy.¹⁸⁷
- 4.3.3** Médecins Sans Frontières has over 1300 Somali staff working on the ground and has been continuously present in the country since 1991. Currently, it has projects in Banadir, Bay, Galgaduud, Lower Juba, Hiraan, Lower Shabelle, Middle Shabelle, Mudug, Somaliland and Puntland.¹⁸⁸ The ICRC continues to provide support for 39 Somali Red Crescent health-care facilities in the southern and central parts of the country to ensure that the population has access to essential health care and to good-quality medicines. These facilities, which conducted more than 115,000 consultations in July and August, were also given equipment and their staff were provided with training.¹⁸⁹ In 2011, as drought exacerbated health risks among civilians, the ICRC boosted its support to health facilities. More than 620,000 people, mainly women and children, accessed free primary health care services in ICRC-supported National Society clinics which increased in number to 39 with the opening of 2 new clinics in the Middle Juba region. The clinics received medicines, dressing materials, funds and staff training to enable them to provide curative and mother-and-child care, including vaccinations. Meanwhile, six of the eight ICRC-

¹⁸⁶ Human Rights Watch, No Place for Children: Child Recruitment, Forced Marriage, and Attacks on Schools in Somalia, February 2012, *Summary* <http://www.hrw.org/fr/node/105168>

¹⁸⁷ COI Service Somalia Country Report, 17 January 2012 (para 25.01) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

¹⁸⁸ COI Service Somalia Country Report, 17 January 2012 (para 25.02) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

¹⁸⁹ COI Service Somalia Country Report, 17 January 2012 (para 25.03) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

supported clinics in and around Mogadishu continued to operate outreach services.¹⁹⁰

- 4.3.4** Médecine Sans Frontières (MSF) reports that in 2012, the situation in Somalia is yet to return to normalcy as the factors that led to last year's huge crisis are still in place. MSF teams therefore, continue their activities, which include nutritional programs, primary health care, surgery, response to epidemics like cholera and measles, immunization campaigns, and maternal health in various parts of the country¹⁹¹. Somalia is currently contending with malaria, measles, cholera/AWD and pneumonia. Waterborne diseases are expected to increase with the onset of the October to December rains. The August 2012 UNOCHA Bulletin reported that although current trends indicate a steady reduction in the number of health facility visits, suspected measles, confirmed malaria, suspected shigellosis and suspected cholera continue to be reported across Somalia.¹⁹² The UN Special Rapporteur on violence against women, its causes and consequences noted in May 2012 that most hospitals and clinics are in dire conditions due to the conflict and lack adequate drugs, equipment and supplies to diagnose or treat problems associated with violence against women.¹⁹³ The same source also reported an absence of suitable health professionals to treat such cases and the almost non-existence of psychosocial or counselling services for women survivors of violence.¹⁹⁴
- 4.3.5** IRIN reported that in Puntland and likewise in Somaliland, people infected with HIV are stigmatised by the local community. The IRIN article of 27 March 2009 reported that in Somaliland, religious leaders have been involved in HIV prevention efforts and "are now stepping in to persuade communities to treat people with HIV more humanely."¹⁹⁵ The USSD reports that persons with HIV/AIDS continued to face discrimination and abuse in their local communities and by employers in all parts of the country. UNICEF reported that persons with HIV/AIDS were subjected to physical abuse, rejected by their families, and subjected to workplace discrimination and dismissal. Children with HIV-positive parents also suffered discrimination, which hindered prevention efforts and access to services.¹⁹⁶
- 4.3.6** In its 2005 Somalia Country Profile, the World Health Organization (WHO) reported that: "The whole mental health set-up of Somalia is based on the efforts of NGOs –

¹⁹⁰ ICRC, 2011 Annual Report: Somalia

<http://www.icrc.org/eng/assets/files/annual-report/current/icrc-annual-report-somalia.pdf>

¹⁹¹ MSF, Interventions in Somalia in 2012, 10 September 2012

<http://somalia.msf.org/wp-content/uploads/2012/09/M%C3%89DECINS-SANS-FRONTI%C3%88RES-ACTIVITIES-map-1.pdf>

¹⁹² UNOCHA, Humanitarian Bulletin Eastern Africa Issue 13; 17 - 31 August 2012, *Somalia*

<http://reliefweb.int/sites/reliefweb.int/files/resources/Eastern%20Africa%20Humanitarian%20Bulletin%20%2313%20OCHA%20EA.pdf>

¹⁹³ United Nations, Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, 14 May 2012, 3. Absence of health and counselling services, paragraphs 74 and 75

http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-16-Add3_en.pdf

¹⁹⁴ United Nations, Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, 14 May 2012, 3. Absence of health and counselling services, paragraphs 74 and 75

http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-16-Add3_en.pdf

¹⁹⁵ COI Service Somalia Country Report, 17 January 2012 (para 25.20)

www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

¹⁹⁶ US State Department, Country Reports on Human Rights Practices 2011: Somalia, 24 May 2012, Other Societal Violence or Discrimination,

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dld=186241>

GRT-UNA of Italy and General Assistance and Volunteer Association (GAVO), a local Somali NGO. They help in the provision of services to mental patients and street children and provide training for primary health care personnel.¹⁹⁷ There are only three centres for psychiatry, the mental hospital in Berbera and the general psychiatric wards in Hargeisa and Mogadishu. UNDP [United Nations Development Programme] is supporting the psychiatric ward in Hargeisa in terms of structural facilities and supplies. There is no private psychiatric inpatient facility though there are a few private clinics in Mogadishu and Hargeisa. There is no specialized drug abuse treatment centre and there is no mental health training facility in the country. Only limited data about one area of Somalia, Somaliland is available. Psychiatrists have private clinics.¹⁹⁸

4.3.7 Where a case owner considers that the circumstances of the individual applicant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 (or Article 8) a grant of Discretionary Leave will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

5. Returns

5.1 Factors that affect the practicality of return such as the difficulty or otherwise of obtaining returns documentation should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.

5.2 There is no policy precluding the return of failed Somali asylum seekers to any region of Somalia. Those without any legal basis of stay in the UK may also return voluntarily to any region of Somalia. There are scheduled air services to a number of destinations in Somalia – Mogadishu, Bosasso, Hargeisa, Berbera, Burao and Galcaio. It is possible to remove failed asylum seekers to Somaliland where those individuals have a right of return to Somaliland on the basis of a proven connection to this area.

5.3 In the case of [HH \(Somalia\) & Others \[2010\] EWCA Civ 426](#) the Court of Appeal found that in any case in which it can be shown either directly or by implication what route and method of return is envisaged, the First Tier Tribunal is required by law to consider and determine any challenge to the safety of that route or method. Where internal relocation is suggested, case owners should consider accessibility of the intended place of relocation. Where return is to a home area other than Mogadishu, case owners should carefully consider any concerns expressed by the applicant regarding safety of the onward route of return but if this is not raised by the applicant at the decision stage, case owners and/or presenting officers should be prepared to deal with any challenge on this issue made by the applicant in the courts.

¹⁹⁷ COI Service Somalia Country Report, 17 January 2012 (para 25.22)
www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

¹⁹⁸ COI Service Somalia Country Report, 17 January 2012 (para 25.23)
www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

- 5.4** In that regard caseowners should note that in the country guidance case of [AMM and others](#), the Upper Tribunal clearly envisaged that the use of internal air travel as being significant. The Tribunal concluded that travel by land across southern and central Somalia to a home area or proposed place of relocation is an issue that falls to be addressed in the course of determining claims to international protection. Such travel may well, in general, pose real risks of serious harm, not only from Al-Shabaab checkpoints but also as a result of famine conditions. Women travelling without male friends or relatives are in general likely to face a real risk of sexual violence. A person from Somaliland will not, in general, be able without real risk of serious harm to travel overland from Mogadishu International Airport to a place where he or she might be able to obtain an unofficial travel document for the purposes of gaining entry to Somaliland, and then by land to Somaliland. This is particularly the case if the person is female. A proposed return by air to Hargeisa, Somaliland (whether or not via Mogadishu International Airport) will in general involve no such risks. It is therefore important that if a claimant is totally disbelieved on their substantive claim then the case that they may in fact be from Somaliland or Puntland should generally be made at that stage.
- 5.5** Somali nationals may return voluntarily to Somalia at any time in one of three ways: (a) leaving the UK by themselves, where the applicant makes their own arrangements to leave the UK, (b) leaving the UK through the voluntary departure procedure, arranged through the UK Border Force, or (c) leaving the UK under one of the Assisted Voluntary Return (AVR) schemes. The AVR scheme is implemented on behalf of the UK Border Agency by Refugee Action and co-funded by the European Refugee Fund. Refugee Action will provide advice and help with obtaining any travel documents and booking flights, as well as organising reintegration assistance in Somalia. The programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Details can be found on Refugee Action's web site at: www.choices-avr.org.uk.
- 5.6** Refugee Action have confirmed that they are able to assist AVR applicants to return to Somaliland and Puntland, but are currently not able to assist AVR applicants to return to southern or central Somalia. For those AVR applicants falling within Refugee Action's current remit, all reintegration would be provided via cash card or, if access to cash machines was not possible, via western union, or, if neither of these were possible, via an alternative provider.
- 5.7** In terms of the reintegration assistance available for single adults in the asylum process, they receive £500 in cash on departure for immediate needs on arrival. They are then able to access up to a further £1,000 once they are back in the country of return. For families with children, they also receive £500 per individual on departure and are then eligible for an additional £1,500 per person on arrival. This assistance is administered by Refugee Action in the UK.
- 5.8** Further, Refugee Action is in the process of sourcing overseas partners for delivery of reintegration assistance post-arrival. As part of the planned development of the AVR scheme in Somalia, Refugee Action are seeking to identify an organisation (or two organisations covering different areas of Somalia) with good "on the ground" coverage across Somalia (including southern and central Somalia) and have been seeking advice on possible options in this regard. If this were possible, and depending on the advice received by the organisation, this may enable the AVR scheme to be extended beyond Somaliland and Puntland and therefore throughout

the whole of Somalia. However, to date Refugee Action has been unable to identify a suitable organisation operating in Somalia itself.

- 5.9** In the meantime the UK Border agency AVR Team have put in place a mechanism to provide reintegration assistance for anyone choosing to return to south or central Somalia in the interim until Refugee Action have their full service in place. An individual seeking to make an application for AVR to travel to south or central Somalia via Refugee Action will have their application processed and determined by the UK Border Agency AVR Team and will liaise directly with the applicant to arrange the process of return and will have in place reintegration assistance.

Country Specific Litigation Team
Strategy and Intelligence Directorate
October 2012