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Home Office

# OPERATIONAL GUIDANCE NOTE

## SOMALIA

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## 1. Introduction

**1.1** This document provides Home Office caseworkers 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. Caseworkers must refer to the relevant asylum instructions for further details of the policy on these areas.

**1.2** Caseworkers 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 caseworkers must likewise take into account all available evidence. It is therefore essential that this guidance is read in conjunction with the up to date country of origin information (COI ) and any other relevant information.

COI is published by the Country of Origin Information Service (COIS) on Horizon and on the [Home Office internet site](#).

**1.3** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. Where a claim for asylum or Humanitarian Protection is being considered, caseworkers must consider any elements of Article 8 of the European Convention on Human Rights (ECHR) in line with the provisions of Appendix FM (Family Life) and paragraphs 276 ADE to 276DH (Private Life) of

the Immigration Rules. Where a person is being considered for deportation, caseworkers must consider any elements of Article 8 of the ECHR in line with the provisions of Part 13 of the Immigration Rules. Caseworkers must also consider if the applicant qualifies for discretionary leave in accordance with the published policy.

- 1.4** If, following consideration, a claim is to be refused, caseworkers 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 workers should refer to the relevant COIS country of origin information material. An overview of the human rights situation in certain countries can also be found in the [Foreign and Commonwealth Office \(FCO\) Annual Report on Human Rights and Democracy](#) which examines developments in countries where human rights issues are of greatest concern:

## **2.2 Actors of protection**

- 2.2.1** Caseworkers must refer to section 7 of the Asylum Instruction - [Considering the asylum claim and assessing credibility](#). To qualify for asylum, an individual must have a fear of persecution for a Convention reason and be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to seek protection in their country of origin or habitual residence. Caseworkers must 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. Effective 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.

## **South and central Somalia**

- 2.2.2** In September 2011 Somali political leaders agreed a 'road map' for the formation of a government to replace the Transitional Federal Government (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.<sup>1</sup> On 1 August 2012 the National Constituent Assembly (NCA) approved a new Constitution<sup>2</sup> and 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.<sup>3</sup> On 10 September

<sup>1</sup> Economist Intelligence Unit, Somalia, Country Report – Main Report, 1 November 2011, (subscription

<sup>2</sup> 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". 5 August 2012.

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

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

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 the 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.<sup>4</sup>

- 2.2.3** In his May 2013 report the UN Secretary-General noted that the Government is implementing its three-phased concept for the formation of local governance structures, whereby temporarily appointed administrations would gradually be succeeded by locally selected and then by elected regional administrations. On 4 February 2013, the Government issued a decree announcing the formation of a new interim administration for the Bay region, to serve for six months, pending local consultations. Similarly, on 8 April 2013, the Government appointed a new administration for Hiraaan region. The President, the Prime Minister, Abdi Farah Shirdon, the Speaker of Parliament, Mohamed Jawari, and several Members of Parliament have successively undertaken visits to meet with local leaders and communities in the regions of Shabelle Hoose, Hiraaan, Bay and Gedo, "Galmudug" and "Puntland".<sup>5</sup>
- 2.2.4** On 2 May 2013 the UN Security Council voted unanimously to establish the United Nations Assistance Mission in Somalia, to be known as UNSOM and to be based in the country's capital, Mogadishu, beginning on 3 June for an initial period of 12 months. Stressing the need for "effectively coordinated international support for Somalia's Federal Government," the Security Council structured the mandate of the new mission as follows: "providing UN 'good offices' functions to support peace and reconciliation; assisting the Government and the existing African Union peacekeeping force known as AMISOM with advice on peace building and State building; assisting in coordinating international support; helping build capacity in human rights and the rule of law; and monitoring and helping prevent human rights violations."<sup>6</sup>
- 2.2.5** The human rights situation in Somalia remains poor, although there have been considerable political and security changes during 2012. The African Union Mission in Somalia (AMISOM), with support from the Somali National Security Forces (SNSF), gained significant territory from the al-Qaeda-linked terrorist group al-Shabaab, who until recently controlled much of the southern area of Somalia. This has improved humanitarian access, but the humanitarian crisis remains dire and NGOs continue to experience difficulties gaining access to much of Southern Somalia.<sup>7</sup> Amnesty International wrote in May 2013 that it believes that the "risk of human rights violations and abuses remains real in most areas of south and central Somalia, given the limited government control, the significant continued presence of al-Shabab, and the ongoing armed conflict" with the situation in Mogadishu remaining fragile and volatile.<sup>8</sup>

<sup>4</sup> BBC News. Somali election of Hassan Sheikh a 'great step'. 1 September 2012.. <http://www.bbc.co.uk/news/world-africa-19557884>

<sup>5</sup> United Nations, Report of the Secretary-General on Somalia, 31 May 2013. Para 4 [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2013/326](http://www.un.org/ga/search/view_doc.asp?symbol=S/2013/326)

<sup>6</sup> UN News Centre, Security Council unanimously approves new UN political mission in Somalia, 2 May 2013, <http://www.un.org/apps/news/story.asp?NewsID=44810&Cr=somalia&Cr1=>

<sup>7</sup> UK Foreign and Commonwealth Office, Human Rights and Democracy 2012: The 2012 Foreign & Commonwealth Office Report - Section IX: Human Rights in Countries of Concern – Somalia. April 2013. <http://www.hrdreport.fco.gov.uk/human-rights-in-countries-of-concern/somalia/>

<sup>8</sup> Amnesty International, Returns to South and Central Somalia: A Violation of International Law, 15 May 2013

**2.2.6** Access to justice remains limited in Somalia. Law enforcement is largely conducted at local and clan level and is a mixture of three tiers of justice: jurisprudence inherited from colonial times, Sharia Law and clan or customary law. There is minimal oversight from the state. There are a few state courts in Mogadishu but the underlying legal framework is inadequate. There have been continued reports of serious abuses in al-Shabaab-controlled areas including summary executions, unlawful arrest, flogging, stoning and amputation. Gains by AMISOM and the SNSF have reduced the area controlled by al-Shabaab, but the new government has yet to provide viable policing and justice systems in their place. Embedding an effective system of justice across the country is one of the President Hassan Sheikh Mohamud's top priorities.<sup>9</sup> The joint Danish – Norwegian fact-finding mission (FFM) in April and May 2013 were informed by UNHCR-Somalia, Mogadishu, that it will not be any time soon that one will see a functioning, fair and efficient justice system in Mogadishu.<sup>10</sup> The FFM was further told that "Impunity was the main cause for gender based violence, in particular, for sexual violence. So far there is no functioning formal, justice system in Mogadishu or in the rest of S/C Somalia. The police often do not handle cases of sexual violence in an objective manner. There is a lack of capacity to investigate cases of sexual violence, which means that most cases do not reach the required standard of evidence for prosecution. Additionally the capacity of organizations involved in legal counseling and representation is very limited. Regarding protection for ordinary citizens in south and central Somalia and in Mogadishu the representatives of an international agency in Mogadishu, explained that people have more trust in their own sub-clan than in the SNAF and the police, and they do not trust the judicial system at all. The latter is also due to the fact that many people do not have the capacity and the economic resources to take a case to the court".<sup>11</sup> Amnesty International further states that "Lack of authority, discipline and control of government forces and its allied militias means that government forces both fail to provide protection or security for its civilians and are themselves a source of insecurity. Al Shabab's capacity to regain control undermines the notion that the already limited improvements in the security situation will actually endure".<sup>12</sup> It also finds that "There is ongoing and virtually absolute impunity for

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<http://www.amnesty.org/en/library/asset/AFR52/008/2013/en/d28eda94-4ae0-43d0-85e9-1f6994a79a31/afr520082013en.pdf>

<sup>9</sup> UK Foreign and Commonwealth Office Human Rights and Democracy 2012: The 2012 Foreign & Commonwealth Office Report - Section IX: Human Rights in Countries of Concern – Somalia. April 2013. <http://www.hrdreport.fco.gov.uk/human-rights-in-countries-of-concern/somalia/>

<sup>10</sup> Danish Immigration Service and Norwegian Landinfo, Security and protection in Mogadishu and South-Central Somalia. Joint report from the Danish Immigration Service's and the Norwegian Landinfo's fact finding mission to Nairobi, Kenya and Mogadishu, Somalia 16 April to 7 May 2013, May 2013, 4 The formal justice system, customary law and property issues, 4.1 Justice system, [http://www.nyidanmark.dk/NR/ronlyres/6F1A29C6-2F84-40D2-BDE4-42F69897EEC3/0/security\\_and\\_protection\\_in\\_somalia\\_may\\_2013.pdf](http://www.nyidanmark.dk/NR/ronlyres/6F1A29C6-2F84-40D2-BDE4-42F69897EEC3/0/security_and_protection_in_somalia_may_2013.pdf)

Report from the Danish Immigration Service's and the Norwegian Landinfo's fact finding mission to Nairobi, Kenya and Mogadishu, Somalia., Security and protection in Mogadishu and South-Central Somalia. May 2013. 1.4 Activities by the SNAF, police forces, District Commissioners (DCs) and criminal gangs

<sup>11</sup> Danish Immigration Service and Norwegian Landinfo, Security and protection in Mogadishu and South-Central Somalia. Joint report from the Danish Immigration Service's and the Norwegian Landinfo's fact finding mission to Nairobi, Kenya and Mogadishu, Somalia 16 April to 7 May 2013, May 2013, 4 The formal justice system, customary law and property issues, 4.1 Justice system, [http://www.nyidanmark.dk/NR/ronlyres/6F1A29C6-2F84-40D2-BDE4-42F69897EEC3/0/security\\_and\\_protection\\_in\\_somalia\\_may\\_2013.pdf](http://www.nyidanmark.dk/NR/ronlyres/6F1A29C6-2F84-40D2-BDE4-42F69897EEC3/0/security_and_protection_in_somalia_may_2013.pdf)

<sup>12</sup> Danish Immigration Service and Norwegian Landinfo, Security and protection in Mogadishu and South-Central Somalia. Joint report from the Danish Immigration Service's and the Norwegian Landinfo's fact finding mission to Nairobi, Kenya and Mogadishu, Somalia 16 April to 7 May 2013, May 2013, 4 The formal justice system, customary law and property issues, 4.1 Justice system,



decades of human rights violations and abuses in Somalia, including crimes under international law. A culture of impunity has developed which feeds the cycle of crimes under international law and other human rights violations: perpetrators can continue to commit abuses without consequences, and others see that they need not fear being brought to justice and are encouraged to commit abuses".<sup>13</sup>

- 2.2.7** Both sides in the conflict have been responsible for civilian casualties. AMISOM troops have had training on international humanitarian law, which included in particular the need to protect civilians. On 6 August 2012, the UN and the transitional government signed an action plan committing the Somali National Armed Forces, allied militia and military groups under its control to end the killing and maiming of children and to uphold international law and safeguard the rights of citizens in Somalia. This followed the signing by the transitional government and the UN in July of the first action plan, to end the recruitment and use of children by the Somali National Armed Forces.<sup>14</sup>
- 2.2.8** A fact-finding mission conducted by the Swedish Migration Board in June 2012 were told that you cannot report to the police, there is very little police activity, the police are corrupt, and the chain of command within the police is not upheld. In some areas, the militias act as police. There are about 10,000 militiamen in Mogadishu who are not formally integrated into government forces. There are local militias governed by District Commissioners who perform police duties. There are about 6,000 police officers and about 12,000 men in the army. There are 6,000 police officers on the payroll, but in reality there are not as many police officers as that in Mogadishu. Those which exist are poorly armed, do not have sufficient access to vehicles and are not committed to their work.<sup>15</sup> The Swedish Migration Board was further told that "the clan protection works to some extent" outside of Mogadishu in southern and central Somalia, but "in some places it just works if you belong to a specific clan".<sup>16</sup>
- 2.2.9** The US State Department report for 2012 also noted that the police were generally ineffective in the south and central regions. With the expulsion of al-Shabaab from many of the larger towns, local police duties fell to Somali National Army troops and allied militia. Command and control of federal police is limited, and the police forces lack the basic infrastructure and logistical support needed to become more effective. As in previous years, there were media reports troops fired on civilians and engaged in arbitrary arrests and detention, extortion, looting, and harassment.<sup>17</sup>

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[http://www.nyidanmark.dk/NR/rdonlyres/6F1A29C6-2F84-40D2-BDE4-42F69897EEC3/0/security\\_and\\_protection\\_in\\_somalia\\_may\\_2013.pdf](http://www.nyidanmark.dk/NR/rdonlyres/6F1A29C6-2F84-40D2-BDE4-42F69897EEC3/0/security_and_protection_in_somalia_may_2013.pdf)

<sup>13</sup> Danish Immigration Service and Norwegian Landinfo, Security and protection in Mogadishu and South-Central Somalia. Joint report from the Danish Immigration Service's and the Norwegian Landinfo's fact finding mission to Nairobi, Kenya and Mogadishu, Somalia 16 April to 7 May 2013, May 2013, 4 The formal justice system, customary law and property issues, 4.1 Justice system,

[http://www.nyidanmark.dk/NR/rdonlyres/6F1A29C6-2F84-40D2-BDE4-42F69897EEC3/0/security\\_and\\_protection\\_in\\_somalia\\_may\\_2013.pdf](http://www.nyidanmark.dk/NR/rdonlyres/6F1A29C6-2F84-40D2-BDE4-42F69897EEC3/0/security_and_protection_in_somalia_may_2013.pdf)

<sup>14</sup> UK Foreign and Commonwealth Office, Human Rights and Democracy 2012: The 2012 Foreign & Commonwealth Office Report - Section IX: Human Rights in Countries of Concern – Somalia. April 2013.

<http://www.hrdreport.fco.gov.uk/human-rights-in-countries-of-concern/somalia/>

<sup>15</sup> Swedish Migration Board. Government and Clan system in Somalia. Report from Fact Finding Mission to Nairobi, Kenya, and Mogadishu, Hargeisa and Boosaaso in Somalia in June 2011. 5 March 2013. Section 3.1.1 <http://lifos.migrationsverket.se/dokument?documentSummaryId=29575>

<sup>16</sup> Swedish Migration Board, Government and Clan system in Somalia. Report from Fact Finding Mission to Nairobi, Kenya, and Mogadishu, Hargeisa and Boosaaso in Somalia in June 2012, 5 March 2013-, Section 5.1.2, <http://lifos.migrationsverket.se/dokument?documentSummaryId=29575>

- 2.2.10** The 2012 US State Department In general impunity remained the norm, particularly in the south and central regions. Governmental authorities took some steps to prosecute and punish officials who committed abuses, particularly military and police officials accused of committing rape, murder, and extortion of civilians.<sup>18</sup> The Integrated Regional Information Networks (IRIN), the humanitarian news and analysis service of the UN Office for the Coordination of Humanitarian Affairs (UNOCHA), have similarly reported that the Somali government is also grappling with acts of criminality by its armed forces. Several hours after the execution of three soldiers for killing civilians on 21 February 2013, the chairman of Somalia's Supreme Military Court, Hassan Mohamed Hussein Mungab, told IRIN: "We will not tolerate killers and rapists within the armed forces. We will kill them because they denied the very people they were supposed to protect the right to life."<sup>19</sup>
- 2.2.11** The UN Secretary General reported in May 2013 that abuses by undisciplined elements of the Somali National Security Forces against civilians continue to be reported although these are said to have decreased in recent times. Government forces were also alleged to have participated in numerous extrajudicial killings in Mogadishu in March. Longstanding clan enmity between local militias and government troops led to several fatal clashes on 22, 25 and 28 March 2013 in Marka, while disputes over political control caused strife in Kismaayo and to a lesser extent in Baidoa.<sup>20</sup>
- 2.2.12** In March 2013 Human Rights Watch published a report detailing serious violations, including physical attacks, restrictions on movement and access to food and shelter, and clan-based discrimination against the displaced in Mogadishu from the height of the famine in mid-2011 through 2012. Interviews with 70 displaced people documented the ways in which government forces, affiliated militia, and private parties, notably camp managers known as "gatekeepers," prey upon the vulnerable community.<sup>21</sup>
- 2.2.13** A joint Danish – Norwegian fact-finding mission in April and May 2013 were informed that that protection for those at risk of being targeted by al-Shabaab in Mogadishu is generally based on hiring soldiers or police officers. This is actually what many NGOs, politicians, businessmen and other exposed groups are doing. Ordinary people will not have this kind of protection available to them, and sometimes for them even being seen next to a soldier will warrant threats or unnecessary attention; this further creates the gap where civilians do not want to seek security from government, where being seeing with them will only cause more trouble and in actuality there is a limit as to how much support the government soldiers and police can give you. Regarding crime it was explained that if a person is a victim of crime he or she may go to the police, but is it

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<sup>17</sup> US State Department, Country Reports on Human Rights Practices for 2012: Somalia. Section 1. Respect for the Integrity of the Person, Including Freedom from, d. Arbitrary Arrest or Detention, Role of the Police and Security Apparatus. 19 April 2013.

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204165>

<sup>18</sup> US State Department, Country Reports on Human Rights Practices for 2012:: Somalia, 19 April 2013, Executive Summary.

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204165>

<sup>19</sup> IRIN, Briefing: In Somalia, relative peace belies rocky road ahead, 26 March 2013, <http://www.irinnews.org/Report/97734/Briefing-In-Somalia-relative-peace-belies-rocky-road-ahead>

<sup>20</sup> United Nations, Report of the Secretary-General on Somalia, 31 May 2013. Para 15

[http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2013/326](http://www.un.org/ga/search/view_doc.asp?symbol=S/2013/326)

<sup>21</sup> Human Rights Watch. Hostages of the Gatekeepers: Abuses against Internally Displaced in Mogadishu, Somalia 28 March 2013. <http://www.hrw.org/node/114366>

uncertain whether the police will take any action or not. With regards to clan protection within Mogadishu this is less important as there are no clan based militias in Mogadishu. Persons returning from abroad are not at particular risk because of their clan affiliation. When asked if this also include members of small minority clans as well as members of ethnic minority groups an international NGO stated that this is the case. The NGO made reference to the Chief of Police in Mogadishu who is a member of a Bravanese minority group. People of Mogadishu have less to fear than two to three months ago, both in relation to security and clan issues. When asked if individuals who are having trouble with other persons or if they fear for something would be able to seek assistance the international NGO stated that people can go to the police, contact their elders and/or contact an MP who is representing their own clan. It was reiterated that the clan system is not very strong today and as there are no militias, people have less to fear when it comes to clan affiliation. There are no longer any clan related conflicts in Mogadishu and people can move everywhere in Mogadishu irrespective of their clan affiliation.<sup>22</sup>

## Somaliland

- 2.2.14** 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, and an Acting Chairperson was appointed.<sup>23</sup> 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.<sup>24</sup>
- 2.2.15** The legal system consists of three parts – Somali common law (Xeer), Islamic law (Sharia) and secular law. Somaliland appears more secular than Islamist, but both Sharia and civil law play a part in the system, directly or indirectly. Xeer is still a very strong instrument, but there are no particular rules for its function in the system. Xeer comes into play at any time and to a wide extent in the court system, even after court proceedings have taken place. Xeer is more flexible than civil law. Subclans can in some cases be very important and this can have to do with exchanging favours. Some judges are a little more Xeer-minded and Xeer can change their interpretation of secular law.<sup>25</sup>
- 2.2.16** The police in Somaliland consist of people from different clans and that all Somali clans can thus be found within the police. Therefore, if a person commits a crime, others from their clan will be found within the police system. The police will contact

<sup>22</sup> Danish Immigration Service and Norwegian Landinfo, Security and protection in Mogadishu and South-Central Somalia. Joint report from the Danish Immigration Service's and the Norwegian Landinfo's fact finding mission to Nairobi, Kenya and Mogadishu, Somalia 16 April to 7 May 2013, May 2013, 2 Protection and livelihood issues in Mogadishu, 2.1 Clan protection, . [http://www.nyidanmark.dk/NR/rdonlyres/6F1A29C6-2F84-40D2-BDE4-42F69897EEC3/0/security\\_and\\_protection\\_in\\_somalia\\_may\\_2013.pdf](http://www.nyidanmark.dk/NR/rdonlyres/6F1A29C6-2F84-40D2-BDE4-42F69897EEC3/0/security_and_protection_in_somalia_may_2013.pdf)

<sup>23</sup> 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](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A.HRC.18.48_en.pdf)

<sup>24</sup> 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](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A.HRC.21.61_en.pdf)

<sup>25</sup> Swedish Migration Board. Government and Clan system in Somalia. Report from Fact Finding Mission to Nairobi, Kenya, and Mogadishu, Hargeisa and Boosaaso in Somalia in June 2011. 5 March 2013. Section 3.4.2 <http://lifos.migrationsverket.se/dokument?documentSummaryId=29575>



the person's clan. It is primarily the police's responsibility to investigate crimes, but the clan will assist the police. The clan members are the police's eyes. In urban environments, the victim goes to the police station and reports crimes. In rural areas, the victim goes to the clan in the same case. This depends on the availability of police officers. In rural areas, two clans who do not agree can turn to the police. The Faction Finding Mission by the Swedish Migration Board was further informed that the police's capacity is limited in terms of human rights. Although all police stations received training in human rights, this does not mean that these rights are implemented. Moreover, the police cannot ensure law and order efficiently<sup>26</sup>

## Puntland

- 2.3.17** 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.<sup>27</sup>
- 2.3.18** 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.<sup>28</sup> In November 2011, the Puntland legislature passed the Human Rights Defender Act, although a human rights defender has yet to be appointed.<sup>29</sup> 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.<sup>30</sup>
- 2.3.19** The surge of Al-Shabaab attacks in late 2012 continued into 2013. Insurgents regularly undertook attacks, including the first suicide bombing in north Gaalkacyo on 11 February 2013. Repeated threats against "Puntland", discoveries of explosives, and reports of insurgents' movement were all indicative of Al-Shabaab's increased capacity and intent in the region and its disturbing presence in nearby "Galmudug". Criminal acts, including some linked to actions of

<sup>26</sup> Swedish Migration Board. Government and Clan system in Somalia. Report from Fact Finding Mission to Nairobi, Kenya, and Mogadishu, Hargeisa and Boosaaso in Somalia in June 2011. 5 March 2013. Section 3.4.1 <http://lifos.migrationsverket.se/dokument?documentSummaryId=29575>

<sup>27</sup> 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](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A.HRC.21.61_en.pdf)

<sup>28</sup> 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](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A.HRC.21.61_en.pdf)

<sup>29</sup> 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](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A.HRC.21.61_en.pdf)

<sup>30</sup> 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](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A.HRC.21.61_en.pdf)

undisciplined Government elements, clan disputes and political tensions continued to disrupt security in “Puntland” and “Galmudug”.<sup>31</sup>

**2.3.20** The administration is weak and corrupt and the people turn primarily to the clans for protection and redress.<sup>32</sup> The traditional clan system and common law Xeer are very strong in Puntland and are usually used in criminal or other proceedings. Cases involving threats against the state and its security, for example, cases which concern al-Shabaab or piracy, go through the formal police and court system. Convicted persons are imprisoned, but may be released after a certain time.<sup>33</sup>

**2.3.21** The judicial capacity in Puntland is still not sufficient. There are no courts in rural areas. Cases there are referred to larger cities; a court can sometimes also travel to a rural area to take on a case. An employee at the Norwegian Refugee Council told the Swedish Migration Board Fact Finding Mission team that the court system functions in urban areas, but it is not always that good at protecting the individual. If there is a victim in the conflict, there will be negotiations within the clan system<sup>34</sup>

“Khatuumo State” / Sool, Sanaag and Cayn regions

**2.3.22** 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 Somaliland<sup>35</sup> 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.<sup>36</sup>

**2.3.23** 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.<sup>37</sup>

<sup>31</sup> UN Security Council, Report of the Secretary-General on Somalia, 31 May 2013, para 16, [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2013/326](http://www.un.org/ga/search/view_doc.asp?symbol=S/2013/326)

<sup>32</sup> Swedish Migration Board, Government and Clan system in Somalia. Report from Fact Finding Mission to Nairobi, Kenya, and Mogadishu, Hargeisa and Boosaaso in Somalia in June 2012, 5 March 2013., Section 5.1.3, <http://lifos.migrationsverket.se/dokument?documentSummaryId=29575>

<sup>33</sup> Swedish Migration Board. Government and Clan system in Somalia. Report from Fact Finding Mission to Nairobi, Kenya, and Mogadishu, Hargeisa and Boosaaso in Somalia in June 201. 5 March 2013. Section 3.3 <http://lifos.migrationsverket.se/dokument?documentSummaryId=29575>

<sup>34</sup> Swedish Migration Board. Government and Clan system in Somalia. Report from Fact Finding Mission to Nairobi, Kenya, and Mogadishu, Hargeisa and Boosaaso in Somalia in June 201. 5 March 2013. Section 3.3 <http://lifos.migrationsverket.se/dokument?documentSummaryId=29575>

<sup>35</sup> IRIN, Somaliland clashes displace thousands, 10/02/2011 <http://www.irinnews.org/report.aspx?ReportID=91887>

<sup>36</sup> 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](http://reliefweb.int/sites/reliefweb.int/files/resources/A.HRC.18.48_en.pdf)

<sup>37</sup> 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](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A.HRC.21.61_en.pdf)

**2.3.24** The political and security situation in the region remains tense. The dispute over Sool, Sanaag and Cayn remained “Somaliland’s” main destabilizing factor and continued to result in periodic armed clashes between “Somaliland” and “Khatumo” which have resulted in deaths and casualties amongst the civilian population.<sup>38</sup>

## Conclusion

**2.3.25** Throughout Somalia the structural weakness of the security services, the limitations of the legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the widespread existence of corruption in state institutions mean that in general claimants are unlikely to be able to access effective protection from the state. Caseworkers should also refer to section 3.10 (below) on [Members of major clan families or related sub-clans](#). Each case must however be considered on its individual facts and the assessment of whether effective protection is available should be considered in relation to the particular circumstances and profile of the claimant and the latest country of origin information.

## 2.3 Internal relocation.

**2.3.1** Caseworkers must refer to the asylum Instruction on [Internal Relocation](#) and in the case of a female applicant, the asylum Instruction on [Gender Issues in the Asylum Claim](#), for guidance on the circumstances in which internal relocation would be a ‘reasonable’ option, so as to 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 part of the country of return where the person would not have a well founded fear of being persecuted and the person can reasonably be expected to stay there, then they will not be eligible for a grant of asylum. Similarly, if there is a part of the country of return where the person would not face a real risk of suffering serious harm and they can reasonably be expected to stay there, then they will not be eligible for 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. Caseworkers must refer to the Gender Issues in the asylum claim where this is applicable. The fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.

**2.3.2** Where a category of applicants’ fear is of ill-treatment/persecution by the state authorities, then internal relocation to escape that persecution will not generally be an option. Very careful consideration must be given to whether internal relocation would be a viable way to avoid a real risk of ill-treatment/persecution at the hands of, tolerated by, or with the connivance of, state agents. If an applicant who faces a real risk of ill-treatment/persecution in their home area would be able to relocate to a part of the country where they would not be at real risk, whether from state or non-state actors, and it would not be unreasonable to expect them to do so, then asylum or humanitarian protection should be refused.

## South and central Somalia (including Mogadishu)

<sup>38</sup> UN Security Council, Report of the Secretary-General on Somalia, 31 May 2013, para 17, [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2013/326](http://www.un.org/ga/search/view_doc.asp?symbol=S/2013/326)

- 2.3.3** 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.<sup>39</sup> In accordance with those guidelines, case workers 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. The Eligibility Guidelines also consider that on account of the general unavailability of protection from the State in southern and central Somalia due to the fact that the State has lost effective control over large parts of territory, the situation in southern and central Somalia does not meet the “relevance” test and that in light of the risks to safety and security, ongoing armed conflict and the shifting armed fronts and ongoing widespread human rights violations, it cannot be considered reasonable for any Somali, regardless of whether the individual originates from southern and central Somalia, Somaliland or Puntland, to relocate within or to southern and central Somalia.<sup>40</sup>
- 2.3.4** A joint Danish – Norwegian fact-finding mission in April and May 2013 were informed by the Danish Refugee Council that freedom of movement in Mogadishu has been increasingly improving. Although freedom of movement has improved, it is not a complete freedom of movement as checkpoints come and go, more in some areas than others. The illegal checkpoints have been removed and most of the Somali National Government (SNG) checkpoints have also gone. When asked if there have been any incidents concerning ordinary civilians at any checkpoint UNHCR stated that there are no recent reports on serious incidents although incidents of harassment of civilians especially along the Afgoye-Mogadishu road were commonly reported. There are no recent reports on the existence of illegal checkpoints in Mogadishu since January/February 2013. According to the United Nations Department of Safety and Security (UNDSS) there are still some illegal checkpoints in Mogadishu and Lower Shabelle and there have been a few reports of travellers being executed by al-Shabaab when it suspected someone to be a government affiliated person<sup>41</sup>
- 2.3.5** According to representatives of an international agency, Mogadishu, ordinary civilians, (ie people not working for the SNG), are able to travel between Mogadishu and Kismayo, Baidoa, Jowhar and Afgoye. They mostly go by bus and there are now fewer checkpoints along the Mogadishu – Kismayo road. There are no checkpoints between Mogadishu and Baidoa. However, there is no guarantee against al-Shabaab ambushes along the road. On the other hand, ambushes may also be committed by ordinary criminals. The representatives of an international agency, Mogadishu, confirmed that al-Shabaab will kill anyone it suspects is working for the SNG or the international community. It was added that the road

<sup>39</sup> 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>

<sup>40</sup> 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>

<sup>41</sup> Danish Immigration Service and Norwegian Landinfo, Security and protection in Mogadishu and South-Central Somalia. Joint report from the Danish Immigration Service's and the Norwegian Landinfo's fact finding mission to Nairobi, Kenya and Mogadishu, Somalia. 16 April to 7 May 2013, May 2013, Page 49 – 50, . [http://www.nyidanmark.dk/NR/rdonlyres/6F1A29C6-2F84-40D2-BDE4-42F69897EEC3/0/security\\_and\\_protection\\_in\\_somalia\\_may\\_2013.pdf](http://www.nyidanmark.dk/NR/rdonlyres/6F1A29C6-2F84-40D2-BDE4-42F69897EEC3/0/security_and_protection_in_somalia_may_2013.pdf)



between Mogadishu and Kismayo is not safe all the way. However, ordinary people will travel along this road anyhow as long as they know how to get by.<sup>42</sup>

- 2.3.6** The representative of Elman Peace and Human Rights Centre, Mogadishu, explained that she would never travel along the roads leading to Baidoa and to Kismayo from Mogadishu. This is due to the threat of al-Shabaab. A well-known person or a person looking a bit westernised may be at severe risk if al-Shabaab stops the vehicle. However, ordinary people will travel by bus or other transportation along these roads as well as to other locations in south and central Somalia, irrespectively of whether al-Shabaab is in control of the area a person has to pass through in order to get to their final destination.<sup>43</sup>
- 2.3.7** People who have fled their homes to seek refuge elsewhere face a real risk of becoming victims of robberies, violence, extortion and sometimes sexual violence including rape, while making their journey. While it is difficult to identify the perpetrators, it is believed that government forces and allied militia, as well as criminal groups are responsible for these attacks. Al-Shabab also commits abuses against civilians who are journeying between locations. On 1 January 2013, a man was abducted and then killed in Bay region when he was on the way to Kenya. There have been reports of al-Shabab ‘arrests’ of people travelling to or returning from areas such as Mogadishu. Extortion and at times violence takes place at checkpoints, including on main exit and entry points to towns under government control. These are controlled by government security forces and proxy militias, though al-Shabab also put check points in areas under their control. Checkpoints are used to harass and extort money from civilians, including transporters. In November 2012, a bus driver was killed at a checkpoint after he refused to pay a bribe to Somali security forces in Mogadishu. In Baidoa, harassment, extortion and at times violence take place at checkpoints manned by government forces or allied militias<sup>44</sup>
- 2.3.8** In May 2013, Amnesty International reported that the situation in IDP settlements both within and outside Mogadishu is dire. IDPs remain extremely vulnerable to ill-treatment as a result of violence and sexual violence, and suffer ongoing human rights abuses. Sexual and other gender-based violence against women and girls is reported to be endemic.<sup>45</sup> The United Nations report that there were at least 1,700 cases of rape in IDP settlements in 2012, with at least 70 per cent of these being carried out by armed men in government uniforms.<sup>46</sup> The March 2013 UN Security Council report on Somalia reports that “Sexual violence, particularly in the camps

<sup>42</sup> Danish Immigration Service and Norwegian Landinfo, Security and protection in Mogadishu and South-Central Somalia. Joint report from the Danish Immigration Service's and the Norwegian Landinfo's fact finding mission to Nairobi, Kenya and Mogadishu, Somalia., 16 April to 7 May 2013, May 2013, Page 49 – 50 [http://www.nyidanmark.dk/NR/rdonlyres/6F1A29C6-2F84-40D2-BDE4-42F69897EEC3/0/security\\_and\\_protection\\_in\\_somalia\\_may\\_2013.pdf](http://www.nyidanmark.dk/NR/rdonlyres/6F1A29C6-2F84-40D2-BDE4-42F69897EEC3/0/security_and_protection_in_somalia_may_2013.pdf)

<sup>43</sup> Danish Immigration Service and Norwegian Landinfo, Security and protection in Mogadishu and South-Central Somalia. Joint report from the Danish Immigration Service's and the Norwegian Landinfo's fact finding mission to Nairobi, Kenya and Mogadishu, Somalia. 16 April to 7 May 2013, May 2013, Page 49 – 50, [http://www.nyidanmark.dk/NR/rdonlyres/6F1A29C6-2F84-40D2-BDE4-42F69897EEC3/0/security\\_and\\_protection\\_in\\_somalia\\_may\\_2013.pdf](http://www.nyidanmark.dk/NR/rdonlyres/6F1A29C6-2F84-40D2-BDE4-42F69897EEC3/0/security_and_protection_in_somalia_may_2013.pdf)

<sup>44</sup> Amnesty International, Returns to South and Central Somalia: A Violation of International Law, 15 May 2013 <http://www.amnesty.org/en/library/asset/AFR52/008/2013/en/d28eda94-4ae0-43d0-85e9-1f6994a79a31/afr520082013en.pdf>

<sup>45</sup> Amnesty International, Returns to South and Central Somalia: A Violation of International Law, 15 May 2013 <http://www.amnesty.org/en/library/asset/AFR52/008/2013/en/d28eda94-4ae0-43d0-85e9-1f6994a79a31/afr520082013en.pdf>

<sup>46</sup> Amnesty International, Returns to South and Central Somalia: A Violation of International Law, 15 May 2013 <http://www.amnesty.org/en/library/asset/AFR52/008/2013/en/d28eda94-4ae0-43d0-85e9-1f6994a79a31/afr520082013en.pdf>



of internally displaced persons in Mogadishu and the surrounding areas, continues to be of great concern. Perpetrators include members of organized armed groups and sometimes members of the Somali national forces".<sup>47</sup>

- 2.3.9** Human Rights Watch noted in March 2013 that "members of displaced communities in Mogadishu faced serious human rights abuses including rape, beatings, ethnic discrimination, restricted access to food and shelter, restrictions on movement, and reprisals when they dared to protest their mistreatment. The most serious abuses were committed by various militias and security forces, often affiliated with the government, operating within or near camps and settlements for the displaced. Frequently these militias were linked or controlled by managers, or "gatekeepers" as they are known, of the IDP camp. The fate of the displaced is often in the hands of the gatekeepers. By "hosting" IDPs, gatekeepers determine the location of settlements, the access of IDPs to these settlements and, often, their ability to access humanitarian assistance. The gatekeepers are generally from the dominant local clan; occasionally they are linked to local authorities or to clan militias that ostensibly provide security but in fact control the camps."<sup>48</sup> Amnesty International further reports that "It is widely acknowledged that some IDPs are prevented from leaving the settlements as gatekeepers would stand to lose economic benefits as a result of humanitarian assistance given due to the presence of IDPs".<sup>49</sup>

## Somaliland and Puntland

- 2.3.10** 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.<sup>50</sup> 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.<sup>51</sup> UNOCHA reported in its August 2012 Humanitarian Bulletin an increase of gender-based violence in Galkayo, Puntland, with many of the incidences occurring in the IDP settlements that host minority clans.<sup>52</sup>

<sup>47</sup> UN Security Council, Report of the Secretary-General on Somalia, 31 May 2013, para 48 [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2013/326](http://www.un.org/ga/search/view_doc.asp?symbol=S/2013/326)

<sup>48</sup> Human Rights Watch, Hostages of the Gatekeepers: Abuses against Internally Displaced in Mogadishu, Somalia, 29 March 2013, Summary <http://www.hrw.org/reports/2013/03/28/hostages-gatekeepers>

<sup>49</sup> Amnesty International, Returns to South and Central Somalia: A Violation of International Law, 15 May 2013 <http://www.amnesty.org/en/library/asset/AFR52/008/2013/en/d28eda94-4ae0-43d0-85e9-1f6994a79a31/afr520082013en.pdf>

<sup>50</sup> 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>

<sup>51</sup> 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. Para 49., 21 January 2010 <http://www.ohchr.org/EN/Issues/IDPersons/Pages/Visits.aspx>

<sup>52</sup> 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>

## Conclusion

- 2.3.11** While travel through or 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](#) 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-Shabaab, and that internal relocation to an area not controlled by Al-Shabaab 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.
- 2.3.12** [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 then risk of indiscriminate violence in the city, together with the then 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 significant and sustained improvement in the situation in Mogadishu and caseworkers should consider the latest available 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.
- 2.3.13** In 2010, the FCO reported that the authorities in Somaliland and Puntland 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 and those associated with the Majerteen in Puntland.<sup>53</sup> The Tribunal in [AMM and others](#) concluded that 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. It 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.
- 2.3.14** Careful consideration must be given to the relevance and reasonableness of internal relocation on a case by case basis taking full account of the individual circumstances of the particular claimant. Case workers need to consider the ability of the persecutor to pursue the claimant in the proposed site of relocation, and whether effective protection is available in that area. Caseworkers will also need to consider the age, gender, health, ethnicity, religion, financial circumstances and

<sup>53</sup> FCO letter 5 May 2010 (hard copy available)

support network of the claimant, as well as the security, human rights and socio-economic conditions in the proposed area of relocation, including the claimant's ability to sustain themselves.

## 2.4 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) (28 November 2011).** 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:

### Mogadishu

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.
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.
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.

### Southern and central Somalia, outside Mogadishu

4. 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.

5. 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.
6. 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.
7. 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.
8. The same considerations apply to those who are reasonably likely to have to pass through Al-Shabab areas.
9. 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.
10. 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.

11. 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.
12. 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.
13. 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

14. 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.
15. 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.

#### Female genital mutilation

16. 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.
17. 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 (23 April 2010)** 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(27 January 2009)** . 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 \(14 December 2005\)](#)** . The Tribunal noted *YS and HA* and 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 \(17 July 2006\)](#)**.. 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 \(31 March 2005\)](#)** . 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 (22 April 2005).**

- (i) This determination superseded 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](#)
  - [FB \(Risk – Class – Midgan\) Somalia CG \[2002\] UKIAT 06753](#)
  - [AH \(Midgan – Disabled Woman – Relocation – Mogadishu\) Somalia CG \[2002\] 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 (24 September 2004).**

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 (23 April 2004).** 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 (3 October 2003)**

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 identity of Bajuni ethnicity.. 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, it is even possible albeit unusual that a person who does not speak Kibajuni or Somali could still be a Bajuni - 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 types of asylum claim, humanitarian protection claim and discretionary leave claim on human rights grounds (whether explicit or implied) made by those entitled to reside in Somalia. 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 instructions below. All asylum instructions can be accessed via the Horizon intranet site. The instructions are also published externally on the Home Office internet site at [asylum policy instructions](#).

- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason - for instance due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in the Court of Appeal's judgment 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 '[Considering the asylum claim and assessing credibility](#)').
- 3.3** For any asylum cases which involve children either as dependents or as the main applicants, caseworkers must have due regard to section 55 of the Borders, Citizenship and Immigration Act 2009. The Home Office instruction '[Every Child Matters; Change for Children](#)' sets out the key principles to take into account in all the department's activities.
- 3.4** If the applicant does not qualify for asylum, consideration should be given as to whether a grant of humanitarian protection is appropriate. (See asylum instruction on [Humanitarian Protection](#)). Where an application for asylum and Humanitarian Protection falls to be refused, caseworkers must consider any elements of Article 8 of the ECHR in line with the provisions of Appendix FM (Family Life) and paragraphs 276 ADE to 276DH (Private Life) of the Immigration Rules. They must also consider whether there are any compelling reasons for granting discretionary Leave (DL) to the individual concerned (see asylum instruction on [Discretionary Leave](#)).

#### Consideration of Articles 15(a) and (b) of the Directive/Articles 2 and 3 ECHR

- 3.5** An assessment of protection needs under Article 15(c) of the Directive should only be required if an applicant does not qualify for refugee protection, and is ineligible for subsidiary protection under Articles 15(a) and (b) of the Directive (which broadly reflect Articles 2 and 3 of the ECHR). Caseworkers are reminded that an applicant who fears a return to a situation of generalised violence may be entitled to a grant of asylum where a connection is made to a Refugee Convention reason or to a grant of Humanitarian Protection because the Article 3 threshold has been met.

#### Other severe humanitarian conditions and general levels of violence

- 3.6** There may come a point at which the general conditions in the country – for example, absence of water, food or basic shelter are unacceptable to the point that return in itself could, in extreme cases, constitute inhuman and degrading treatment. Decision makers need to consider how conditions in the country and locality of return, as evidenced in the available country of origin information, would impact upon the individual if they were returned. Factors to be taken into account would include age, gender, health, effects on children, other family circumstances, and available support structures. It should be noted that if the State is withholding these resources it could constitute persecution for a Convention reason and a breach of Article 3 of the ECHR.

- 3.7** As a result of the [Sufi & Elmi v UK](#) judgment in the European Court of Human Rights (ECtHR), where a humanitarian crisis is predominantly due to the direct and indirect actions of the parties to a conflict, regard should be had to an applicant's ability to provide for his or her most basic needs, such as food, hygiene and shelter and his or her vulnerability to ill-treatment. Applicants meeting either of these tests would qualify for Humanitarian Protection.

## Credibility

- 3.8** This guidance is not designed to cover issues of credibility. Caseworkers will need to consider credibility issues based on all the information available to them. For guidance on credibility see section 4 – Making the Decision in the Asylum Instruction '[Considering the asylum claim and assessing credibility](#)'. Caseworkers 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 caseworker should satisfy themselves through CRS database checks that there is no match to a non-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.

## **3.9 General country situation in southern and central regions**

- 3.9.1** Some claimants will make an asylum and/or human rights claim based on the security and/or humanitarian situation in southern and central Somalia.
- 3.9.2 Treatment.** Somalia's long-running armed conflict continues to leave civilians dead, wounded, and displaced in large numbers. Although the Islamist armed group al-Shabaab lost ground in 2012, abandoning control of key towns such as Beletweyne, Baidoa, and the strategic port city of Kismayo, it continues to carry out attacks and targeted killings, including in the capital, Mogadishu.<sup>54</sup>
- 3.9.3** In 2012, the situation in Mogadishu improved somewhat, with less open armed conflict. However, improving security remains a serious challenge for the new Somali National Government, highlighted by the increase in targeted killings of journalists and infighting between government forces and militias.<sup>55</sup>

## Mogadishu

- 3.9.4** A joint Danish and Norwegian fact-finding mission in October 2012 were told that the victims of targeted killings in Mogadishu are generally journalists, Members of Parliament (MPs), NGOs, human rights defenders and people who are in the public eye.<sup>56</sup>
- 3.9.5** The UN Secretary General's report to the Security Council in January 2013 reported that the security situation remains unpredictable in Mogadishu. While the African Union Mission in Somalia (AMISOM) and the Somali National Security

<sup>54</sup> Human Rights Watch: World Report 2013 – Somalia. 31 January 2013. <http://www.hrw.org/world-report/2013/country-chapters/somalia>

<sup>55</sup> Human Rights Watch: World Report 2013 – Somalia. 31 January 2013. <http://www.hrw.org/world-report/2013/country-chapters/somalia>

<sup>56</sup> Danish Immigration Service and Norwegian Landinfo, Joint report from the Danish Immigration Service's and the Norwegian Landinfo's fact finding mission to Nairobi, Kenya and Mogadishu, Somalia. 17 to 28 October 2012, . Page 34. January 2013. <http://www.nyidanmark.dk/NR/rdonlyres/68C10A22-BFFC-4BD6-899D-60FB6B0F7AC5/0/FFMSomalia2013Final.pdf>

Forces maintain their hold on the city, Al-Shabaab attacks occur frequently, including targeted killings and hand grenade attacks, with an increase in outlying districts.<sup>57</sup> In Mogadishu and in the newly recovered areas, security swipes resulted in mass arrests and detention. In his May 2013 report, the UN Secretary General noted that despite some improvements in Mogadishu, Al-Shabaab continued to launch asymmetrical attacks on soft targets using terrorist tactics that often resulted in civilian casualties. Targeted killings and attacks were routinely reported. The number of incidents involving improvised explosive devices rose in 2013 in comparison with 2012. On 24 January 2013, for example, a device hit a convoy carrying two UN personnel, who were unharmed. Incidents such as the suicide bombings targeting Prime Minister Shirdon in Villa Somalia on 29 January 2013 and the head of the National Security Intelligence Agency for Banadir, which killed 10 people on 18 March 2013, showed Al-Shabaab's continued intent and capability to attack government and soft targets. On 14 April, more than 30 people died in a complex attack perpetrated by Al-Shabaab on a regional court house. The attack, which involved multiple gunmen and bombs, was the deadliest to date in Mogadishu in 2013. On the same day, a vehicle likely to be that of a suicide bomber hit a Turkish aid agency convoy. On 25 April, a Deputy State Attorney was murdered in Mogadishu, while, on 5 May, a suicide vehicle that targeted a Qatari delegation travelling in a ministerial convoy killed over 10 people. Government forces were also alleged to have participated in numerous extrajudicial killings in Mogadishu in March 2013<sup>58</sup>

**3.9.6** A complex attack on 19 June on the UN Common Compound in Mogadishu, housing UN humanitarian and development staff, resulted in the deaths of one international UN staff member, three UN contractors, four Somali guards and several Somali civilians.<sup>59</sup> Amnesty International reported in May 2013 that in Mogadishu there is ongoing violence through both indiscriminate and targeted attacks. Al-Shabab though weakened, retains influence and despite their diminished capacity is still able to carry out direct attack on civilians and indiscriminate attacks through suicide bombs, improvised explosive device (IED) and grenade attacks.<sup>60</sup>

**3.9.7** In the August 2012 report by UN Human Rights Council's independent expert it was noted that Al Shabaab's withdrawal from Mogadishu has brought improvement to the situation of civilians living in the capital.<sup>61</sup> A briefing by IRIN, published in March 2013, noted that since the August 2011 withdrawal of Al-Shabaab insurgents from Mogadishu, security has improved, allowing for the gradual resumption of government functions. But sporadic suicide attacks, conflict-related population displacement and socio-economic problems persist, exemplifying some of the daunting challenges still ahead.... Recent gains by the African Union Mission in Somalia (AMISOM) and Somali forces against the Al-Shabaab insurgents have given the government some breathing space. Members

<sup>57</sup> UN Security Council. Report of the Secretary-General on Somalia. Para 11. 31 January 2013. [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2013/69](http://www.un.org/ga/search/view_doc.asp?symbol=S/2013/69)

<sup>58</sup> United Nations, Report of the Secretary-General on Somalia, 31 May 2013. Para 11 [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2013/326](http://www.un.org/ga/search/view_doc.asp?symbol=S/2013/326)

<sup>59</sup> UNOCHA, Humanitarian Bulletin Somalia: June 2013, 15 July 2013 [http://www.ecoi.net/file\\_upload/1226\\_1374224102\\_ocha-20somalia-20humanitarian-20bulletin-20june-202013.pdf](http://www.ecoi.net/file_upload/1226_1374224102_ocha-20somalia-20humanitarian-20bulletin-20june-202013.pdf)

<sup>60</sup> Amnesty International, Returns to South and Central Somalia: A Violation of International Law, 15 May 2013 <http://www.amnesty.org/en/library/asset/AFR52/008/2013/en/d28eda94-4ae0-43d0-85e9-1f6994a79a31/afr520082013en.pdf>

<sup>61</sup> 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>



of the Somali diaspora are now returning due to the increased stability...”More children are going to school, businesses are opening, and there been a construction boom,” added another Mogadishu resident. “There has been a really big change.”<sup>62</sup> According to the May 2013 report of the UN Secretary-General, since the beginning of 2013, UNHCR estimates that 16,000 people returned voluntarily from neighbouring countries (Kenya, Ethiopia, Saudi Arabia and Yemen) as well as from the diaspora. Humanitarian actors continue to support the voluntary return of displaced people through planned programmes.<sup>63</sup>

**3.9.8** 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. 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.<sup>64</sup>

**3.9.9** The UN Office for the Co-ordination of Humanitarian Affairs noted that in the first four months of 2013, civilian casualties treated in the four main referral hospitals in Mogadishu decreased by 33%, compared with the same period in 2012, according to the World Health Organization. Despite the improvement, more than 1,500 weapon-related injuries (including three children under five) were treated in these hospitals. 22 deaths were registered, although the number of deaths on site is unknown.<sup>65</sup> A joint Danish – Norwegian fact-finding mission in April and May 2013 were informed by an international agency that there has been a significant improvement regarding security in Mogadishu as well as in the rest of south and central Somalia since October 2012 when the fact-finding team undertook its last mission. Gunshots and grenade attacks have decreased in number. Elman Peace and Human Rights Centre, Mogadishu, explained that there is no shelling and no fighting with heavy arms any longer. Al-Shabaab does not deliberately target groups of civilians. According to representatives of an international agency in Mogadishu, the people of Mogadishu are feeling much more comfortable today than for many years. Regarding improvement in security in Mogadishu and its surroundings a UN agency, Nairobi, stated that the last 15 months have been positive, there has been a lot of improvement particularly in Mogadishu. The UN agency is now able to go by road all the way up to Afgoye and spend the day in the area before returning to Mogadishu on the same day. However, killings take place from time to time in Mogadishu, and the overall context in Somalia is still

<sup>62</sup> IRIN, Briefing: In Somalia, relative peace belies rocky road ahead, 26 March 2013, <http://www.irinnews.org/Report/97734/Briefing-In-Somalia-relative-peace-belies-rocky-road-ahead> Date accessed 15 April 2013

<sup>63</sup> United Nations, Report of the Secretary-General on Somalia, 31 May 2013. Para 54 [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2013/326](http://www.un.org/ga/search/view_doc.asp?symbol=S/2013/326)

<sup>64</sup> 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](http://www.voanews.com/content/mogadishu_feeding_centers_keep_hundreds_of_thousands_from_starvation/369844.html)

<sup>65</sup> UN Office for the Co-ordination of Humanitarian Affairs, Humanitarian Bulletin: Somalia April 2013, 10 May 2013, <http://reliefweb.int/sites/reliefweb.int/files/resources/OCHA%20Somalia%20Humanitarian%20Bulletin%20April%202013.pdf>



fragile, in spite of the security improvements and progresses that have been made since August 2011.<sup>66</sup>

- 3.9.10** According to an international NGO, people are returning from the Diaspora in increasing numbers and today the citizens of Mogadishu have access to all parts of the city. A UN agency, Nairobi, confirmed that most checkpoints in Mogadishu have been removed. All illegal or unauthorised checkpoints are now gone. The UN agency also stated that the risk of a return to warlordism in Mogadishu is no longer an issue. It is now the SNG and AMISOM who are in control of Mogadishu, not the District Commissioners and their militias.<sup>67</sup>
- 3.9.11** The UN Department of Safety and Security (UNDSS) in Mogadishu, stated that from a UN point of view there has been a gradual improvement regarding security since early 2012 and UN threat and risk levels for Mogadishu have gone down. Regarding the threat of terrorism UNDSS stated that al-Shabaab is still present in Mogadishu as well as across Somalia, but it has no capacity to undertake conventional warfare in Mogadishu, and there is no longer a frontline in the city.<sup>68</sup>

#### Security situation in South and Central Somalia

- 3.9.12** Al-Shabaab committed serious abuses such as targeted killings, beheadings, and executions, and forcibly recruited adults and children in areas under its control. For example, on 22 July 2012, in the coastal town of Merka, al-Shabaab publicly executed three men it accused of being Western spies. Al-Shabaab continued to apply an extreme form of Islamic law in areas under its control, restricting the movement of people in need of humanitarian assistance or seeking to flee fighting in Kismayo.<sup>69</sup>
- 3.9.13** The UN Office for the Co-ordination of Humanitarian Affairs report that more than 10,000 people have been assisted to return to their home areas so far in 2013. People mainly moved from Gaalkacyo, Mogadishu, and Somaliland to Baidoa in Bay, Afgooye and Wanla Weyne districts in Lower Shabelle and Balad and Jowhar districts in Middle Shabelle. The initiative was implemented by the Somalia Return Consortium, comprising UN and international NGOs, established in August 2012. More returns are expected in August/September, ahead of the next rainy season. The return assistance includes transport, access to basic services, and livelihood support. The support, except transport, is provided on arrival in the village of origin. The assisted families are monitored and supported for a minimum of six months in their new locations. UNHCR, population movement tracking indicates that in April, about 2,100 refugees left Kenya for Somalia. Some 2,340 people crossed the

<sup>66</sup> Danish Immigration Service and Norwegian Landinfo, Security and protection in Mogadishu and South-Central Somalia. Joint report from the Danish Immigration Service's and the Norwegian Landinfo's fact finding mission to Nairobi, Kenya and Mogadishu, Somalia. 16 April to 7 May 2013, May 2013, 1.6 Security Improvements in Mogadishu, Pages 18-21, . [http://www.nyidanmark.dk/NR/ronlyres/6F1A29C6-2F84-40D2-BDE4-42F69897EEC3/0/security\\_and\\_protection\\_in\\_somalia\\_may\\_2013.pdf](http://www.nyidanmark.dk/NR/ronlyres/6F1A29C6-2F84-40D2-BDE4-42F69897EEC3/0/security_and_protection_in_somalia_may_2013.pdf)

<sup>67</sup> Danish Immigration Service and Norwegian Landinfo, Security and protection in Mogadishu and South-Central Somalia. Joint report from the Danish Immigration Service's and the Norwegian Landinfo's fact finding mission to Nairobi, Kenya and Mogadishu, Somalia. 16 April to 7 May 2013, May 2013, 1.6 Security Improvements in Mogadishu, Pages 18-21, . [http://www.nyidanmark.dk/NR/ronlyres/6F1A29C6-2F84-40D2-BDE4-42F69897EEC3/0/security\\_and\\_protection\\_in\\_somalia\\_may\\_2013.pdf](http://www.nyidanmark.dk/NR/ronlyres/6F1A29C6-2F84-40D2-BDE4-42F69897EEC3/0/security_and_protection_in_somalia_may_2013.pdf)

<sup>68</sup> Security and protection in Mogadishu and South-Central Somalia. Joint report from the Danish Immigration Service's and the Norwegian Landinfo's fact finding mission to Nairobi, Kenya and Mogadishu, Somalia. Pages 18 – 21. May 2013. [http://www.nyidanmark.dk/NR/ronlyres/6F1A29C6-2F84-40D2-BDE4-42F69897EEC3/0/security\\_and\\_protection\\_in\\_somalia\\_may\\_2013.pdf](http://www.nyidanmark.dk/NR/ronlyres/6F1A29C6-2F84-40D2-BDE4-42F69897EEC3/0/security_and_protection_in_somalia_may_2013.pdf)

<sup>69</sup> Human Rights Watch: World Report 2013 – Somalia, 31 January 2013, <http://www.hrw.org/world-report/2013/country-chapters/somalia>

border in March. In all, about 16,000 people were recorded crossing from Kenya into Somalia in the first four months of 2013. Those interviewed by UNHCR and partners said they returned due to the improving security situation in Somalia with the majority moving to Doble, Diff, Baardheere and Kismayo in Lower Juba and Ceel Waaq in Gedo. Those moving also cited insecurity and inadequate humanitarian support in the camps in Kenya as reasons to leave. Others sought to resume seasonal work. Preliminary figures from a verification exercise conducted by UNHCR in Dadaab refugee camps in northern Kenya showed a 20% drop in the number of people from 470,000 to 390,000. UNHCR said that while this can be explained by a more accurate count, physical evidence of empty plots suggest that refugees have also left the camp. A number of those not accounted for may have crossed into Somalia.<sup>70</sup>

**3.6.14** Amnesty International reported in May 2013 that the risk of human rights violations and abuses remains real in most areas of south and central Somalia, given limited government control, the significant continued presence of al-Shabab, and the ongoing armed conflict. Regardless of the recent gains of the government, al-Shabab remains in control of large parts of rural areas, and of much of south and central Somalia.<sup>71</sup> The January 2013 report of the Secretary-General on Somalia noted that outside of Mogadishu guerrilla and terrorist tactics are frequently used in the areas recovered from Al-Shabaab, including weekly in Baidoa (Bay) and Kismaayo and almost daily in the Afgooye and Merka areas. Al-Shabaab killed a UN employee on 27 August 2012 in Marka and issued threats against and harassed other aid workers in southern Somalia. Continued abuses by undisciplined elements of the Government forces in Shabelle Hoose were reported. Local antipathy to Al-Shabaab meant that Shabelle Dhexe have suffered relatively few attacks. Attacks have also decreased in Beledweyne (Hiraan), though they still occurred weekly, and there were continued reports of harassment of civilians and aid agencies in southern Hiraan.<sup>72</sup> Recurring clashes between clan militias in Beledweyne sometimes disrupted aid activities, as did infighting among factions of Ahlu Sunna wal Jama in Galguduud. From August 2012 - January 2013, 157 civilian casualties were caused by improvised explosive devices and military operations by allied forces in southern and central Somalia.<sup>73</sup>

**3.9.15** The May 2013 report of the Secretary-General on Somalia noted that the areas of Baidoa (Bay), Beledweyne (Hiraan), Kismaayo (Juba Hoose) and Xuddur (Bakool) controlled by the Federal Government suffered attacks almost on a weekly basis, and on 12 February an off-duty United Nations guard was injured. Mortar attacks on Kismaayo airport, on 29 April and 1 May respectively, led to the relocation of most United Nations personnel out of the city. There was a particularly high incidence of attacks in the Afgooye and Marka areas and insurgents also continued to threaten and harass civilians and aid workers operating there. Al-Shabaab adopted a low profile in Shabelle Dhexe and Galguduud, but continued to control much of these territories. The most significant security development outside Mogadishu occurred in Xuddur (Bakool) following the withdrawal of Ethiopian and Somali forces on 17

<sup>70</sup> UN Office for the Co-ordination of Humanitarian Affairs, Humanitarian Bulletin: Somalia April 2013, 10 May 2013, <http://reliefweb.int/sites/reliefweb.int/files/resources/OCHA%20Somalia%20Humanitarian%20Bulletin%20April%202013.pdf>

<sup>71</sup> Amnesty International, Returns to South and Central Somalia: A Violation of International Law, 15 May 2013 <http://www.amnesty.org/en/library/asset/AFR52/008/2013/en/d28eda94-4ae0-43d0-85e9-1f6994a79a31/afr520082013en.pdf>

<sup>72</sup> UN Security Council. Report of the Secretary-General on Somalia. 31 January 2013, Para 13, [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2013/69](http://www.un.org/ga/search/view_doc.asp?symbol=S/2013/69)

<sup>73</sup> UN Security Council. Report of the Secretary-General on Somalia. 31 January 2013. Paragraphs 37-38 [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2013/69](http://www.un.org/ga/search/view_doc.asp?symbol=S/2013/69)

March. The town was quickly retaken by Al-Shabaab, and at least one civilian was killed and several others were arrested. The seizure of Xuddur marked the insurgents' first territorial gain in several months and demonstrated the challenge of maintaining control over recovered areas.<sup>74</sup>

**3.9.16** In a June 2013 bulletin, UNOCHA reported that the security situation in southern and central Somalia remains volatile and unpredictable. Political and clan tensions simmered in Kismayo following the contested election of the president of Jubaland state on 15 May, and developed into military confrontations in June. Heavy fighting intensified from 7 to 8 June and from 28 to 30 June in particular. The latest figures from the World Health Organization (WHO) confirm that at least 71 civilians were killed and about 300 injured over the course of the month. Continuing insecurity has also increased displacement of civilians, limited access to health care and amplified the risk of outbreaks of cholera and other communicable diseases.<sup>75</sup>

#### Security situation in Puntland

**3.6.17** The January 2013 report of the Secretary-General on Somalia noted that Al-Shabaab became more active in Puntland from late November onwards, undertaking several attacks. Killings and arrests of suspects, discoveries of ordnance and continued reports of troop movements demonstrated the insurgents' enduring presence in the region and neighbouring Galmudug. Puntland and Galmudug also suffered from crime that, in Puntland, was partly linked to undisciplined troops brought in to fight the insurgents.<sup>76</sup>

**3.9.18** In Puntland a surge of Al-Shabaab attacks late in 2012 have continued into 2013. Insurgents regularly undertook attacks, including the first suicide bombing in north Gaalkacyo on 11 February 2013. Repeated threats against Puntland, discoveries of explosives, and reports of insurgents' movements were all indicative of Al-Shabaab's increased capacity and intent in the region and its disturbing presence in nearby Galmudug. Criminal acts, including some linked to actions of undisciplined Government elements, clan disputes and political tensions continued to disrupt security in Puntland and Galmudug.<sup>77</sup>

**3.9.19** Civilian casualties and extrajudicial killings in conflict areas were frequently reported. Attempts to repress freedom of expression through the arbitrary detention and targeted killings of journalists remained of concern. On 3 April 2013, the Puntland authorities ordered the closure of three radio stations without clear legal justification.<sup>78</sup>

#### Security situation in Somaliland

**3.9.20** The January 2013 report of the Secretary-General on Somalia noted that while local elections in "Somaliland" resulted in multiple incidents of civil disturbance and politically motivated violence, the dispute over Sool, Sanag and Cayn remained

<sup>74</sup> United Nations, Report of the Secretary-General on Somalia, 31 May 2013 paragraphs 13-14  
[http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2013/326](http://www.un.org/ga/search/view_doc.asp?symbol=S/2013/326)

<sup>75</sup> UNOCHA, Humanitarian Bulletin Somalia: June 2013, 15 July 2013  
[http://www.ecoi.net/file\\_upload/1226\\_1374224102\\_ocha-20somalia-20humanitarian-20bulletin-20june-202013.pdf](http://www.ecoi.net/file_upload/1226_1374224102_ocha-20somalia-20humanitarian-20bulletin-20june-202013.pdf)

<sup>76</sup> UN Security Council. Report of the Secretary-General on Somalia. 31 January 2013 Paragraph 14  
[http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2013/69](http://www.un.org/ga/search/view_doc.asp?symbol=S/2013/69)

<sup>77</sup> United Nations, Report of the Secretary-General on Somalia, 31 May 2013. Para 16  
[http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2013/326](http://www.un.org/ga/search/view_doc.asp?symbol=S/2013/326)

<sup>78</sup> United Nations, Report of the Secretary-General on Somalia, 31 May 2013. Para 41  
[http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2013/326](http://www.un.org/ga/search/view_doc.asp?symbol=S/2013/326)

the main destabilizing factor and continued to result in periodic armed clashes between “Somaliland” and “Khatumo”, a disputed area at the border region.. Despite the August peace agreement with a former leader of Sool, Sanag and Cayn, Suleiman Haglatosiye, ambushes, shootings and attacks involving improvised explosive devices continued to occur in “Khatumo”. Related tensions with Puntland also spiked periodically.<sup>79</sup> The May 2013 report notes that early in 2013, “Somaliland” experienced a flurry of anti-Al-Shabaab activity amid United Kingdom and United States warnings of a terrorist threat to westerners, but there was no attack.<sup>80</sup>

## Humanitarian situation

- 3.9.21** The Foreign and Commonwealth Office 2012 Human Rights report noted that the conflict, continued insecurity and extreme weather patterns have combined to produce a humanitarian crisis, with over two million people in need of urgent assistance. While the situation has improved significantly since the famine of 2011, malnutrition rates remain high, with an estimated 236,000 acutely malnourished children in the south and chronic food insecurity across the country. This has led to significant levels of displacement, with 1.36 million internally displaced people and 1 million Somali refugees across the Horn of Africa, including some 500,000 Somali refugees living in Kenya. Congestion in refugee camps across the region means that vulnerable groups such as women and unaccompanied children have little protection, and women suffer high levels of gender-based violence.<sup>81</sup>
- 3.9.22** The May 2013 report of the UN Secretary-General noted that the humanitarian situation continued to improve during the January-May 2013 period. The number of people in need of life-saving assistance decreased by 50% and malnutrition rates improved as a result of sustained assistance coupled with favourable climatic conditions. Humanitarian needs however remain very significant with 2.7 million Somalis depending on assistance, according to the Food Security and Nutrition Analysis Unit and the Famine Early Warning System Network managed by the Food and Agriculture Organization of the United Nations (FAO). Despite some improvements, humanitarian efforts are still hampered by insecurity. Political uncertainty and a related instability in the Juba regions prevented humanitarians from expanding aid delivery on the outskirts of Kismaayo.<sup>82</sup>
- 3.9.23** The World Food Programme (WFP) and its partners reached over 1 million beneficiaries through a combination of nutrition, relief, livelihoods and social safety net programmes. Food assistance focused on enhancing the resilience of households and communities, while continuing targeted nutrition support to the most vulnerable groups, including children under 5 and internally displaced persons. Nutrition partners reached more than 52,422 children suffering from severe acute malnutrition, aged from 6 months to under 5 years, mainly in southern Somalia. Health partners are strengthening services in the area and for the first time ran a polio vaccination campaign in all newly accessible districts of 10

<sup>79</sup> UN Security Council. Report of the Secretary-General on Somalia. 31 January 2013 Paragraph 15 [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2013/69](http://www.un.org/ga/search/view_doc.asp?symbol=S/2013/69)

<sup>80</sup> United Nations, Report of the Secretary-General on Somalia, 31 May 2013 paragraphs 17 [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2013/326](http://www.un.org/ga/search/view_doc.asp?symbol=S/2013/326)

<sup>81</sup> Foreign & Commonwealth Office, Human Rights and Democracy: The 2012 Foreign & Commonwealth Office Report - Section IX: Human Rights in Countries of Concern – Somalia. April 2013. <http://www.hrdreport.fco.gov.uk/human-rights-in-countries-of-concern/somalia/>

<sup>82</sup> United Nations, Report of the Secretary-General on Somalia, 31 May 2013. Para 49 [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2013/326](http://www.un.org/ga/search/view_doc.asp?symbol=S/2013/326)



regions. Although over 700,000 children were reached, 500,000 children in south central Somalia remain in need of vaccination.<sup>83</sup>

See also: [Actors of protection](#) (section 2.2 above)

[Internal relocation](#) (section 2.3 above)

[Caselaw](#) (section 2.4 above)

**3.9.24 Conclusion.** It is important that caseworkers ensure that they refer to the most recent COIS country of origin 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.

**3.9.25** 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.

**3.9.26** 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.

Case workers 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, in November 2011, 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

<sup>83</sup> United Nations, Report of the Secretary-General on Somalia, 31 May 2013. Para 52  
[http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2013/326](http://www.un.org/ga/search/view_doc.asp?symbol=S/2013/326)



current evidence as set out in the COIS country information and elsewhere is that the lower level of violence has been sustained, 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. Caseworkers 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 and also consider the reasonableness of any such relocation..

- (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 case workers 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 caseworker 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 caseworker, either in the letter of refusal or (subject to issues of procedural fairness) during any appeal proceedings. In many cases, the caseworker 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.

**3.9.27** Case workers 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 Home Office fact finding missions' use of anonymised sources.

### **3.10 Members of major clans or their sub-clans**

**3.10.1** 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.

- 3.10.2 Treatment.** In 2009, the Institute for Security Studies reported that 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.<sup>84</sup>
- 3.10.3** 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.<sup>85</sup>
- 3.10.4** 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.<sup>86</sup> 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.<sup>87</sup>
- 3.10.5** A Swedish Migration Board fact-finding mission noted in June 2012 that Somalia is a clan-based society in which individuals have their legal and economic position and security in the Diya-paying subclan. Diya is blood compensation paid from one Diya-paying subclan to another. The Diya-paying subclan is the level of subclan which is collectively responsible for their subclan's security and has an obligation to compensate other subclans for damages which their own subclan has caused them. The clan system has changed over time, and in at least some geographic areas it is no longer fully functioning.<sup>88</sup>
- 3.10.6** The same report notes that the clan is of importance in Mogadishu. You can move around, but not live in an area where your clan does not exist. The clan is and has always been of importance in Mogadishu. The Elder of Hawiye said that the clan can't protect the individual. However, if a crime is committed by someone who is not a member of Al Shabaab, the matter can be resolved between the clans. In that way the clan can be of some protection.<sup>89</sup> It also commented during the period

<sup>84</sup> Institute for Security Studies 01 Sep 2009: ISS Paper 198:

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

<sup>85</sup> ACCORD 'Clans in Somalia' December 2009, II. Clans and Minorities,

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

<sup>86</sup> 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)

<sup>87</sup> Landinfo, Response: Somalia: Protection and resolution mechanisms, 2 June 2009,

[http://www.landinfo.no/asset/1058/1/1058\\_1.pdf](http://www.landinfo.no/asset/1058/1/1058_1.pdf)

<sup>88</sup> Swedish Migration Board (LIFOS). Government and Clan system in Somalia. Report from Fact Finding Mission to Nairobi, Kenya, and Mogadishu, Hargeisa and Boosaaso in Somalia in June 2012. 5 March 2013. Section 2 Individual opportunities for protection and redress in Somalia

<http://lifos.migrationsverket.se/dokument?documentSummaryId=29575>

<sup>89</sup> Swedish Migration Board (LIFOS). Government and Clan system in Somalia. Report from Fact Finding Mission to Nairobi, Kenya, and Mogadishu, Hargeisa and Boosaaso in Somalia in June 2012. 5 March 2013. Section 4.3 Mogadishu <http://lifos.migrationsverket.se/dokument?documentSummaryId=29575>



Al Shabaab controlled Mogadishu, clans as such have been less influential even if some clans through connections with other power centres still have had a role to play in solving conflicts and when an individual seeks protection or redress.<sup>90</sup> The possibility for the individual in Mogadishu to get clan protection depends on the clan's position in the city, e.g. a clan member in an influential position in TFG or other power centres. Clans which are represented in influential positions can facilitate clan members' needs of protection and redress. In Puntland it occurs that clans agree that a person should be killed instead of one clan paying Diya to the victim's clan.<sup>91</sup>

**3.10.7** A joint Danish – Norwegian fact-finding mission in October 2012 were told by OCHA that clan influence in Somalia has increased again since February 2012. The same source explained that individuals now seek assistance and support from respectable and well off individuals rather than their clan or sub-clan. An international NGO working in south and central Somalia told the fact-finding team that clan support is diminishing all over South and Central Somalia. This is due to the fact that even sub-sub clans are unable to support and assist. Whether or not an individual will get support depends on this person's position and reputation. It further noted that one would not expect protection of his or her own clan. It is only at the sub-sub clan level one may expect protection. This means that if you are Hawiye Haber Gedir Sa'ad you can only expect to be protected by Sa'ad sub-sub clan, not Hawiye in general. Within most of the sub-sub clans there is often a dominant person, this could be a warlord, or a former warlord, a District Commissioner or someone who has become a wealthy businessman. It is very important for anyone in need of support and protection of his or her sub-sub clan that he or she is not involved in a dispute or disagreement with this dominant person. The fact-finding team were also informed that Al-Shabaab does not target persons only because of their clan affiliation. Killings are not a clan issue any longer, but al-Shabaab always ensure that someone it wants to kill will be killed by members of the victims own sub-clan. People and government officials in general do not have a negative perception of people whose clan or sub-clan previously supported al-Shabaab. A local NGO in Mogadishu added that it is important to know that being marginalized is a relative thing in a Somali context. You can be a member of a major clan, but if you go to a place where your clan is outnumbered, you could be marginalized and a victim.<sup>92</sup>

**3.10.8** A subsequent joint Danish – Norwegian fact-finding mission in April and May 2013 were informed by an international NGO that within Mogadishu clan protection is no longer important as there are no clan based militias in Mogadishu. Persons returning from abroad are not at particular risk because of their clan affiliation. When asked if individuals who are having trouble with other persons or if they fear for something would be able to seek assistance the international NGO stated that

<sup>90</sup> Swedish Migration Board (LIFOS). Government and Clan system in Somalia. Report from Fact Finding Mission to Nairobi, Kenya, and Mogadishu, Hargeisa and Boosaaso in Somalia in June 2012. 5 March 2013. Section 4.3 Mogadishu <http://lifos.migrationsverket.se/dokument?documentSummaryId=29575>

<sup>91</sup> Swedish Migration Board (LIFOS). Government and Clan system in Somalia. Report from Fact Finding Mission to Nairobi, Kenya, and Mogadishu, Hargeisa and Boosaaso in Somalia in June 2012. 5 March 2013. Section 5.1.3 Lifos's comments, Puntland

<http://lifos.migrationsverket.se/dokument?documentSummaryId=29575>

<sup>92</sup> Danish Immigration Service's and the Norwegian Landinfo, Update on security and human rights issues in South-Central Somalia, including Mogadishu, Joint report from the Danish Immigration Service's and the Norwegian Landinfo's fact finding mission to Nairobi, Kenya and Mogadishu, Somalia. 17 to 28 October 2012, January 2013, Section 4.1 Clan affiliation: protection, human rights and property claims, <http://www.nyidanmark.dk/NR/rdonlyres/68C10A22-BFFC-4BD6-899D-60FB6B0F7AC5/0/FFMSomalia2013Final.pdf>



people can go to the police, contact their elders and/or contact an MP who is representing their own clan. It was reiterated that the clan system is not very strong today and as there are no militias, people have less to fear when it comes to clan affiliation. There are no longer any clan related conflicts in Mogadishu and people can move everywhere in Mogadishu irrespective of their clan affiliation. UNHCR- Somalia, Mogadishu, confirmed that someone in Mogadishu will not be at risk today solely because he/she is of a different clan, although clan dynamics in combination with other factors are an important element when considering risk, including for the IDP population. It is obvious that one is safer when he or she is residing in an area dominated by his or her own clan or if one has good relations with a dominating clan<sup>93</sup>

See also: [Actors of protection](#) (section 2.2 above)

[Internal relocation](#) (section 2.3 above)

[Caselaw](#) (section 2.4 above)

- 3.10.9 Conclusion.** It is unlikely that in general 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.
- 3.10.10** With regard the possibility of internal relocation in southern or central 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 and others](#) 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.

### 3.11 Minority ethnic groups

- 3.11.1** 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 one of the minority ethnic groups in Somalia.
- 3.11.2 Treatment.** More than 85% of the population share a common ethnic heritage, religion, and nomad-influenced culture. In most areas members of groups other than the predominant clan are excluded from effective participation in governing institutions and were subject to discrimination in employment, judicial proceedings, and access to public services.<sup>94</sup>

<sup>93</sup> Danish Immigration Service and the Norwegian Landinfo. Security and protection in Mogadishu and South-Central Somalia. Joint report from the Danish Immigration Service's and the Norwegian Landinfo's fact finding mission to Nairobi, Kenya and Mogadishu, Somalia 16 April to 7 May 2013. . May 2013. “.1 Clan protection. Page 31. [http://www.nyidanmark.dk/NR/rdonlyres/6F1A29C6-2F84-40D2-BDE4-42F69897EEC3/0/security\\_and\\_protection\\_in\\_somalia\\_may\\_2013.pdf](http://www.nyidanmark.dk/NR/rdonlyres/6F1A29C6-2F84-40D2-BDE4-42F69897EEC3/0/security_and_protection_in_somalia_may_2013.pdf)

<sup>94</sup> US State Department, Country Reports on Human Rights Practices for 2012: Somalia, 19 April 2013, National/Racial/Ethnic Minorities, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204165>

- 3.11.3** Minority group clans include the Bantu (the largest minority group), Benadiri, Rer Hamar, Brawanese, Swahili, Tumaal, Yibir, Yaxar, Madhiban, Hawrarsame, Muse Dheryo, Faqayaqub, and Gabooye. The US State Department report covering 2012 recorded that intermarriage between minority groups and mainstream clans has been 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.<sup>95</sup>
- 3.11.4** 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”.<sup>96</sup> Furthermore, UNHCR Somalia explained in February 2012 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.”<sup>97</sup> 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. 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.<sup>98</sup>
- 3.11.5** 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 organisation<sup>99</sup>. 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,

<sup>95</sup> US State Department, Country Reports on Human Rights Practices for 2012: Somalia, 19 April 2013, National/Racial/Ethnic Minorities,

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204165>

<sup>96</sup> Minority Rights Group International, State of the World’s Minorities and Indigenous Peoples 2012, 28 June 2012 Somalia p.69 <http://www.minorityrights.org/download.php?id=1112>

<sup>97</sup> 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](http://www.nyidanmark.dk/NR/rdonlyres/90821397-6911-4CEF-A8D0-6B8647021EF2/0/Security_human_rights_issues_South_CentralSomalia_including_Mogadishu.pdf)

<sup>98</sup> 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](http://www.nyidanmark.dk/NR/rdonlyres/90821397-6911-4CEF-A8D0-6B8647021EF2/0/Security_human_rights_issues_South_CentralSomalia_including_Mogadishu.pdf)

<sup>99</sup> 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/rdonlyres/90821397-6911-4CEF-A8D0-6B8647021EF2/0/Security\\_human\\_rights\\_issues\\_South\\_CentralSomalia\\_including\\_Mogadishu.pdf](http://www.nyidanmark.dk/NR/rdonlyres/90821397-6911-4CEF-A8D0-6B8647021EF2/0/Security_human_rights_issues_South_CentralSomalia_including_Mogadishu.pdf)

Al-Shabaab reportedly beheaded ten people suspected of spying for their enemies in the Galguduud region.<sup>100</sup>

- 3.11.6** A joint Danish – Norwegian fact-finding mission in April and May 2013 were informed by an international NGO that within Mogadishu clan protection is no longer important as there are no clan based militias in Mogadishu. Persons returning from abroad are not at particular risk because of their clan affiliation. When asked if this also include members of small minority clans as well as members of ethnic minority groups an international NGO stated that this is the case. The NGO made reference to the Chief of Police in Mogadishu who is a member of a Bravanese minority group. People of Mogadishu have less to fear than two to three months ago, both in relation to security and clan issues. When asked if individuals who are having trouble with other persons or if they fear for something would be able to seek assistance the international NGO stated that people can go to the police, contact their elders and/or contact an MP who is representing their own clan. It was reiterated that the clan system is not very strong today and as there are no militias, people have less to fear when it comes to clan affiliation. There are no longer any clan related conflicts in Mogadishu and people can move everywhere in Mogadishu irrespective of their clan affiliation. UNHCR Somalia, Mogadishu, confirmed that to benefit from clan protection, the person concerned must be known to the clan elders or to other clan members known to these elders. A newcomer, particularly, when he/she does not belong to the existing clans or nuclear families or when he/she originates from an area formerly or presently controlled by an insurgent group, would certainly attract adverse attention. Even those who originate from the Mogadishu may be perceived as newcomers, if they left a long time ago and have lost all links with their clan-based community.<sup>101</sup>
- 3.11.7** A Swedish Migration Board fact-finding mission notes in June 2012 that the clan is of importance in Mogadishu. You can move around, but not live in an area where your clan does not exist. The clan is and has always been of importance in Mogadishu. It further notes that the possibility for an individual in Mogadishu to get clan protection depends on the clan's position in the city, e.g. a clan member in an influential position in TFG or other power centres. Clans which are represented in influential positions can facilitate clan members' needs of protection and redress.
- 3.11.8** In a March 2013 report on the abuses against IDPs in Mogadishu, Human Rights Watch notes that "while clan identity is only one among several factors contributing to the abuses against IDPs in Mogadishu, it can have enormous consequences. As Ken Menkhaus points out: One of the most troubling but least discussed aspects of Somalia's recurring humanitarian crises is the low sense of Somali social and ethical obligation to assist countrymen from weak lineages and social groups. This stands in sharp contrast to the very powerful and non- negotiable obligation Somalis have to assist members of their own lineage".<sup>102</sup> Reporting on

<sup>100</sup> 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](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A.HRC.21.61_en.pdf)

<sup>101</sup> Danish Immigration Service's and the Norwegian Landinfo, Security and protection in Mogadishu and South-Central Somalia. Joint report from the Danish Immigration Service's and the Norwegian Landinfo's fact finding mission to Nairobi, Kenya and Mogadishu, Somalia. 16 April to 7 May 2013, May 2013, 2.1 Clan protection, page 31. [http://www.nyidanmark.dk/NR/rdonlyres/6F1A29C6-2F84-40D2-BDE4-42F69897EEC3/0/security\\_and\\_protection\\_in\\_somalia\\_may\\_2013.pdf](http://www.nyidanmark.dk/NR/rdonlyres/6F1A29C6-2F84-40D2-BDE4-42F69897EEC3/0/security_and_protection_in_somalia_may_2013.pdf)

<sup>102</sup> Human Rights Watch, Hostages of the Gatekeepers: Abuses against Internally Displaced in Mogadishu, Somalia, 29 March 2013, Clan Dynamics [http://www.hrw.org/sites/default/files/reports/somalia0313\\_ForUpload.pdf](http://www.hrw.org/sites/default/files/reports/somalia0313_ForUpload.pdf)

the situation for the Rahanweyn and Bantu communities it notes that “both their social status, not seen as being one of the noble clans, and their livelihood strategies, being primarily agro-pastoralists and farmers, rendered them particularly vulnerable to famine and later to abuses in Mogadishu. In Mogadishu the most powerful clans, notably in the districts on which this research focuses on, are from the Hawiye clan group. Neither of these two communities have established links with the Hawiye”.<sup>103</sup>

**3.11.9** The Jamestown Foundation reports in November 2011 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”.<sup>104</sup> There are also reports that al-Shabaab has continued to forcibly recruit minorities to fight.<sup>105</sup> 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”.<sup>106</sup> The 2010 UNHCR Eligibility Guidelines identify the Ashraf, Midgan, Bantu, Bravenese, Bajuni, Rerhamar, Eyle, Galgala, Tumul, Yibir, Gaboye, Hamar Hindi and Oromos as minority clans in southern and central Somalia which it considers to be at risk on the ground of ethnicity/race. It reports that these minority clans are vulnerable 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. They are therefore exposed to an increased risk of rape, attack, abduction and having their property confiscated in southern and central Somalia’s lawless atmosphere. Intermarriage between members of minority and majority clans is reportedly restricted. IDPs from minority clans in all parts of Somalia face daily abuses such as killings, physical assault, theft and rape, without legal recourse either through formal justice or the customary legal system – the result being that they can be abused with impunity.<sup>107</sup>

## Bantu

**3.11.10** A Swedish fact-finding mission in June 2012 found that in southern Somalia, the Bantus are integrated into the society and also that there is currently no violence

<sup>103</sup> Human Rights Watch, *Hostages of the Gatekeepers: Abuses against Internally Displaced in Mogadishu, Somalia*, 29 March 2013, *Clan Dynamics*

[http://www.hrw.org/sites/default/files/reports/somalia0313\\_ForUpload.pdf](http://www.hrw.org/sites/default/files/reports/somalia0313_ForUpload.pdf)

<sup>104</sup> 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)

<sup>105</sup> 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>

<sup>106</sup> 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](http://www.nyidanmark.dk/NR/rdonlyres/90821397-6911-4CEF-A8D0-6B8647021EF2/0/Security_human_rights_issues_South_CentralSomalia_including_Mogadishu.pdf)

<sup>107</sup> 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.refworld.org/docid/4be3b9142.html>



specifically directed at the minorities<sup>108</sup> The U.S. State Department notes that Somali Bantus and Midgaan are sometimes kept in servitude by more powerful Somali clan members as domestic workers, farm labourers, and herders.<sup>109</sup> UNOCHA stated in October 2012 “there are camps where the IDPs are Bantu people. These IDPs are the worst off IDPs in Mogadishu. They are literally living from garbage and they have less access to assistance as they are very poor and marginalized”.<sup>110</sup> In a March 2013 report on the abuses against IDPs in Mogadishu, Human Rights Watch notes that “The accounts of people displaced from Bay, Bakool, and the Shabelle regions of south- central Somalia, who are primarily from the Rahanweyn clan and the Bantu minority group, show that these communities are particularly vulnerable to abuse. Gatekeepers and their militia treat them as second class citizens, and subject them to various forms of repression, including frequent verbal and physical abuse. These displaced communities face serious difficulties obtaining adequate food and shelter. Gatekeepers and militias use various methods to divert or steal food aid during or after distributions. Some of the displaced are forced to resort to begging due to lack of access to food.”<sup>111</sup>

## Banjuni

- 3.11.11** In 2003, it was reported that the Bajuni are a small independent ethnic community of perhaps 3,000 or 4,000 who are predominantly sailors and fishermen.<sup>112</sup> 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).<sup>113</sup>
- 3.11.12** In the past the Bajuni suffered considerably at the hands of Somali militia, principally Marehan militia who tried to force them off the islands.<sup>114</sup> A Danish fact-finding mission in April 2012 was informed by UNHCR that the question of who now controls the Bajuni Islands was complicated. The islands basically stretch from Kismayo to the Kenyan border. The Kenyan navy patrols the waters around the islands. On the islands themselves, there is no Al-Shabaab, Somali national Government or Kenyan presence although there are Al-Shabaab sympathizers on the islands.<sup>115</sup> In 2003, it was reported that though Marehan settlers still occupy the islands, Bajuni can work for the Marehan as paid labourers. This is an

<sup>108</sup> Swedish Migration Board. Government and Clan system in Somalia. Report from Fact Finding Mission to Nairobi, Kenya, and Mogadishu, Hargeisa and Boosaaso in Somalia in June 2012. 5 March 2013. Para 4.4.2 <http://lifos.migrationsverket.se/dokument?documentSummaryId=29575>

<sup>109</sup> United States Department of State, 2013 Trafficking in Persons Report - Somalia, 19 June 2013 <http://www.refworld.org/docid/51c2f38d65.html>

<sup>110</sup> Joint report from the Danish Immigration Service's and the Norwegian Landinfo's fact finding mission to Nairobi, Kenya and Mogadishu, Somalia. 17 to 28 October 2012 Update on security and human rights issues in South- Central Somalia, including in Mogadishu. January 2013. Section 5.1.1 Conditions for IDPs and urban poor Mogadishu <http://www.nyidanmark.dk/NR/rdonlyres/68C10A22-BFFC-4BD6-899D-60FB6B0F7AC5/0/FFMSomalia2013Final.pdf>

<sup>111</sup> Human Rights Watch, Hostages of the Gatekeepers: Abuses against Internally Displaced in Mogadishu, Somalia, 29 March 2013, Summary <http://www.hrw.org/reports/2013/03/28/hostages-gatekeepers-0>

<sup>112</sup> Madhibaan, Somalia country report 2003 <http://www.madhibaan.org/faq/report-2003-4.htm>

<sup>113</sup> Madhibaan, A Study on minorities in Somalia Undated <http://www.madhibaan.org/in-depth/in-depth-a-study.htm>

<sup>114</sup> Madhibaan, Somalia country report 2003 <http://www.madhibaan.org/faq/report-2003-4.htm>

<sup>115</sup> 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. Para 1.2.1.1 [http://www.nyidanmark.dk/NR/rdonlyres/90821397-6911-4CEF-A8D0-6B8647021EF2/0/Security\\_human\\_rights\\_issues\\_South\\_CentralSomalia\\_including\\_Mogadishu.pdf](http://www.nyidanmark.dk/NR/rdonlyres/90821397-6911-4CEF-A8D0-6B8647021EF2/0/Security_human_rights_issues_South_CentralSomalia_including_Mogadishu.pdf)



improvement on the period during the 1990s 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.<sup>116</sup>

Benadiri (Rer Hamar) or Bravenese

**3.11.13** ACCORD reported in 2009 that some Rer Hamar have established relations with 'noble' clans such as the Hawiye Abgal and Habr Gedir through marriage. The Benadiri in Merka have sought 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.<sup>117</sup> An international NGO working in South and Central Somalia explained that there are two groups of people which are most vulnerable in Mogadishu. These two groups are either marginalized or exploited: the Reer Hamar/Benadiri are not considered marginalized, neither are the Reer Brava. They are exploited but not marginalized. Compared to other clans there are fewer Reer Hamar returning to Mogadishu.<sup>118</sup>

Midgan, Tumul, Yibir or Galgala

**3.11.14** A joint Danish– Norwegian fact-finding mission in October 2012 cited a local NGO in Mogadishu as stating that the unarmed marginalized groups have more fears than people belonging to the major clans and this will continue as long as the police and security forces are weak institutions. The marginalized groups in this context are the caste groups, i.e. the Midgan, Tumul, Benadiris and Jareer. It further reported that the marginalized groups have less access to business opportunities, likewise to education and health facilities since they cannot pay for hospitalisation and medical services, school fees etc.<sup>119</sup> An international NGO working in South and Central Somalia notes that groups such as Midgan, Gaboye, Tumul and Jareer are marginalised in Mogadishu.<sup>120</sup> The U.S. State Department notes that Somali Bantus and Midgaan are sometimes kept in servitude by more powerful Somali clan members as domestic workers, farm laborers, and herders.<sup>121</sup> UNHCR considers that members of certain minority clans, such as the Midgan, Tumul and Yibir, who were previously residing near or with majority clans,

<sup>116</sup> Madhibaan, Somalia country report 2003 <http://www.madhibaan.org/faq/report-2003-4.htm>

<sup>117</sup> ACCORD 'Clans in Somalia', December 2009 <http://www.refworld.org/docid/4b29f5e82.html>

<sup>118</sup> Danish Immigration Service and Norwegian Landinfo, Joint report from the Danish Immigration Service's and the Norwegian Landinfo's fact finding mission to Nairobi, Kenya and Mogadishu, Somalia. 17 to 28 October 2012 Update on security and human rights issues in South- Central Somalia, including in Mogadishu. January 2013. Section 5.1 Vulnerable Groups <http://www.nyidanmark.dk/NR/ronlyres/68C10A22-BFFC-4BD6-899D-60FB6B0F7AC5/0/FFMSomalia2013Final.pdf>

<sup>119</sup> Joint report from the Danish Immigration Service's and the Norwegian Landinfo's fact finding mission to Nairobi, Kenya and Mogadishu, Somalia. 17 to 28 October 2012 Update on security and human rights issues in South- Central Somalia, including in Mogadishu. January 2013. Section 4.1 Clan affiliation: protection, human rights and property claims <http://www.nyidanmark.dk/NR/ronlyres/68C10A22-BFFC-4BD6-899D-60FB6B0F7AC5/0/FFMSomalia2013Final.pdf>

<sup>120</sup> Danish Immigration Service and Norwegian Landinfo, Joint report from the Danish Immigration Service's and the Norwegian Landinfo's fact finding mission to Nairobi, Kenya and Mogadishu, Somalia. 17 to 28 October 2012 Update on security and human rights issues in South- Central Somalia, including in Mogadishu. January 2013. Section 5.1 Vulnerable Groups <http://www.nyidanmark.dk/NR/ronlyres/68C10A22-BFFC-4BD6-899D-60FB6B0F7AC5/0/FFMSomalia2013Final.pdf>

<sup>121</sup> United States Department of State, 2013 Trafficking in Persons Report - Somalia, 19 June 2013 <http://www.refworld.org/docid/51c2f38d65.html>

may be able to call upon the protection of majority clans, if that 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.<sup>122</sup>

**See also:** [Actors of protection](#) (section 2.2 above)

[Internal relocation](#) (section 2.3 above)

[Caselaw](#) (section 2.4 above)

**3.11.15 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. In claims involving Somali ethnic minority applicants, caseworkers must pay particular attention to establish both the claimant's nationality as well as ethnicity. The Bajuni for example do not only originate from Somalia but also other countries along the Indian Ocean coast, notably Kenya.<sup>123</sup>

**3.11.16** Within Mogadishu it is unlikely that in general any Somali belonging to one of the minority groups would face targeted violence on return on the basis of their ethnic origin alone. The Chief of Police in Mogadishu is a member of a Bravanese minority group. Minority group members may however encounter discrimination and abuse from other clan groups in Mogadishu due to their lowly social status. Caseworkers must therefore give careful consideration to the individual circumstances of the claimant in when assessing whether internal relocation to Mogadishu is a viable option.

**3.11.17** Outside of Mogadishu, 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](#) it was found that "Persons of Bajuni or Bravanese ethnicities 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.

**3.11.18** 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.

**3.11.19** Members of the Midgan, Tumul Yibir or Galgala groups have traditionally settled in areas where they can obtain a degree of protection from the dominant clan and

<sup>122</sup> 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 I(1) of the OAU Convention, d) Members of Minority Clans <http://www.refworld.org/docid/4be3b9142.html>

<sup>123</sup> Landinfo Topical Note 'Somalia: The Bajuni Islands 16 February 2010 <http://www.landinfo.no/id/168.0>

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.

**3.11.20** 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.

### **3.12 Women (including Female Genital Mutilation (FGM))**

**3.12.1** 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.

**3.12.2 Treatment.** Somalia ranks second to Afghanistan as the worst country worldwide for women. Violence against women cuts across all social and economic strata, and is deeply embedded in Somali culture. The Somali customary system is based on clear gender divisions of labour. Women are generally confined to the household, while men have jurisdiction over decisions outside the home. Nonetheless, women have been the backbone of Somali society, providing much of the labour required for the survival of the family in a harsh environment. They fetch water and wood, milk the animals, process the milk, feed the family, and take care of the children and livestock. There are many women-headed households in Somalia where women are the breadwinners, engaging in small-scale enterprises, especially in urban areas.<sup>124</sup>

**3.12.3** Since 1991, the re-emergence of customary law, the extended use of sharia law and the resort to clan-based forms of political representation have meant women have been virtually excluded from all political and judicial structures in different parts of the country. The *xeer* recognizes the rights of men but limits the rights of women, meaning their lives are of unequal value to those of men. Sharia law offers women greater justice than the *xeer*, but can only be administered by men; in practice it is often misapplied in the interests of the latter. Although Somalia's Family Law states that females and males have equal inheritance rights, both sharia law and customary practices often prevent women from getting equal shares or any share at all.<sup>125</sup>

**3.12.4** As in most contemporary conflicts, many Somali women have been killed, raped, displaced and abandoned. Women and children comprise 70 to 80% of all refugees and internally displaced people (IDPs). Many women have lost husbands

<sup>124</sup> UN Development Programme. Somalia Human Development Report 2012. Chapter 2 Dual Traps: Poverty and Violence. Violence and Exclusion of Women. 28 September 2012.

<http://www.undp.org/content/dam/undp/library/corporate/HDR/Arab%20States/HDR-Somalia-2012-E.pdf>

<sup>125</sup> UN Development Programme. Somalia Human Development Report 2012. Chapter 2 Dual Traps: Poverty and Violence. Violence and Exclusion of Women. 28 September 2012.

<http://www.undp.org/content/dam/undp/library/corporate/HDR/Arab%20States/HDR-Somalia-2012-E.pdf>

and other able-bodied family members to violence, leaving them to provide for and protect the children, the elderly and the sick. Polygamy and divorce have further contributed to the increasing number of female breadwinners. Among other consequences, these situations reduce education opportunities for girls. Gender-based violence has been a significant feature of Somalia's conflict, in which customary conventions to protect women and children and preserve human dignity have been violated.<sup>126</sup>

- 3.12.5** Rape and sexual violence against the displaced, particularly against members of rival clans and minority groups, are targeted strategies to weaken families and break down the social fabric of communities and societies. Even in some parts of Somalia where there is relative peace, high levels of sexual and gender-based violence persist, creating long-term threats to security and to women's health. Perpetrators of sexual and gender-based violence are rarely prosecuted, given the weakness of the judiciary system and the lack of recognition of these as crimes. Even as rape continues to be used as a tool of war, survivors have no recourse. Women in IDP camps are particularly vulnerable, having lost their clan protection, and are common victims of murder, rape and kidnappings. Traditional Somali society is conditioned not to openly discuss issues such as domestic violence and rape, which further hampers women's access to justice. Most surveys confirm under-reporting of violence.<sup>127</sup>
- 3.12.6** The status of Somali women differs widely across social groups and to a certain extent across geographic areas, but this richness and diversity is poorly understood. Development agencies' activities focus mostly on women as beneficiaries rather than partners of projects.<sup>128</sup>
- 3.12.7** While both Somaliland and Puntland have developed gender policy papers recognising the need for women's empowerment at all levels of clans, communities and society, it is not yet clear how these policies will look in terms of actual implementation.<sup>129</sup>
- 3.12.8** Women in Somalia face considerable discrimination. Although outlawed, under the new constitution 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. The new constitution outlines the expectation that women be included in all branches of government and includes a non-discrimination clause that makes specific mention of women. As of August 2012, 30 members of Somalia's new parliament were female, which is about half of the country's new quota of 30 %.<sup>130</sup>

<sup>126</sup> UN Development Programme. Somalia Human Development Report 2012. Chapter 2 Dual Traps: Poverty and Violence. Violence and Exclusion of Women. 28 September 2012.  
<http://www.undp.org/content/dam/undp/library/corporate/HDR/Arab%20States/HDR-Somalia-2012-E.pdf>

<sup>127</sup> UN Development Programme. Somalia Human Development Report 2012. Chapter 2 Dual Traps: Poverty and Violence. Violence and Exclusion of Women. 28 September 2012.  
<http://www.undp.org/content/dam/undp/library/corporate/HDR/Arab%20States/HDR-Somalia-2012-E.pdf>

<sup>128</sup> UN Development Programme. Somalia Human Development Report 2012. Chapter 2 Dual Traps: Poverty and Violence. Violence and Exclusion of Women. 28 September 2012.  
<http://www.undp.org/content/dam/undp/library/corporate/HDR/Arab%20States/HDR-Somalia-2012-E.pdf>

<sup>129</sup> UN Development Programme. Somalia Human Development Report 2012. Chapter 2 Dual Traps: Poverty and Violence. Violence and Exclusion of Women. 28 September 2012.  
<http://www.undp.org/content/dam/undp/library/corporate/HDR/Arab%20States/HDR-Somalia-2012-E.pdf>

<sup>130</sup> Freedom House, Freedom in the World 2013: Somalia, May 2013  
<http://www.freedomhouse.org/report/freedom-world/2013/somalia>



- 3.12.9** 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..<sup>131</sup> Al-Shabaab continued to apply an extreme form of Islamic law in areas under its control.<sup>132</sup>
- 3.12.10** 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".<sup>133</sup> 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.<sup>134</sup> The March 2013 UN Security Council report on Somalia states that "Sexual violence, particularly in the camps of internally displaced persons in Mogadishu and the surrounding areas, continues to be of great concern. Perpetrators include members of organized armed groups and sometimes members of the Somali national forces".<sup>135</sup> Human Rights Watch similarly reported that "Displaced women and girls and their families have limited means of protection against rape given the context of insecurity in which they live. The destruction or absence of traditional protection mechanisms, especially clan protection that occurs from being displaced contributes to their vulnerability along with lack of shelter, access to livelihoods, and the culture of impunity that has characterised the conflict in Somalia. The presence of a male relative does not always protect women against abuse".<sup>136</sup>

#### Female genital mutilation (FGM)

- 3.12.11** The 2012 US State Department report noted that the provisional federal constitution describes female circumcision as cruel and degrading, equates it with torture, and prohibits the circumcision of girls. However, female genital mutilation/cutting is widespread throughout the country. As many as 98% of women and girls have undergone FGM; the majority were subjected to infibulation, the most severe form of FGM. International and local NGOs have run education awareness programs on the dangers of FGM, but there are no reliable statistics to measure the success of these programs.<sup>137</sup>
- 3.12.12** Activists have welcomed the ban on FGM in the new constitution of Somalia but warn that translating the law into action will require more than just a legal

<sup>131</sup> Human Rights Watch, World report 2012; Somalia, Abuses in Opposition Controlled Areas <http://www.hrw.org/world-report-2012/world-report-2012-somalia>

<sup>132</sup> Human Rights Watch, World report 2013: Somalia, 31 January 2013 <http://www.hrw.org/world-report/2013/country-chapters/somalia?page=3>

<sup>133</sup> 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>

<sup>134</sup> 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](http://www.nyidanmark.dk/NR/rdonlyres/90821397-6911-4CEF-A8D0-6B8647021EF2/0/Security_human_rights_issues_South_CentralSomalia_including_Mogadishu.pdf)

<sup>135</sup> UN Security Council, Report of the Secretary-General on Somalia, 31 May 2013, para 48 [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2013/326](http://www.un.org/ga/search/view_doc.asp?symbol=S/2013/326)

<sup>136</sup> Human Rights Watch, Hostages of the Gatekeepers: Abuses against Internally Displaced in Mogadishu, Somalia, 29 March 2013, Sexual and Gender Based Violence <http://www.hrw.org/reports/2013/03/28/hostages-gatekeepers>

<sup>137</sup> US Department of State, Country Reports on Human Rights Practices for 2012: Somalia, 19 April 2013, Section 6. Discrimination, Societal Abuses, and Trafficking Persons, Children,, <http://www.state.gov/documents/organization/204377.pdf>

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.<sup>138</sup>

- 3.12.13** In December 2011 Puntland's president signed a bill into law that outlawed some forms of female circumcision but allowed for "Sunna circumcision," which consists of the removal of the prepuce (retractable fold of skin) and/or the tip of the clitoris. The legislation also abolished blame if a child were to die during FGM. Human rights workers largely considered this a retrogressive step in the protection of women's rights. The Somaliland administration worked with the UN FGM task force to develop an FGM policy for Somaliland, but by the end of 2012 the policy was not completed.<sup>139</sup>
- 3.12.14** However according to a report released on 16 April 2013 by the UN Children's Fund (UNICEF), incidents of female genital mutilation (FGM) appear to be declining in the Somaliland and Puntland regions of Somalia. Three-fourths of girls aged 10 to 14 in the Puntland and Somaliland regions have not been circumcised, whereas more than 98% of women aged 15 and above have, the survey found. UNICEF Chief of Child Protection in Somalia, Sheema Sen Gupta, called the findings a promising indicator for long term reductions in the practice. "FGM is practiced just around puberty," Gupta said. "It usually spikes in the [aged] 10 to 14 group and to see that it was at 25% that was fantastic."<sup>140</sup>

**See also:** [Actors of protection](#) (section 2.2 above)

[Internal relocation](#) (section 2.3 above)

[Caselaw](#) (section 2.4 above)

- 3.12.15 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, most 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, connections with the diaspora (which can be material both in terms of income and ability to find work with reference to the diaspora driven economic boom).and other individual circumstances of the applicant.
- 3.12.16** 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.
- 3.12.17** 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

<sup>138</sup> IRIN, SOMALIA: Activists laud ban on FGM/C, say implementation will require more, 12 August 2012, <http://www.irinnews.org/report/96092/>

<sup>139</sup> US Department of State, Country Reports on Human Rights Practices for 2012: Somalia, 19 April 2013, Section 6. Discrimination, Societal Abuses, and Trafficking Persons, Children, <http://www.state.gov/documents/organization/204377.pdf>

<sup>140</sup> All Africa. Somalia: Northern Somalia Sees Drop in Female Genital Mutilation. 17 April 2013 <http://allafrica.com/stories/201304180181.html>

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 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).

- 3.12.18** Caseworkers 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. Caseworkers 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.
- 3.12.19** 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.
- 3.12.20** With regard to FGM, the Upper Tribunal concluded in the country guidance case of [AMM and others](#), 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 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.
- 3.12.21** Given the prevalence of FGM throughout Somalia and the strong cultural belief in its practice it is unlikely that an individual could successfully internally relocate. 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 approximate total number of prisoners and detainees throughout the country, including juvenile and female prisoners, is not known. The approximate total number of prisoners and detainees throughout the country, including juvenile and female prisoners, was not known. A UN assessment found that at the end of July 2012 the Mogadishu Central Prison population was 950 individuals, of whom 14 were women and 39 were juveniles. Harsh conditions in prisons and detention centres throughout the country included overcrowding, poor sanitation, and lack of health care. Inadequate food, water, ventilation, and lighting continued to be persistent problems. Tuberculosis and pneumonia were reportedly widespread. Prisoners relied on their families and clans, who were expected to pay the costs associated with detention. In many areas prisoners depended on family members and relief agencies for food. The Transitional Federal Charter (TFC), provided for the right to physical security. The provisional federal constitution that replaced the TFC in August prohibits torture and inhumane treatment. However, torture and other cruel, inhuman, or degrading treatment or punishment occurred.<sup>141</sup>
- 3.13.4** In prisons and detention centres, juveniles are frequently held with adults. Female prisoners were separated from males. Pretrial detainees often were 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 remained an issue. At times juveniles held in prison so they would not be recruited forcibly by al-Shabaab were held in cells with al-Shabaab prisoners<sup>142</sup>
- 3.13.5** The Elman Peace and Human Rights Centre, Mogadishu reported to the May 2013 Danish and Landinfo Fact Finding Mission that many people are incarcerated without charges for long periods of time. Children and adults are not separated. There are outbreaks of diseases in the prisons and all humanitarian actors have been denied access. The last being International Committee of the Red Cross (ICRC) who's access was denied and there have been concerns of cholera outbreaks. Petty criminals are incarcerated with radicals and high risk individuals.<sup>143</sup>

<sup>141</sup> US Department of State, 2012 Report on Human Rights Practices in Somalia, 19 April 2013, Section 1c. Prison and Detention Center Conditions, <http://www.state.gov/documents/organization/186453.pdf>

<sup>142</sup> US Department of State, 2012 Report on Human Rights Practices in Somalia, 19 April 2013 Section 1c. Prison and Detention Center Conditions, , <http://www.state.gov/documents/organization/186453.pdf>

<sup>143</sup> Danish Immigration Service and Norwegian Landinfo, Security and protection in Mogadishu and South-Central Somalia Report from the Danish Immigration Service's and the Norwegian Landinfo's fact finding mission to Nairobi, Kenya and Mogadishu, Somalia. 16 April to 7 May 2013, May 2013. 1.4 Activities by the SNAF, police forces, District Commissioners (DCs) and criminal gangs [http://www.nyidanmark.dk/NR/rdonlyres/6F1A29C6-2F84-40D2-BDE4-42F69897EEC3/0/security\\_and\\_protection\\_in\\_somalia\\_may\\_2013.pdf](http://www.nyidanmark.dk/NR/rdonlyres/6F1A29C6-2F84-40D2-BDE4-42F69897EEC3/0/security_and_protection_in_somalia_may_2013.pdf)



- 3.13.6** The UN's Report of the independent expert on the situation of human rights in Somalia, published on 22 August 2012 stated that during his visit to Somalia, the Independent Expert visited several detention centres in Puntland and Somaliland. He found that, 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. Most inmates in Puntland and Mogadishu were accused of such serious crimes as murder, piracy or having links with al-Shabaab; for a significant number of cases, however, detentions appeared to be either unlawful or arbitrary.<sup>144</sup>
- 3.13.7** The USSD 2012 report also stated that: 'Al-Shabaab operated dilapidated detention centres in areas under its control in the south and central regions. No statistics were available, but observers estimated thousands were incarcerated in inhumane conditions for relatively minor "offenses" such as smoking, listening to music, watching or playing soccer, or not wearing a hijab.'<sup>145</sup>
- 3.13.8** The UN Office on Drugs and Crime (UNDOC)'s counter piracy programme includes work on improving the prison service. UNDOC have been working in a newly opened prison academy in Puntland training Puntland's prison staff on the latest techniques in prisoner care, resisting corruption and rehabilitation of violent young men. A new 500 bed prison which will open at the end of 2013 to bring Somali pirates convicted in courts around the world back to serve their sentences close to home: a strategy supported by the UN Security Council and passed to UNDOC for implementation.<sup>146</sup>
- 3.13.9 Conclusion.** Prison conditions in Somalia are in general 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. Minors claiming in their own right**

- 4.1** Minors claiming in their own right who have not been granted asylum or humanitarian protection can only be returned where the Secretary of State is satisfied that safe and adequate reception arrangements are in place in the country to which the child is to be returned.

<sup>144</sup> UN Human Rights Council, Report of the independent expert on the situation of human rights in Somalia, Shamsul Bari, 22 August 2012, p15,  
[http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A.HRC.21.61\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A.HRC.21.61_en.pdf)

<sup>145</sup> US Department of State, 2012 Report on Human Rights Practices in Somalia, 19 April 2013 Section 1c. Prison and Detention Center Conditions, , <http://www.state.gov/documents/organization/186453.pdf>

<sup>146</sup> UN Office on Drugs and Crime. Counter Piracy Programme. Support to the Trial and Related Treatment of Piracy Suspects. December 2012. Page 5  
[http://www.unodc.org/documents/easternafrika/piracy/CPP\\_brochure\\_December\\_2012.pdf](http://www.unodc.org/documents/easternafrika/piracy/CPP_brochure_December_2012.pdf)

- 4.2 At present there is insufficient information to be satisfied that there are adequate alternative reception, support and care arrangements in place for minors with no family in Somalia. Those who cannot be returned should be considered for leave as unaccompanied asylum seeking children (UASC).
- 4.3 Regulation 6 of the Asylum Seekers (Reception Conditions) Regulations 2005 imposes a duty on the Secretary of State to try to trace the families of UASC as soon as possible after the claim for asylum is made, while making sure that those endeavours do not jeopardise the child's and/or their family's safety. Information on the infrastructure within Somalia which may potentially be utilised to assist in trying to trace the families of UASC, can be obtained from the Country of Origin Information Service (COIS).
- 4.4 Caseworkers should refer to the asylum instruction: [Processing an Asylum Application from a Child](#), for further information on assessing the availability of safe and adequate reception arrangements, UASC leave and family tracing. Additional information on family tracing can be obtained from the [interim guidance](#) on Court of Appeal judgment in [KA \(Afghanistan\) & Others \[2012\] EWCA civ1014](#).
5. **Medical treatment**
  - 5.1 Individuals whose asylum claims have been refused and who seek to remain on the grounds that they require medical treatment which is either unavailable or difficult to access in their countries of origin, will not be removed to those countries if this would be inconsistent with our obligations under the ECHR. Caseworkers should give due consideration to the individual factors of each case and refer to the latest available country of origin information concerning the availability of medical treatment in the country concerned. If the information is not readily available, an information request should be submitted to COIS.
  - 5.2 The threshold set by Article 3 ECHR is a high one. It is not simply a question of whether the treatment required is unavailable or not easily accessible in the country of origin. According to the House of Lords' judgment in the case of [N \(FC\) v SSHD \[2005\] UKHL31](#), it is "whether the applicant's illness has reached such a critical stage (for instance he is dying) that it would be inhuman treatment to deprive him of the care which he is currently receiving and send him home to an early death unless there is care available there to enable him to meet that fate with dignity". That judgment was upheld in May 2008 by the European Court of Human Rights.
  - 5.3 That standard continues to be followed in the Upper Tribunal (UT) where, in the case of [GS and EO \(Article 3 – health cases\) India \[2012\] UKUT 00397\(IAC\)](#) the UT held that a dramatic shortening of life expectancy by the withdrawal of medical treatment as a result of removal cannot amount to the highly exceptional case that engages the Article 3 duty. But the UT also accepted that there are recognised departures from the high threshold approach in cases concerning children, discriminatory denial of treatment, the absence of resources through civil war or similar human agency.
  - 5.4 The improvement or stabilisation in an applicant's medical condition resulting from treatment in the UK and the prospect of serious or fatal relapse on expulsion will therefore not in itself render expulsion inhuman treatment contrary to Article 3 ECHR. All cases must be considered individually, in the light of the conditions in the country of origin, but an applicant will normally need to show exceptional circumstances that prevent return. Namely that there are compelling humanitarian

considerations, such as the applicant being in the final stages of a terminal illness without prospect of medical care or family support on return.

- 5.5** Where a caseworker considers that the circumstances of the individual applicant and the situation in the country would make removal contrary to Article 3 or 8 a grant of discretionary leave to remain will be appropriate. Such cases should always be referred to a senior caseworker for consideration before a grant of discretionary leave. Caseworkers must refer to the asylum instruction on [Discretionary Leave](#) for the appropriate period of leave to grant.

## **6. Returns**

- 6.1** 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.
- 6.2** 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.
- 6.3** 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, caseworkers should consider accessibility of the intended place of relocation. Where return is to a home area other than Mogadishu, caseworkers 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, caseworkers and/or presenting officers should be prepared to deal with any challenge on this issue made by the applicant in the courts.
- 6.4** In that regard case workers 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.

- 6.5** Somali nationals may return voluntarily to Somalia at any time in one of three ways. Leaving the UK:
- a) by themselves, where the applicant makes their own arrangements to leave the UK,
  - b) through the voluntary departure procedure, arranged through the UK Border Force, or
  - c) under one of the assisted voluntary return (AVR) schemes.
- 6.6** The AVR schemes are implemented on behalf of the Home Office 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](http://www.choices-avr.org.uk).
- 6.7** 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.
- 6.8** 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.
- 6.9** The Home Office 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 Home Office 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**  
**Immigration and Border Policy Directorate**  
**Home Office**  
**September 2013**