

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	433
Land:	Somalia
Kilde:	UNHCR
Titel:	UNHCR Position on Returns to Southern and Central Somalia
Udgivet:	Juni 2014
Optaget på baggrundsmaterialet:	30. juni 2014



UNHCR POSITION ON RETURNS TO SOUTHERN AND CENTRAL SOMALIA

Introduction

1. In May 2013, the international community expressed its commitment to support Somalia in its continuing transition towards peace and stability at the Somalia Conference in London. The Conference's concluding document acknowledged that the country had arrived at a pivotal moment, one year after its eight-year transition had ended, and after Somalia's population had elected a new Parliament and President in what was generally considered a legitimate election process, and a new Government had been formed. The Conference also acknowledged, on the other hand, that many challenges remained in particular relating to security, governance, human rights, displacement and development.¹
2. Even in the highly volatile environment that persists in Southern and Central Somalia, humanitarian and development actors have started exploring possible interventions to support the creation of conditions for future returns to Somalia. Despite the reality that large-scale returns to many parts of Somalia are not possible at the moment, there is general recognition of the fact that solutions to protracted large-scale displacement will be an integral element of sustainable peace in Somalia. Within this context, the Federal Government of Somalia, the Government of Kenya and UNHCR signed on 10 November 2013 a tripartite agreement that sets out the legal framework for future returns from Kenya to Somalia.² There is no deadline in the agreement for the returns and the agreement specifies that all returns should be voluntary and take place in safety and dignity. In both Kenya and Somalia, preparations have been initiated for the implementation of pilot projects, supporting spontaneous returns to selected areas and working with host communities and returned IDPs to improve conditions generally – all as part of a multi-actor strategy to contribute to peacebuilding.

¹ United Kingdom Government (Foreign & Commonwealth Office, Department for International Development and Prime Minister's Office), *The International Somalia Conference Final Communiqué*, 7 May 2013, <https://www.gov.uk/government/news/somalia-conference-2013-communiqué>.

² UN High Commissioner for Refugees (UNHCR), *Tripartite Agreement Between the Government of the Republic of Kenya, the Government of the Federal Republic of Somalia and the United Nations High Commissioner for Refugees Governing the Voluntary Repatriation of Somali Refugees Living in Kenya*, 2013, 10 November 2013, <http://www.refworld.org/docid/5285e0294.html>.

3. In line with and reinforcing the international community's commitment to support Somalia's transition to stability, UNHCR launched a Global Initiative on Somali Refugees (GISR), the first meeting of which was held in November 2013. The collaboration with host states, the Somali diaspora, donors and experts on the Somali situation which is taking place through the GISR is starting to bear fruit, with initiatives on education for Somalis in countries of asylum in the region and with work starting on livelihoods and other initiatives designed to support self-reliance and a move away from dependency. UNHCR and partners engaged in the GISR have been working more closely with diaspora groups and will be meeting with regional stakeholders in Addis Ababa in late July 2014, so as to move forward on contributions to a regional strategy. With Somali refugees and a Somali diaspora present in all corners of the world, the regional strategy should ideally develop into a global strategy, with constructive engagement and participation from States beyond the immediate region.

Current Situation

4. As outlined in the organization's analysis of the protection needs of persons originating from Southern and Central Somalia, set out in its *International Protection Considerations* paper of 17 January 2014,³ the security situation in many parts of Southern and Central Somalia continues to be volatile⁴ and the capacity of the State and its institutions to protect civilians residing there remains weak, including at local level.⁵ Protracted armed conflict has had devastating consequences, including massive displacement, weakened community structures, gross human rights violations and the breakdown of law and order. Large parts of Southern and Central Somalia remain under the effective control of non-state armed groups.⁶
5. In March 2014, the Somali National Security Forces (SNSF) and the African Union Mission in Somalia (AMISOM) launched a military offensive against such groups, known as "Operation Eagle". The ongoing operation has, so far, led to the displacement of about 73,000 persons.⁷ Human rights abuses are reported⁸ in areas where military activities take place, although verification of these reports remains a challenge due to insecurity and access constraints. Transit routes to and from key towns are unsafe as criminal elements have established illegal checkpoints where they are reported to harass and extort money and valuables from IDPs.⁹ Even where the State has re-established territorial control, local

³ UNHCR, *International Protection Considerations with Regard to People Fleeing Southern and Central Somalia*, 17 January 2014, <http://www.refworld.org/docid/52d7fc5f4.html>.

⁴ The security situation is reported to have deteriorated further since the publication of the January 2014 Protection Considerations paper (full reference in previous footnote). See e.g. Integrated Regional Information Networks (IRIN), *Security Downturn in Mogadishu*, 9 April 2014, <http://www.refworld.org/docid/5379ca534.html>; UN News Service, *Somalia: UN Envoy Condemns Recent Outbreaks of Deadly Violence in Baidoa*, 24 March 2014, <http://www.refworld.org/docid/533950634.html>; IRIN, *Short-term Costs of Military Gains in Somalia*, 21 March 2014, <http://www.refworld.org/docid/53394c044.html>; UN Security Council, *Report of the Secretary-General on Somalia*, 3 March 2014, S/2014/140, <http://www.refworld.org/docid/531ef31f4.html>.

⁵ See e.g. UN News Service, *Somalia's Efforts to Build Cohesive State Require International Support, Security Council Told*, 11 March 2014, <http://www.refworld.org/docid/5322d9f24.html>; France 24, *Operation Eagle: Tracking al-Shabaab in Somalia*, 19 May 2014, <http://www.france24.com/en/20140516-operation-eagle-somalia-fight-against-al-shabaab-african-union-al-qaeda/>.

⁶ See footnote 3.

⁷ Based on information available to UNHCR Somalia.

⁸ UNHCR and its partners in Somalia have received such reports from IDPs.

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civilian governance, including functioning justice and security structures, will need to be rebuilt. The situation in these areas is expected to remain fragile for some time.¹⁰

6. Against this backdrop, UNHCR is concerned by the significant numbers of deportations to Southern and Central Somalia which the organization is observing.

Deportations

7. Since December 2013, over 34,000 Somalis have been deported from different countries to Somalia, often in the context of efforts to address irregular migration and security concerns.¹¹ The majority of deportees are young Somali men and women, although in a number of instances children and elderly people have also been deported. Reports of split families are common. Many of those deported have found themselves in an IDP-like situation in Mogadishu.
8. Amongst the deportees there have been confirmed cases of registered refugees and asylum-seekers; their deportation to Somalia amounts to *refoulement*. The deportation of other Somalis may also amount to *refoulement*, depending on the individual circumstances of the case.

UNHCR Position on Forced Returns

9. Under the present circumstances, UNHCR urges States to refrain from forcibly returning any persons to areas of Southern and Central Somalia that are affected by military action and/or ensuing displacement, remain fragile and insecure after recent military action, or remain under control of non-State groups. For Somalis from these areas, eligibility for international refugee protection under the 1951 Convention and in the African Union, under the 1969 OAU Convention¹² should be considered; many of them are likely to meet the criteria for

¹⁰ See e.g. "(...) as the African Union troops make progress on the ground, big doubts surround the ability of Somalia's army and government to fill the resulting security and humanitarian vacuum once they have left. Although al Shabaab no longer has a visible presence in Qoryooley, people are still within the orbit of the militant group, which retains a significant force just a few kilometres away and about which there is little concrete intelligence. (...)" France 24, *Operation Eagle: Tracking al-Shabaab in Somalia*, 19 May 2014, <http://www.france24.com/en/20140516-operation-eagle-somalia-fight-against-al-shabaab-african-union-al-qaeda/>. See also: "Mahamed Muse Tarey, executive director of the Somali Institute for Policy and Strategic Studies, notes that political disputes can arise quickly when territory is rapidly reclaimed. "What we have realized before, is that some area was liberated from al-Shabab but there was not a political strategy in place. And what happened, there was a power vacuum, but also clan in-fighting," Tarey stated." In: VOA News, *AMISOM Expands Operations Against al-Shabab in Somalia*, 13 March 2014, <http://www.voanews.com/content/amisom-expands-operations-against-al-shabab-in-somalia/1870507.html>.

¹¹ Detailed information available to UNHCR.

¹² See article 1.1 and 1.2, Organization of African Unity (OAU), *Convention Governing the Specific Aspects of Refugee Problems in Africa* ("OAU Convention"), 10 September 1969, 1001 U.N.T.S. 45, available at: <http://www.refworld.org/docid/3ae6b36018.html>.

Outside the African Union, other broader international protection criteria may apply, such as (a) the Cartagena Declaration on Refugees, *Colloquium on the International Protection of Refugees in Central America, Mexico and Panama*, 22 November 1984, <http://www.refworld.org/docid/3ae6b36ec.html>. (Unlike the OAU Convention, the Cartagena Declaration is not a binding legal instrument; its provisions acquire the force of law only through incorporation in national legislation) and (b) the Qualification Directive, European Union, *Directive 2011/95/EU of the European Parliament and of the Council on standards for the qualification of third - country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)*, 13 December 2011, <http://www.refworld.org/docid/4f06fa5e2.html>, Articles 2(f), 15.

refugee status under one or both of these Conventions.¹³ General *non-refoulement* obligations under international human rights law may also be engaged in the context of forcible return of Somalis to Southern and Central Somalia.

Spontaneous and Organized Returns

10. Those individual Somalis who are outside the country and considering return to Southern or Central Somalia in a spontaneous manner should be provided with as much detailed information on the situation in their place of origin as possible, so as to allow them to take into account the current situation as regards security, governance and livelihoods and make a fully informed choice.
11. If they consider return to Mogadishu instead, in light of continued or renewed insecurity or other adverse conditions in their place of origin, detailed information on current living conditions and risks in Mogadishu should be made available to them.¹⁴ The protracted nature of displacement in Mogadishu has resulted in further pressure on accommodation and services there, with living conditions for IDPs increasingly difficult. Furthermore, the security situation in the city has recently been reported to have deteriorated again and continues to give rise to serious concerns.¹⁵
12. The tripartite agreement governing voluntary returns from Kenya to Somalia¹⁶ does not affect the assessment of international protection needs of asylum-seekers from Somalia. As with other countries,¹⁷ the fact that some Somalis may choose to return despite the less than ideal circumstances does not change the fact that many Somalis¹⁸ continue to flee in search of international protection, either for 1951 Convention reasons or for reasons that may bring them within the criteria of the 1969 OAU Convention.¹⁹
13. In cases in which UNHCR supports returns under pilot return projects to designated areas, the Office will verify and confirm the voluntariness of the movement through individual interviews with all members of returning families.

¹³ For a full analysis of protection needs of Somalis from Southern and Central Somalia before the implementation of recent military action, see UNHCR's 2014 Protection Considerations (full reference in footnote 3).

¹⁴ See e.g. "In Mogadishu, fear of attack and crime prevents many from leading normal lives", and, as regards the situation for IDP women and girls in Mogadishu: "Sexual violence against women is also a major problem, particularly for those in IDP camps. According to data from the UN Office for the Coordination of Humanitarian Affairs (OCHA), there were 800 cases of sexual and gender-based violence in Mogadishu during the first six months of 2013." In: IRIN, *Somalia at "Risk of Relapse"*, 7 May 2014, <http://www.irinnews.org/report/100051/somalia-at-risk-of-relapse>.

¹⁵ See e.g. "In Mogadishu, the security situation has deteriorated since ... December," Nicholas Kay, the Secretary-General's special representative to Somalia, told the UN Security Council on 11 March. "Times are tough, and in the short term they may get tougher. Insecurity in Mogadishu poses challenges for Somalis, for the UN and the international community." "The risk of further attacks against Somali government and international targets remains high," he added. For many Mogadishu residents, fear of attack and crime prevents them from leading normal lives. Neighbourhoods such as Heliwaa, Yaqshiid and Dayniile have been particularly hard-hit, forcing people to flee to more peaceful districts within the city." In: IRIN, *Security Downturn in Mogadishu*, 9 April 2014, <http://www.irinnews.org/report/99906/security-downturn-in-mogadishu>.

¹⁶ See footnote 2.

¹⁷ Such as, for example, Afghanistan; a country which has signed tripartite return agreements with UNHCR and a number of countries, including for example with Pakistan.

¹⁸ Asylum applications of Somalis in 44 industrialized States rose by 23% in 2013 compared to 2012, with 18,701 asylum applications of Somalis recorded in 2012 and 23,071 in 2013. See UNHCR, *UNHCR asylum trends 2013*, March 2014, <http://www.unhcr.org/statistics/2013-Asylum-Trends-annex-tables.zip>, table 3.

¹⁹ Outside the African Union, other broader international protection criteria may apply, see footnote 12.

14. As in similar situations elsewhere, the commencement of larger scale organised repatriation will depend on conditions in return areas being conducive for a durable return in safety and dignity. UNHCR continues to monitor the situation in all accessible parts of Somalia.
15. Any assistance provided by UNHCR for return to Somalia aims at supporting individuals who, being fully informed of the situation in their places of origin, choose voluntarily to return. Any future role of UNHCR in the facilitation of organized voluntary repatriation movements to Somalia and any future involvement by UNHCR in efforts aimed at sustainable reintegration for returnees and IDPs in Somalia should not be construed as implying an assessment on the part of UNHCR that Somalia is safe for every individual, regardless of personal profile or personal circumstances. It should be noted in this regard that voluntary repatriation and forced return are processes of fundamentally different characters, engaging different responsibilities on the parts of the various actors involved.

Refugee Protection under the 1951 Convention

16. In relation to Somalis who originate from Southern and Central Somalia and who seek international protection in countries outside the AU, UNHCR would like to recall that many of them have profiles that may bring them within the scope of the 1951 Refugee Convention.²⁰ Under the current circumstances, this applies to Somalis originating from areas covered by the above advisory against returns, as well as to Somalis originating from parts of Southern and Central Somalia that are under effective Government control and are not affected by military operations.²¹

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²⁰ Or applicable broader international protection criteria; see footnote 12.

²¹ See full list of profiles in the above mentioned UNHCR 2014 Protection Considerations, footnote 3.