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SOMALIA

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1. Introduction

- 1.1** This document summarises the general, political and human rights situation in Somalia and provides information on the nature and handling of claims frequently received from nationals/residents of that province. It must be read in conjunction with the RDS - COI Service Somalia Country of Origin Information Report October 2005 at:

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

- 1.2** This guidance is intended to provide clear guidance on whether the main types of claim are or are not likely to justify the grant of asylum, Humanitarian Protection or Discretionary Leave. Caseworkers should refer to the following Asylum Policy Instructions for further details of the policy on these areas:

API on Assessing the Claim
 API on Humanitarian Protection
 API on Discretionary Leave
 API on the European Convention on Human Rights

- 1.3** Claims should be considered on an individual basis, but taking full account of the information set out below, in particular Part 3 on main categories of claim.

Source documents

- 1.4 A full list of source documents cited in footnotes is at the end of this note.

2. Country assessment

- 2.1 Since the fall of President Siad Barre in January 1991, Somalia has been without a functioning central government. During the 1990s, the country was in a perpetual state of civil war with rival clan warlords and their associated militias engaged in armed conflicts over control of various regions. The most serious outbreaks of clan violence were in southern and central regions. In some areas, notably Puntland and Somaliland in the north, local administrations function effectively in lieu of a central government. In these areas the existence of local administrations, as well as more traditional forms of conflict resolution such as councils of clan Elders, helps to prevent disputes degenerating rapidly into armed conflict.¹
- 2.2 In 2000, Djibouti hosted a major reconciliation conference; the 13th such attempt since 1991. In August 2000, the Transitional National Government (TNG) was inaugurated, however it failed to extend its authority much beyond some areas of Mogadishu during its 3-year mandate which expired in August 2003. In early 2002, Kenya organised a further reconciliation effort under Inter-Governmental Authority on Development (IGAD) auspices known as the Somalia National Reconciliation Conference, which concluded in October 2004. In August 2004, the Somali Transitional Federal Assembly (TFA) was established as part of the IGAD-led process. Abdullahi Yusuf Ahmed was elected Transitional Federal President of Somalia on 10 October 2004 and Ali Mohamed Ghedi was approved by the Transitional Federal Assembly as Prime Minister on 24 December 2004 as part of the continued formation of a Transitional Federal Government (TFG).²
- 2.3 The Transitional Federal Parliament (TFP) approved the interim government's cabinet put forward by the Prime Minister Ghedi in January 2005. The most immediate issue facing the president, Abdullahi Yusuf Ahmed, and his new transitional government in 2005 is the split in the cabinet over the interim government's location in Jowhar rather than Mogadishu. If a solution to the impasse is not found soon, a risk of violent confrontation between forces loyal to Yusuf in Jowhar and those loyal to his rivals in Mogadishu, particularly the speaker of Somalia's TFP Sharif Hassan Sheikh Aden, cannot be discounted. No international peacekeepers are expected to be deployed until the impasse over the government's location is resolved. The new interim government has been established in Jowhar. Some cabinet members have refused to serve outside Mogadishu. In June talks to resolve the split in the cabinet over the interim government's location failed to produce an agreement. Plans to deploy international peacekeepers have been put on hold.³
- 2.4 In the north of the country there are two autonomous regions with separate administrations: Somaliland and Puntland. The 'Republic of Somaliland' declared its independence from the rest of Somalia in 1991, although this is not recognised internationally. Somaliland did not taken part in the National Reconciliation Conference in Kenya and following the establishment of the Transitional Federal Parliament and President in the autumn of 2004, re-emphasised its autonomy and territorial boundaries. The self-declared "Puntland State of Somalia" has been led since 1998 by President Abdullahi Yusuf. Puntland has said that it has no aspirations to form a separate state. A dispute between Somaliland and Puntland over control of Sool and Sanaag regions has been ongoing since December 2003. Troops from both sides are still deployed in the border region and the conflict remains unresolved. A prominent participant in the reconciliation process in Kenya, Yusuf was elected President of the TFG in October 2004. He remains the pre-eminent leader in Puntland.⁴

¹ Home Office COI Service Somalia Country of Origin Information Report October 2005 (paras 4.01 – 4.13, 5.01 – 5.31 & 6.141 – 6.167)

² COI Service Somalia Country Report (paras 4.14 – 4.16 & 4.20)

³ COI Service Somalia Country Report (paras 4.21 – 4.22, 5.12 – 5.15 & 6.143 – 6.147)

⁴ COI Service Somalia Country Report (paras 4.12 – 4.30, 5.27 – 5.31 & 6.160 – 6.167)

- 2.5** Political power in many areas of central and southern Somalia, including Mogadishu, is in the hands of local warlords or leading figures of the dominant clan or sub clan in that area. These regions are much less homogeneous in clan terms than Puntland and Somaliland, which is reflected in the large number of clan-based militia; some of which control only small areas. There are several regional clan-based administrations, some of which co-operate with neighbouring authorities that permit free movement of people and trade across regional boundaries. Many authorities are comprised of councils of Elders, often heavily influenced by a dominant local militia. Rival Hawiye factions control most key regions and urban areas of central and southern Somalia. Though control of each region/sub region has generally been with the same warlord and/or clan grouping for the past decade or so, the fluidity of the security and political situation in most of the regions means that control is liable to be contested in sporadic outbursts of armed conflict.⁵
- 2.6** The country's human rights situation remained poor and serious human rights abuses continued in 2004. Throughout the country, human rights violations remain endemic. These include murder, looting and destruction of property, use of child soldiers, kidnapping, discrimination of minorities, torture, unlawful arrest and detention, and denial of due process by local authorities. The prolonged absence of a central government complicates efforts to address the human rights violations. While the *de facto* authorities are accountable for the human rights situation in the areas they control, many are either not aware of or choose to ignore international conventions, or do not have the capacity to enforce respect for human rights and justice.⁶
- 2.7** The human rights situation is better in Somaliland and Puntland than in other parts of Somalia. Somaliland and Puntland have constitutions that provide for citizens' rights and have civic institutions that provide a degree of protection to individuals; the human rights situation is in general better in these two regions than elsewhere in the country. There are a number of local and international NGOs engaged in human rights activity currently operating in southern Somalia, though their presence is subject to change according to the prevailing security conditions and the will of *de facto* administrations. The human rights groups located in Somaliland are able to operate freely while those based in Puntland however are shown little tolerance by the political authorities.⁷
- 2.8** Somali society is characterised by membership of clan families (which are sub-divided into clans and sub-clans) or membership of minority groups. An individual's position depends to a large extent on their clan origins. In general terms, a person should be safe in an area controlled by their clan, and any person, irrespective of clan or ethnic origin, will be safe from general clan-based persecution in Somaliland and Puntland. The chronic and widespread level of underdevelopment in Somalia makes a large portion of the population vulnerable not only to humanitarian crisis, but also to violations of their human rights. Somalis with no clan affiliation, and thus protection, are the most vulnerable to such violations, including predatory acts by criminals and militias, as well economic, political, cultural and social discrimination.⁸
- 2.9** Societal discrimination against women is widespread and the practice of female genital mutilation almost universal. Instances of gender-based violence are increasing, including rape and domestic violence. The cultural attitudes of traditional elders and law enforcement officials routinely result in restrictions on women's access to justice, denial of their right to due process and their inhumane treatment in detention.⁹
- 2.10** The overwhelming majority of Somalis are Sunni Muslims and Islam has been declared the 'official' religion by some local administrations. The Sunni majority may view non-Sunni

⁵ COI Service Somalia Country Report (paras 5.05 – 5.31 & 6.141 – 6.167)

⁶ COI Service Somalia Country Report (para 6.01)

⁷ COI Service Somalia Country Report (paras 5.02 – 5.03, 5.27 – 5.31, 6.01 – 6.02 & 6.14 – 6.21)

⁸ COI Service Somalia Country Report (paras 6.77 – 6.87 & Annexes B & C)

⁹ COI Service Somalia Country Report (paras 6.105 – 6.106 & 6.109 – 6.117)

Muslims and people observing other faiths with suspicion. There have been reports of non-Muslims experiencing societal harassment problems because of their religion, in particular where an attempt has been made to convert Muslims. This practice is illegal in Somaliland and Puntland and effectively blocked by informal social consensus elsewhere.¹⁰

- 2.11** There is no national judicial system or police force, however regional administrations have some functioning courts and civilian police forces. In most areas the locally organised judiciary is an inconsistent mixture of traditional and customary justice, Islamic Shari'a law and the pre-1991 penal code. In Somaliland and Puntland, where the pre-1991 penal code still generally applies, an accused person can be assisted by a lawyer and has some appeal rights, even in the Shari'a courts. The right to representation by an attorney and the right to appeal does not exist in most southern/central regions that apply traditional and customary judicial practices or Shari'a law. The death penalty is enforced.¹¹
- 2.12** Since the collapse of central government in 1991 there has not been a national army in Somalia. The TNG attempted to re-establish a national army in November 2000 and maintain a police force in Mogadishu in March 2001, however their effectiveness was temporary and its authority limited. The Somaliland authorities have established an effective regional army, which numbered 7,000 in August 2002. In the absence of a national army or police force, and in spite of the establishment of the TFG in Kenya in 2004, control of the majority of the country continues to be in the hands of factional warlords and their localised majority clan-based militias.¹²
- 2.13** Despite the absence of a central government based in the country, there is generally free movement, of both people and goods, within Somalia, although travel between regions may be dangerous at times as bandits operate and militias mount roadblocks to extort tolls. Security conditions generally have however continued to improve enough in many parts of the country in recent years to allow many refugees to return to their homes since 2003. Scheduled international air services operate to airports in Somaliland, Puntland and Mogadishu from Djibouti, Ethiopia, Kenya and some Middle Eastern states.¹³

3. Main categories of claims

- 3.1** This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in Somalia. It also contains any common claims that may raise issues covered by the API on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal flight are set out in the relevant APIs, but how these affect particular categories of claim are set out in the instructions below.
- 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 - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the API on Assessing the Claim).

¹⁰ COI Service Somalia Country Report (paras 6.35 – 6.42)

¹¹ COI Service Somalia Country Report (paras 5.32 – 5.52)

¹² COI Service Somalia Country Report (paras 5.44 – 5.52)

¹³ COI Service Somalia Country Report (paras 6.67 – 6.70 & 6.137 – 6.139)

- 3.3** If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the applicant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.
- 3.4** 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 paragraph 11 of the API on Assessing the Claim and sub-sections 5.1 to 5.4 below on particular issues relating to claims made by Somalis)
- 3.5** Also, this guidance does not generally provide information on whether or not a person should be excluded from the Refugee Convention or from Humanitarian Protection or Discretionary Leave. (See API on Humanitarian Protection and API on Exclusion under Article 1F or 33(2) and API on DL)

All APIs can be accessed via the IND website at:

http://www.ind.homeoffice.gov.uk/ind/en/home/laws_policy/policy_instructions/apis.html

3.6 Members of major clan families or related sub-clans

- 3.6.1** Some claimants apply for asylum based on their fear of discrimination amounting to persecution 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.
- 3.6.2 *Treatment.*** Somali society is characterised by membership of clan families (which are sub-divided into clans and many sub-clans) or membership of minority groups. 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 clans/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.¹⁴
- 3.6.3** The dominant clan in any particular area has generally excluded and discriminated against other clans and minorities from participation in power in that area. Due to the fluid security situation and absence of a central government, instances of armed inter-clan and intra-clan conflict and serious human rights abuses continue to be reported in many southern and central areas as rival factions compete for control of local resources. As a result of this, there are many thousands of internally displaced persons living outside their traditional home area, particularly where rival clan factions have taken control of their home area. However, most ethnic Somalis (i.e. those belonging to major clans) are able to live safely within territories controlled by their clan. Though not usually targeted, civilians will very often know how to escape or avoid being involved in armed clan conflicts.¹⁵
- 3.6.4 *Sufficiency of protection.*** In the absence of a central Government, most Somalis ensure their personal safety by residing in the 'home areas' of their clan, where they can seek and receive adequate protection from their kinship group.¹⁶ Generally, only those unable to reside in such areas will not be able to obtain sufficient protection from ill treatment/persecution on the basis of clan membership.

¹⁴ COI Service Somalia Country Report (paras 6.79 & Annexes B & C)

¹⁵ COI Service Somalia Country Report (paras 5.05 – 5.31, 6.01 – 6.02, 6.79, 6.81 & 6.135 – 6.136)

¹⁶ COI Service Somalia Country Report (paras 6.81 & Annex B)

3.6.5 Internal relocation. Those affiliated to major clan families, their immediate clan groups and associated sub clans should be able to safely reside in an area in which their clan is present. Freedom of movement is restricted in some parts of the country due to sporadic clan or sub-clan conflict, especially in southern and central regions. Checkpoints manned by militiamen loyal to one clan or faction inhibit passage by other groups, nevertheless internal relocation for major clan affiliates is generally possible.¹⁷

3.6.6 Large parts of northern Somalia, namely Somaliland and Puntland, are considered generally safe regardless of clan membership. However, the authorities controlling the Somaliland and Puntland regions have made it clear that they would only admit to the areas they control those who originate from that 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 Majerteen in Puntland and the Isaaq in Somaliland.¹⁸

3.6.7 Caselaw.

AIT/IAT Determinations: W (Somalia) [2003] UKIAT 00111. Situation in Mogadishu, although unsatisfactory, is not such as to give rise to a breach of Article 3 (or any other Articles) for a majority clan member.

M (Somalia) [2003] UKIAT 00129. The Tunni who are associated with the Digil clan are not a minority clan, and are not currently persecuted in Somalia by other, majority clans or groups.

SH (Somalia) [2004] UKIAT 00164. The claimant belonged to the Darod clan, sub-clan Marehan, which is not a minority clan in Somalia, so that members of the clan do not face persecution by reason of clan membership alone. The Marehan clans dominate the Gedo region, and that area would have provided adequate safety for the claimant.

AE (Somalia) [2004] UKIAT 00281. On the material available to it, the Tribunal was not satisfied that the Bimaal clan was able to draw upon effective protection in Mogadishu or in Marka. Although the Dir afforded effective protection to clan members in the north of Somalia, they offered no protection to the Bimaal in southern Somalia.

SH (Somalia) [2004] UKIAT 00272. Rahanweyn does not constitute a minority clan, it is clearly affiliated with the majority Digil clan and its main political embodiment, the RRA, has control of the Bay and Bakool regions. There was no evidence that the Elai are a vulnerable subclan.

HM (Somalia) [2005] UKIAT 00040 promulgated 26 January 2005. Somali women – Particular Social Group. The Tribunal found that women in Somalia form a PSG not just because they are women but because they are extensively discriminated against.

NM and Others (Somalia) CG [2005] UKIAT 00076 promulgated 14 February 2005. Lone women – Ashraf. 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. ... 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. ... Being a single woman returnee is not of itself a sufficient differentiator.

3.6.8 Conclusion. It is unlikely than any Somali belonging to one of the major clan-families – their immediate clan groups or associated sub clans - would be able to demonstrate that they have a well-founded fear of persecution within the terms of the 1951 Convention on the basis of their clan affiliation alone. All clan family groups are represented in Mogadishu, many Somali clans are present in more than one area of Somalia and also in areas beyond Somalia's borders. Moreover, people displaced from their home area may move to other areas

¹⁷ COI Service Somalia Country Report (paras 6.60, 6.81 & Annex B)

¹⁸ COI Service Somalia Country Report (paras 6.72 & Annex B)

populated by their clan. Somalis are increasingly able to both visit and live in cities outside their clan's traditional domain. As emphasised in the case of 'NM and Others' above, there will always be an area in Somalia in which any major clan member can live safely. The grant of asylum is therefore not likely to be appropriate in such cases.

3.7 Bajunis

3.7.1 Some applicants claim asylum based on ill treatment amounting to persecution at the hands of major clan and sub-clan militias or other clan-based controlling groups in southern/ central Somalia on account of their underclass status as members of the Bajuni minority group.

3.7.2 *Treatment.* Somalis with no clan affiliation are the most vulnerable to serious human rights violations, including predatory acts by criminal and militias, as well economic, political, cultural and social discrimination. These groups comprise an estimated two million people, or about one third of the Somali population and include the Bajuni.¹⁹

3.7.3 The small Bajuni population (around 11,000 in 2003) is traditionally made up of fishermen and sailors from coastal settlements and islands south of Kismayo. They suffered considerably at the hands of Somali militia during the civil war in the early 1990s, have lost property and were prevented from pursuing their traditional livelihoods by occupying Somali clans, principally the Marehan. Though Marehan settlers still have effective control of the islands, Bajuni can work for the Marehan as paid labourers. This is an improvement on the period during the 1990s when General Morgan's forces controlled Kismayo and the islands, when the Bajuni were treated by the occupying Somali clans as little more than slave labour. Essentially the plight of the Bajuni is based on the denial of economic access by Somali clans, rather than outright abuse.²⁰

3.7.4 *Sufficiency of protection.* Minority groups that are politically and economically the weakest and are culturally and ethnically distinct from Somali clan families such as the Bajuni are not able to secure protection from any major clan family or related sub-clan. They are vulnerable to discrimination and exclusion wherever they reside.²¹ Bajunis do not therefore have access to adequate protection from their persecutors.

3.7.5 *Internal relocation.* As the Bajuni are vulnerable to discrimination and exclusion by major clan and sub-clan groups throughout southern/central Somalia,²² internal relocation within these regions is therefore not a reasonable option. The possibility of internal relocation to Somaliland or Puntland is also not an option as the authorities in these areas have made it clear that they would only admit to the territory they control those who are of the same clan or who were previously resident in that particular area.²³

3.7.6 *Caselaw.*

AIT/IAT Determinations: AJH (Somalia) [2003] UKIAT 00094. Persons of Bajuni or Bravanese ethnicity are likely to face persecution and cannot reasonably relocate, particularly if they are female. This case sets out the test for caseworkers assessing the credibility of claims of Bajuni ethnicity. (see paragraph 5.1.5 below).

KS (Somalia) CG [2004] UKIAT 00271. 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. For such persons, clan membership will usually be determinative but may

¹⁹ COI Service Somalia Country Report (para 6.87)

²⁰ COI Service Somalia Country Report (paras 6.89 – 6.92)

²¹ COI Service Somalia Country Report (paras 6.87 – 6.88)

²² COI Service Somalia Country Report (paras 6.87 – 6.88)

²³ COI Service Somalia Country Report (para 6.72)

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).

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.

3.7.7 Conclusion. Bajunis are part of the underclass in Somali society and are subject to political and economic exclusion due mainly to them being culturally and ethnically unconnected to any major clan group. They are unable to secure protection from any clan group and are therefore in a vulnerable position wherever they reside. Individual applicants who have demonstrated a reasonable likelihood that they are members of Bajuni ethnicity are likely to encounter ill treatment amounting to persecution. The grant of asylum in such cases is therefore likely to be appropriate.

3.8 Benadiri (Rer Hamar) or Bravanese

3.8.1 Some applicants will claim asylum based on ill treatment amounting to persecution at the hands of dominant clan and sub-clan militias or other clan-based controlling groups in southern/central Somalia on account of their underclass status as member of one of the Benadiri (Rer Hamar) or Bravanese minority groups.

3.8.2 Treatment. Somalis with no clan affiliation are the most vulnerable to serious human rights violations, including predatory acts by criminal and militias, as well economic, political, cultural and social discrimination. These groups comprise an estimated two million people, or about one third of the Somali population and include the Benadiri (Rer Hamar) and Bravanese.²⁴

3.8.3 The Benadiri are an urban people of East African Swahili origin. They all lost property during the war and the majority of Benadiri fled to Kenya. Those that remain live mainly in the coastal cities of Mogadishu, Merka and Brava. The situation of the Benadiri remaining in Somalia is difficult, as they cannot rebuild their businesses in the presence of clan militias. As of 2003, 90% of the Rer Hamar population in Mogadishu had left the city as a consequence of civil war and lack of security. The majority of Rer Hamar who are still in Mogadishu are older people who live in Mogadishu's traditional Rer Hamar district; Hamar Weyn which is controlled by militias of the Habr Gedir sub-clan, Suleiman. Most homes belonging to the Benadiri and Bravanese in Mogadishu had been taken over by members of clan militias, although sometimes the clan occupants allowed them to reside in one room.²⁵

3.8.4 The Bravanese are long established in the city of Brava, believed to be of mixed Arab, Portuguese and other descent. These groups have been particularly disadvantaged and targeted by clan militia since the collapse of central authority in 1991. Bravanese have mostly fled from the coastal town of Brava, although some are still living in the town, which is controlled by the Habr Gedir. The Bravanese who remained face abuses such as forced labour, sexual slavery and general intimidation.²⁶

3.8.5 Sufficiency of protection. Minority groups based in southern or central Somalia that are politically and economically the weakest and are culturally and ethnically distinct from Somali clan families such as the Benadiri (Rer Hamar) and Bravanese are not able to secure protection from any major clan family or related sub-clan in these regions. They are vulnerable to discrimination and exclusion wherever they reside.²⁷

3.8.6 Internal relocation. As the Benadiri (Rer Hamar) and Bravanese are vulnerable to discrimination and exclusion by major clan and sub-clan groups throughout southern and

²⁴ COI Service Somalia Country Report (para 6.87)

²⁵ COI Service Somalia Country Report (paras 6.97 – 6.98)

²⁶ COI Service Somalia Country Report (para 6.98)

²⁷ COI Service Somalia Country Report (paras 6.87 – 6.88)

central Somalia , internal relocation within these regions is not a reasonable option. The possibility of internal relocation to Somaliland or Puntland is restricted; in these areas the authorities have made it clear that they would only admit to the territory they control those who are of the same clan or who were previously resident in that particular area.²⁸

3.8.7 **Caselaw.**

AIT/IAT Determinations: AJH (Somalia) [2003] UKIAT 00094. Persons of Bajuni or Bravanese ethnicity are likely to face persecution and cannot reasonably relocate, particularly if they are female. This case sets out the test for caseworkers assessing the credibility of claims of Bajuni ethnicity but can be applied to all minority group claims (see paragraph 5.1.6 below).

FK (Somalia) [2004] UKIAT 00127. The Tribunal found that the *Shekhal Gandhershe* is a sub clan within the Benadiri group and as such would be unable to secure protection from human rights abuses from the armed militia of other clans. There has been no particular change in circumstances since the decision in Mohammed [2002] UKIAT 08403 that would now make it safe for members of the Shekhal Gandhershe sub-clan to return to Somalia.

MN (Somalia CG) [2004] UKIAT 00224. The Tribunal clarified that there are three distinct groups using the name "Tunni". There are "Town Tunnis" who live near Brava and who are perceived as Bravanese, "country" Tunnis who live away from Brava and who are associated with the Digil clan, and the "Tunni Torre" who are "a negroid group federated to the Tunni of Brava as vassals". Because the Town Tunnis are perceived as Bravanese they are treated as such. Therefore a decision-maker assessing the risks faced by a Town Tunni should assess them as if the claimant were Bravanese. This is a country guidance case and on this point must be followed unless there is clear evidence that Dr. Luling (who gave expert evidence on this issue) is wrong. The Tribunal emphasised that not every Town Tunni or Bravanese necessarily risks persecution in the event of return, however such a risk existed in the case of MN. [Note: see also M (Somalia) at paragraph 3.6.5 above on "country" Tunnis associated with the Digil clan.

A (Somalia) [2004] UKIAT 00080. Benadiri from Somaliland. 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.

3.8.8 Conclusion. The Benadiri (Rer Hamar) and Bravanese are part of the underclass in Somali society and are subject to political and economic exclusion due mainly to them being culturally and ethnically unconnected to any major clan group. They are unable to secure protection from any clan group and are therefore in a vulnerable position wherever they reside. Individual applicants who have demonstrated a reasonable likelihood that they are of Benadiri (Rer Hamar) or Bravanese origins are likely to encounter ill treatment amounting to persecution. The grant of asylum in such cases is therefore likely to be appropriate.

3.9 **Midgan, Tumal, Yibir or Galgala**

3.9.1 Some applicants claim asylum based on ill treatment amounting to persecution at the hands of major clan and sub-clan militias or other clan-based controlling groups on account of their lowly status as members of one of the occupational castes: the Midgan, Tumal, Yibir or Galgala.

3.9.2 Treatment. The Gaboye/Midgan (usually referred to as the Midgan but also known as the Madhiban), Tumal and Yibir (a group said to have Jewish origins) traditionally lived in the areas of the four main nomadic clan families of Darod, Isaaq, Dir and Hawiye in northern and central Somalia. In the last few decades many of them migrated to the cities, these groups are now scattered throughout the country but are mainly found in northern and central

²⁸ COI Service Somalia Country Report (paras 6.72 & 6.87 – 6.88)

regions; Midgan have been able to settle in Puntland. Midgan can trade freely and their position improved at times of stability and recovery, although they are usually unable to own property and livestock. The Midgan, Tumul and Yibir and Galgala have always been placed at the lower end of Somali society and are subject to societal discrimination in urban centres from other clan groups and harassment where no patron clan protection exists, particularly in rural areas.²⁹

3.9.3 Sufficiency of protection. These groups traditionally settle in areas where they obtain protection from the dominant clan and build up an economic activity. Most have assimilated into other Somalia clans with whom they live. For example, the Galgala have assimilated into the Abgal in Jowhar and Mogadishu. However, they identify themselves as Nuh Mohamud, a sub clan of the Majerteen clan. Some Gaboye, Tumul and Yibir assimilated into the Isaaq in Somaliland, while others have assimilated into the Darod in Puntland and central regions. There are also other Gaboye, Tumul and Yibir who assimilated with Hawadle, Murasade and Marehan clans in Galgadud region.³⁰ Members of these groups are therefore able to seek and receive adequate protection from their patron clans.

3.9.4 Internal relocation. Those assimilated into major clan families, their clan groups and associated sub clans should be able to safely reside in an area in which their patron clan is present. Freedom of movement is restricted in some parts of the country due sometimes to sporadic clan or sub-clan conflict, especially in southern and central regions. More usually, checkpoints manned by militiamen loyal to one clan or faction inhibit passage by other groups, nevertheless internal relocation for members of these occupational castes is generally possible. The possibility of internal relocation to Somaliland or Puntland is restricted; in these areas the authorities have made it clear that they would only admit to the territory they control those who are of the same clan or who were previously resident in that particular area.³¹

3.9.5 Caselaw.

AIT/IAT Determinations: YS and HA (Somalia) CG [2005] 00088 promulgated 22 April 2005. Midgan not generally at risk. The Tribunal found that while being a woman or lone woman increases the level of risk under the Refugee Convention or the ECHR...the question of real risk comes down to whether a Midgan would be able to access protection from a majority clan patron. There is nothing to show that such protection would be denied to a female Midgan where it would be afforded to a male Midgan.

3.9.6 Conclusion. Members of the Midgan, Tumul, Yibir or Galgala groups are usually assimilated into major clan or sub-clan groups where they reside. While they may from time to time encounter discrimination and harassment from other clan groups due to their lowly social status, they may avail themselves of the protection of their patron clan or relocate to another region where their patron clan is represented. It is unlikely that such a claimant would encounter ill treatment amounting to persecution within the terms of the 1951 Convention. The grant of asylum in such cases is therefore not likely to be appropriate.

3.10 General country situation

3.10.1 Some applicants claim asylum based on ill treatment amounting to persecution or inhuman or degrading treatment arising from the insecure and fluid socio-political conditions in a country without a functioning state or central government.

3.10.2 Treatment. Sporadic inter and intra-clan fighting and serious human rights abuses continue to be reported in a number of areas of southern and central Somalia. The rule of law guarantees of personal security, and protection from human rights abuses vary from

²⁹ COI Service Somalia Country Report (paras 6.100 – 6.102 & Annexes B & C)

³⁰ COI Service Somalia Country Report (paras 6.101 & Annex C)

³¹ COI Service Somalia Country Report (paras 6.60, 6.72, 6.81 & Annexes B & C)

location to location. Much of the countryside, particularly Somaliland, Puntland and pockets of southern Somalia are considered relatively stable while central regions immediately south of Puntland have become increasingly susceptible to more prolonged instances of fighting and violence. Mogadishu remains unpredictable and dangerous. While fighting is generally between rival militia civilians are invariably involved and civilian casualties are frequently reported. Most commonly reported examples of war crimes include rape, looting and destruction of property, illegal occupation and child soldiering.³²

3.10.3 Sufficiency of protection. In the absence of a central Government, most Somalis ensure their personal safety by residing in the 'home areas' of their clan, where they can see and receive adequate protection from their kinship group.³³

3.10.4 Internal relocation. Freedom of movement is hazardous in some parts of the country due sometimes to sporadic clan or sub-clan conflict, especially in southern and central regions. More usually, checkpoints manned by militiamen loyal to one clan or faction inhibit passage by other groups, nevertheless internal relocation for major clan affiliates is generally possible. The possibility of internal flight to Somaliland or Puntland is restricted; in these areas the authorities have made it clear that they would only admit to the territory they control those who are of the same clan or who were previously resident in that particular area.³⁴

3.10.5 Caselaw.

AIT/IAT Determinations: Adan (Somalia) [1998] IMMAR/338 General civil war situation not sufficient grounds for granting asylum.

M (Somalia) [2003] UKIAT 00129. There was no evidence before the Tribunal that there would be a real risk on return to Mogadishu for a person who had previously experienced lawlessness there.

SH (Somalia) [2004] UKIAT 00272. A risk of being exposed to lawlessness or the normal incidents of civil war or armed conflict does not amount to persecution under the Refugee Convention or treatment contrary to Article 3 ECHR, since a person affected by civil war or armed conflict can only succeed in showing a real risk of such treatment if he can show a risk personal to him.

HM (Somalia) [2005] UKIAT 00040 promulgated 26 January 2005. Somali women – Particular Social Group (PSG). The Tribunal found that women in Somalia form a PSG not just because they are women but because they are extensively discriminated against.

NM and Others (Somalia) CG [2005] UKIAT 00076 promulgated 14 February 2005. Lone women – Ashraf. 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. ... 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. ... Being a single woman returnee is not of itself a sufficient differentiator.

3.10.6 Conclusion. A collapsed state where law and order has broken down, as has happened in Somalia, does not of itself give rise to a well-founded fear of persecution for a Convention reason. A claimant can only demonstrate a well-founded claim where they can demonstrate they are at risk of adverse treatment on Convention grounds over and above the risk to life and liberty, which occurs in such a state. A general risk of violence will not in itself be sufficient to bring most applicants within the Humanitarian Protection or Discretionary Leave provisions; such conditions are not sufficient so that removal would amount to a

³² COI Service Somalia Country Report (paras 5.05 – 5.31, 6.01 – 6.02 & 6.141 – 6.167)

³³ COI Service Somalia Country Report (paras 6.81 & Annex B)

³⁴ COI Service Somalia Country Report (paras 6.60 & 6.72)

breach of the ECHR. Therefore applicants who apply on the basis of inter-clan fighting or civil war are unlikely to qualify for asylum or humanitarian protection.

3.11 Prison conditions

3.11.1 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.

3.11.2 *Consideration.* Prisons within Somalia are run by a combination of the de facto administrations of Puntland, Somaliland and other regional administrations. Warlords also operate prisons in areas under their control, particularly in southern and central regions. Prison conditions vary from region to region but conditions are generally harsh and life threatening. Overcrowding, poor sanitary conditions, inadequate health care and the absence of educational and vocational training characterise prisons throughout Somalia. Abuse of prisoners by guards is reportedly common in many prisons. The detainees' clans generally paid the costs of detention. In many areas, prisoners were only able to receive food from family members or from relief agencies. The practice of parents having their children incarcerated when they wanted them disciplined continued during 2004; these children were also reportedly held with adults. Members of minority groups make up a disproportionately large percentage of the prison population.³⁵

3.11.3 *Conclusion.* Prison conditions in Somalia are severe and taking into account overcrowding, poor sanitary conditions, a lack of access to adequate health care, an absence of education and vocational training, widespread TB and abuse by guards, conditions in prisons and detention facilities in Somalia are likely to reach the Article 3 threshold. Therefore a grant of HP will be appropriate where individual claimants are able to demonstrate a real risk of imprisonment on return to Somalia. Where the real risk of imprisonment is related to one of the five Refugee Convention grounds a grant of asylum will be appropriate.

4. Discretionary Leave

4.1 Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See API on Discretionary Leave)

4.2 With particular reference to Somalia the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances not covered by the categories below which warrant a grant of DL - see the API on Discretionary Leave.

4.3 Minors claiming in their own right

4.3.1 Minors claiming in their own right who have not been granted asylum or HP can only be returned where there are adequate care and support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate care and support arrangements in place in Somalia.

4.3.2 Minors claiming in their own right without a family to return to, or where there are no adequate care and support arrangements, should if they do not qualify for leave on any more favourable grounds be granted Discretionary Leave for a period of three years or until their 18th birthday, whichever is the shorter period.

³⁵ COI Service Somalia Country Report (paras 5.53 – 5.57)

4.4 Medical treatment

- 4.4.1** Applicants may claim they cannot return to Somalia due to a lack of specific medical treatment. See the IDI on Medical Treatment, which sets out in detail the requirements for Article 3 and/or Article 8 to be engaged.
- 4.4.2** According to Medecins Sans Frontiers (MSF) in January 2004, the overall level of healthcare and possibilities for treatment in central and southern Somalia were very poor. MSF refers to a lack of basic medical training amongst the personnel (doctors and particularly nurses) operating at the limited number of hospitals and clinics in the region. It was estimated that up to 90% of the doctors and health staff in hospitals is insufficiently trained. For those with sufficient funding to pay for treatment, primary healthcare was available in all regions. MSF indicated that women and children had a better chance of receiving treatment on the grounds that they are less likely to be the target of militias. The actual situation does vary within different parts of the country although the few health workers who remain tend to be based in the more secure urban centres.³⁶
- 4.4.3** In Mogadishu there are two public hospitals with facilities to perform certain surgical procedures. Public hospitals in Galkayo (Mudug) and Kismayo (Lower Juba) serve enormous areas. These hospitals were beset with insecurity, lack of funding, equipment, qualified staff and drugs. The only other hospitals in southern/central regions - in Belet Weyne (Hiran) and Baidoa (Bay and Bakool) - have been closed for some years. Aid agencies have attempted to fill the gap in areas where health services and structures have all but collapsed. They struggle to provide health care in remote areas, where reaching the patients is a major problem. The Somali private health sector has grown considerably in the absence of an effective public sector. Of the population who get any care at all, about two thirds of them get it from the private health sector.³⁷
- 4.4.4** Where a caseworker considers that the circumstances of the individual applicant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 (or Article 8) a grant of Discretionary Leave will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

5. Assessing the claim

5.1 Disputed nationality / ethnicity

- 5.1.1** There is evidence that other nationals have been posing as Somali nationals. Such applicants may be ethnic Somalis from Kenya, Ethiopia and Djibouti, or Swahili speakers from neighbouring states such as Kenya and Tanzania, posing as members of Swahili-speaking Somali minority groups. There are also indications that applicants from Middle Eastern states, particularly Yemen, have also posed as Somali nationals.
- 5.1.2** It should be noted that Kenya, Ethiopia and Djibouti all have large ethnic Somali populations with close links to fellow clan members in Somalia itself. As such it may be difficult to distinguish between a Somali speaker from a neighbouring country and a Somali speaker from Somalia. Caseworkers should be aware that ethnic Somalis from neighbouring states could be familiar with Somali issues and may well have travelled inside Somalia and have a good knowledge of the country.
- 5.1.3** There is also evidence that Somali nationals who have been living in Somalia sometimes claim to be a member of a particularly vulnerable group in order to increase the likelihood of being granted refugee status or humanitarian protection.

³⁶ COI Service Somalia Country Report (paras 5.64 – 5.67)

³⁷ COI Service Somalia Country Report (paras 5.68 & 5.70 – 5.71)

5.1.4 Consideration of individual asylum cases from Somali nationals will always require caseworkers to make every effort to ascertain and verify the clan or minority group (including any sub clan) the applicant is affiliated to. Confirmation of the area of the country in which the applicant resided and where different, the area they originated from should also be sought. These issues are central to any Somali claim and the caseworker must take all reasonable steps to be satisfied regarding such information. Discrepancies in the claimant's account should be put to the claimant in order to give the claimant an opportunity to clarify or explain.

5.1.5 Caselaw.

AIT/IAT Determinations: AJH (Somalia) [2003] UKIAT 00094. This case sets out the test (at paragraph 33 of the determination) for caseworkers assessing the credibility of claims of Bajuni ethnicity but can be applied to all minority group claims. Essentially, what is required in cases involving Somali nationals of Bajuni clan identity is an assessment examining at least 3 different factors:

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

The assessment must not treat any one of these factors as decisive – caseworkers should always have regard to whether the applicant's personal history explains any discrepancy in the results. With non-Bajuni minority group claims, caseworkers should substitute the relevant dialect for Kibajuni.

KS (Somalia CG) [2004] UKIAT 00271. The Tribunal gave useful guidance about claims based on clan membership/minority group. It found that the background evidence did not support the argument that all members of minority groups or clans are on that sole basis at risk of persecution on return, but that it showed that members of certain clans or groups such as the Bajuni are likely to be able to demonstrate such a risk. A distinction needed to be maintained between:

- (i) Membership of a clan where the background evidence does not support a conclusion that there is generally a risk of persecution arising from membership of that clan even though on the particular facts of the case an individual claimant may be able to establish a claim on the basis of his own particular background and profile, and
- (ii) Membership of a minority clan where membership generally does give rise to real risk subject to the particular circumstances of the claimant. In such a case, while each claim must be individually considered, the claim will normally depend on whether in fact the claimant is genuinely a member of that minority clan.

As to (i), clan membership will be a significant element in assessing whether there is a risk on return but will not be determinative. In many cases, the risks faced by those who have fled do not arise because of clan membership.

As to (ii), clan membership will normally be determinative but may not be in individual cases where there are features in the claimant's background and circumstances which indicate that the claimant is not in fact at the same risk as that faced generally by other clan members. As an example, where a female member of such a clan marries into a majority clan, she may have protection from her husband's clan.

5.1.6 Further guidance on disputed nationality can be found in the relevant section of the APIs and more detail on minority groups may be found in the COI Service Somalia Country of Origin Information Report October 2005 and the 2000 Fact-Finding Mission Report on Minority Groups.

5.2 Language

5.2.1 Where an applicant has requested that their interview be conducted in Swahili the Home Office interpreter must always be asked to confirm the dialect of Swahili being used. Caseworkers and Presenting Officers must also be satisfied that the interpreter is authorised to use the specific dialect concerned. Caseworkers should be aware that applicants claiming to be Bajuni, Benadiri or Bravanese, who claim that they cannot also speak some Somali may, in fact, be from neighbouring Swahili-speaking states.

5.2.2 **Caselaw.**

AIT/IAT Determinations: KS (Somalia) [2004] UKIAT 00271. The decision contains (at paras 40 to 44) guidance on assessing the credibility of claims of Bajuni ethnicity, looking in particular at the issue of the language(s) spoken by the claimant.

- 5.2.3 Further information on languages spoken by minority groups may be found in Section 6.C and Annex C of the October 2005 Somalia Country of Origin Information Report and the 2000 Fact-Finding Mission Report on Minority Groups.

5.3 **Documentation**

- 5.3.1 It must be noted that it is not possible under any circumstances to verify the authenticity of claimed Somali documents that may be submitted in support of applications or appeals. There is no British diplomatic post in Somalia to refer such documents to undertake verification enquiries, nor in the absence of any central government are there any central authorities maintaining a national record of the population or issuing passports or other identity documents. Furthermore, many official records maintained under the previous administration in Somalia were destroyed during the civil war. Some local administrations such as Somaliland and the TNG authorities issue documents (birth certificates, passports etc.) but these are not issued under any internationally recognised authority and are not verifiable.
- 5.3.2 A range of Somali documents, including passports, can be easily obtained both in Somalia and in many other countries in the region through unofficial channels; such documentation is often openly on sale in markets.³⁸ Little weight can therefore be attached to any claimed Somali document and they should not be accepted as sole proof of identity or nationality.
- 5.3.3 With effect from 3 July 2003 Somali passports, whether issued pre or post 1991, ceased to be accepted as valid national passports for travel to the UK. Most other EU countries already do not recognise Somali passports. Both 'Somaliland' and the then 'Transitional National Government' issue their own passports, however these documents are also unacceptable for visa purposes as neither of these administrations has been officially recognised by the UK. A visa is needed for travel from Somalia to the UK.

5.4 **Expert witnesses**

- 5.4.1 There are a number of Somali experts who submit reports in support of applications (most commonly at the appeal stage). There is no specific criteria by which an individual may declare themselves to be a Somali expert; whilst some experts clearly do have considerable knowledge regarding many aspects of the country the expertise of others relates to specific issues.
- 5.4.2 It is important to note that there are several instances where experts themselves have contrasting views. The fact that an expert report has been filed does not necessarily mean that its contents contain the *definitive* view on the issues covered. There have also been instances where a single expert report prepared for one specific case is subsequently represented in respect of numerous other cases.

5.4.3 **Caselaw.**

³⁸ COI Service Somalia Country Report (para 6.76)

AIT/IAT Determinations: SAIDI [2001] UKIAT 00TH2757. On the issue of expert witness credibility, the Adjudicator suggested that the tests set out in the *Ikarian Reefer* be applied. They are:

1. Expert evidence presented to the court should be and should be seen to be the independent product of an expert uninfluenced as to the formal content by the exigencies of litigation.
2. An expert witness should provide independent assistance to the court by way of objective unbiased opinion in relation to matters within his expertise.
3. An expert witness in the High Court should never assume the role of advocate.
4. An expert witness should state the facts or assumptions on which his opinion is based. He should not omit to consider material facts that detract from the concluded opinion.
5. An expert witness should make it clear when a particular question or issue falls outside his expertise.
6. If an expert's opinion is not properly researched because it considers that insufficient data is available then this must be stated with an indication that the opinion is no more than a provisional one.
7. If after exchange of reports an expert witness changes his view on a material matter ... such change of view should be communicated ... to the other side without delay and when appropriate to the court.
8. Where expert evidence refers to photographs, plans, calculations, survey reports or other similar documents, they must be provided to the opposite party at the same time as the exchange of reports

H (Somalia) [2004] UKIAT 00047. UK Somali Benadir Community Council (SBCC) has no official status in this country (Para 2). The SBCC issues standard form letters only which "...renders such letters practically valueless as confirmation of his or any other claimant's account." (Para 8)

AB (Somalia) [2004] UKIAT 00125. Witness corroboration in asylum appeals. The growing practice of appellants and/or their representatives adducing letters granting refugee status to someone who is (or is said to be) a relative or colleague. All too often it is assumed such letters automatically prove that the person concerned was granted refugee status on the basis he says he was. All too rarely are such letters accompanied by documents confirming on what basis the person concerned actually claimed asylum or, if an appeal was involved, on what basis the Adjudicator allowed that person's appeal. Since such additional documentation should often be still available to the person concerned or to that person's solicitors, Adjudicators should consider what weight they can attach to refugee grant letters when they are not accompanied by confirmatory documents of this kind. (Para 11)

AA Somalia [2004] UKIAT 00221. Expert evidence assessment. An adjudicator should not accept without question the opinions expressed by an individual merely because he claims to be an expert on a particular subject. An individual purporting to give an expert opinion must demonstrate that he is in reality an expert in relation to those matters on which he is expressing his opinion, and that he has current and reliable knowledge as to those matters. He must also identify the sources of his information with sufficient particularity to enable their weight to be assessed properly, and must give proper, intelligible and adequate reasons for arriving at the conclusions expressed by him.

6. Returns

- 6.1 Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. 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. On 4 July 2003 Home Office officials signed a Memorandum of Understanding (MoU) with the authorities in Somaliland that provides for the return of those people from Somaliland who have no legal basis to remain in the United Kingdom.
- 6.2 The UNHCR has recommended that asylum-seekers originating from southern and central Somalia are in need of international protection and, excepting exclusion grounds, should be granted, if not refugee status, then complementary forms of protection. UNHCR also reiterates its call upon all governments to refrain from any forced returns to southern and

central Somaliarecommended that governments refrain from all enforced returns.³⁹ The UNHCR's position paper of November 2005 provides a broad assessment of the situation in Somalia and we do not dispute that it presents an accurate overview of the general humanitarian situation and the serious social and security problems inherent in a country without a central government. However, asylum and human rights claims are not decided on the basis of the general situation - they are based on the circumstances of the particular individual and the risk to that individual. We do not therefore accept UNHCR's conclusion, based on their overview of the general situation, that it is unsafe for all persons who have been found not to be in need of some form of international protection to return to Somalia.

6.3 **Caselaw.**

AIT/IAT Determinations: NM and Others (Somalia) CG [2005] UKIAT 00076 promulgated 14 February 2005. Risk on return for major clan member. 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. ... 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. ... Being a single woman returnee is not of itself a sufficient differentiator.

- 6.4 Somali nationals may return voluntarily to any region of Somalia at any time by way of the Voluntary Assisted Return and Reintegration Programme run by the International Organisation for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance in Somalia. The programme was established in 2001, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Somali nationals wishing to avail themselves of this opportunity for assisted return to Somalia should be put in contact with the IOM offices in London on 020 7233 0001 or www.iomlondon.org.

7. **List of source documents**

- UK Home Office COI Service Somalia Country of Origin Information Report October 2005 at http://www.homeoffice.gov.uk/rds/country_reports.html
- United Nations High Commissioner for Refugees (UNHCR) Position paper on the return of failed asylum seekers to Somalia, November 2005 at: <http://www.unhcr.org/cgi-bin/texis/vtx/home/opendoc..pdf?tbl=RSDLEGAL&id=437082c04>

Asylum and Appeals Policy Directorate
21 November 2005

³⁹ UNHCR Position paper on the return of failed asylum seekers to Somalia November 2005