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UNHCR ELIGIBILITY GUIDELINES FOR ASSESSING THE INTERNATIONAL PROTECTION NEEDS OF ASYLUM-SEEKERS FROM SOMALIA

**United Nations High Commissioner for Refugees (UNHCR)
5 May 2010
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NOTE

UNHCR *Eligibility Guidelines* are issued by the Office to assist decision-makers, including UNHCR staff, Governments and private practitioners, in assessing the international protection needs of asylum-seekers. They are authoritative legal interpretations of the refugee criteria in respect of specific groups on the basis of objectively assessed social, political, economic, security, human rights and humanitarian conditions in the country/territory of origin concerned. The pertinent international protection needs are analyzed in detail and recommendations made as to how the applications in question should be decided upon in line with the relevant principles and criteria of refugee law as per, notably, the UNHCR Statute, the 1951 Convention and its 1967 Protocol, and relevant regional instruments such as the Cartagena Declaration, the 1969 OAU Convention and the EU Qualification Directive. The recommendations may also touch upon, as relevant, complementary or subsidiary protection regimes.

UNHCR issues *Eligibility Guidelines* to promote the accurate interpretation and application of the above-mentioned refugee criteria in line with its supervisory responsibility as contained in paragraph 8 of its Statute in conjunction with Article 35 of the 1951 Convention and Article II of its 1967 Protocol and based on the expertise it has developed over the years in matters related to eligibility and refugee status determination. It is expected that the positions and guidance contained in the *Guidelines* will be considered carefully by the authorities and the judiciary in reaching decisions on asylum applications. The *Guidelines* are based on rigorous research, factual evidence provided by UNHCR's global network of field offices and information from independent country specialists, researchers and other sources, rigorously reviewed for reliability. The *Guidelines* are posted on UNHCR's Refworld website at <http://www.refworld.org>.

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I. Introduction

For some years now, Somali nationals have been seeking protection within their own country, as refugees in neighbouring countries and much further afield in large numbers. These Guidelines contain information on the current situation in Somalia and groups at risk of persecution or serious harm¹ and assess their need for international protection in the context of the refugee criteria under the 1951 Convention relating to the Status of Refugees (1951 Convention) and its 1967 Protocol, the Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Convention),² UNHCR's mandate³ and complementary/subsidiary forms of protection such as the relevant provisions of the EU Qualification Directive⁴ and other international and regional instruments.⁵ The Guidelines are intended for use by UNHCR and State adjudicators in properly deciding on claims lodged by Somali asylum-seekers.⁶ They supersede the 2005 "*UNHCR Advisory on the Return of Somali Nationals to Somalia*".⁷

The Guidelines are divided into four Sections and an Annex, including this Introduction (Section I). Section II provides an outline of trends in causes of displacement of Somalis within Somalia, to neighbouring countries and beyond, and highlights some general trends in the types of Somali claims being dealt with by UNHCR and States. Section III provides background information relevant to the main types of Somali asylum claims mentioned in Section II. Section IV outlines the approach being advised by UNHCR as to how claims should be dealt with. It contains the relevant country of origin information, the accompanying legal analysis and conclusions for purposes of inclusion and exclusion from refugee status in light of the most common types of claims. It further sets out UNHCR's recommendations on the international protection needs of Somalis under complementary/subsidiary protection regimes in the context of the armed conflict and human rights considerations outside the refugee/asylum framework. Guidance is also provided on assessing the availability of an internal flight or relocation alternative.

¹ UNHCR derives its mandate to promote the accurate interpretation and application of refugee criteria from its supervisory responsibility contained in paragraph 8 of its Statute (<http://www.unhcr.org/refworld/docid/3ae6b3628.html>), as contained in General Assembly Resolution 428 (V) of 14 December 1950, in conjunction with Article 35 of the 1951 Convention (<http://www.unhcr.org/refworld/docid/3be01b964.html>) and Article II of its 1967 Protocol (<http://www.unhcr.org/refworld/docid/3ae6b3ae4.html>).

² Organization of African Unity, *Convention Governing the Specific Aspects of Refugee Problems in Africa*, 10 September 1969, 1001 U.N.T.S. 45, <http://www.unhcr.org/refworld/docid/3ae6b36018.html>.

³ UNHCR's mandate comprises, as found in its Statute, the refugee criteria under the 1951 Convention as well as the broader refugee definition developed through successive General Assembly resolutions and customary international law.

⁴ Council of the European Union, *Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted*, 2004/83/EC, 19 May 2004, <http://www.unhcr.org/refworld/docid/4157e75e4.html>.

⁵ UNHCR, in the exercise of its supervisory role, has undertaken a number of activities to strengthen the linkages between international refugee law and international human rights law in order to ensure the best possible protection for refugees. UNHCR may thus fulfil a subsidiary function regarding the application of the provisions in human rights treaties that refer either explicitly to refugees or apply to them implicitly. In this respect, UNHCR guidance as it relates to the application of human rights treaties should be afforded due consideration by relevant authorities and should be given substantial weight in determination of asylum, human rights and humanitarian claims. See Volker Türk, "UNHCR's Supervisory Responsibility", *Revue Québécoise de Droit International*, Volume 14.1, 2001. See also Recital 15 of the Qualification Directive, which states that consultations with UNHCR "may provide valuable guidance for Member States when determining refugee status according to Article 1 of the Geneva Convention".

⁶ These Guidelines are based on information available to UNHCR up to April 2010, unless otherwise stated.

⁷ UNHCR, *UNHCR Advisory on the Return of Somali Nationals to Somalia*, 2 November 2005, <http://www.unhcr.org/refworld/docid/437082c04.html>.

II. Trends in Displacement and Types of Somali Asylum Claims

Internal and external displacement of Somalis due to human rights violations, conflict, natural disasters and economic crises have been commonplace in Somalia since the collapse of the Somali State in the early 1990s. In this period, Somalia has been, and continues to be, an asylum-seeker and refugee producing country of origin. The trend saw a steady reduction in the total number of asylum-seekers and refugees, from 637,000 in 1995 to 396,000 by 2005.⁸ However, as of the end of 2006, the number of Somali refugees and asylum-seekers had increased to approximately 485,000;⁹ to 503,000 by the end of 2007;¹⁰ and to over 700,000 by the end of 2009. Somali refugees registered by UNHCR in the Kenyan border camps of Dadaab increased from 152,868 in 2006 to 252,202 in 2009.¹¹ Throughout 2009, approximately 7,000 new asylum-seekers were arriving in Dadaab every month.

The flow of Somalis moving north through Puntland and Somaliland, to Djibouti and across the Gulf of Aden to Yemen and beyond, has continued as a result of Somalis fleeing the conflict and economic collapse in southern and central Somalia. Between 2006 and 2009, the number of Somalis in Yemen registered with UNHCR increased from 23,477 in 2006 to 161,468 in 2009.¹² In 2009, 31,980 Somalis were registered in the country.¹³

A relatively stable and protracted caseload of Internally Displaced Persons (IDPs), mainly settling around urban centres, was estimated at 400,000 in early 2006.¹⁴ Since then, however, the number has risen considerably. An additional 600,000 IDPs were recorded in 2007, resulting in an estimated 1 million IDPs in Somalia by the end of that year. By the end of 2009, and despite some small scale returns to Mogadishu in early 2009 when the situation had appeared to improve, the total number of IDPs in Somalia had increased to an estimated 1.55 million (104,000 in Puntland, 67,000 in Somaliland and 1,380,000 in southern and central Somalia).¹⁵

The causes of displacement and types of persecution in Somalia are complex and often location-specific. Nevertheless, several trends in displacement and types of asylum claims can be identified.

First, the armed conflict in Somalia is a major cause of displacement. The last three years have been marked by a consistent failure of all parties to respect basic principles of international humanitarian law, resulting in civilians regularly being caught in the cross-fire. Indiscriminate bombardment of and military offensives carried out in civilian areas with little or no regard for the rules of war, road-side

⁸ UNHCR, *UNHCR Statistical Yearbook 2005, Country Data Sheet – Somalia*, 30 April 2007, <http://www.unhcr.org/4641bec20.html>. The reduction in total Somali refugees and asylum-seekers during this period was largely due to voluntary repatriation programmes from within the region to Somaliland, but the reduction also reflected a lower rate of new asylum applications.

⁹ UNHCR, *UNHCR Statistical Yearbook 2006 – Annex, Country Data Sheets*, 15 January 2008, <http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=478ce34a2&query=2006%20Yearbook%20Somalia>.

¹⁰ UNHCR, *UNHCR Statistical Yearbook 2007*, December 2008, Chapter II page 27, <http://www.unhcr.org/statistics/STATISTICS/4981b19d2.html>; UNHCR, *UNHCR Statistical Yearbook 2007*, December 2008, Chapter I page 9, <http://www.unhcr.org/statistics/STATISTICS/4981b19d2.html>; UNHCR, *UNHCR Statistical Yearbook 2007*, December 2008, Chapter I page 9, <http://www.unhcr.org/statistics/STATISTICS/4981b19d2.html>.

¹¹ UNHCR Kenya, *Draft Annual Statistical Report*; 2009.

¹² UNHCR Yemen, *Draft Annual Statistical Report*; 2009.

¹³ UN Security Council, *Report of the Secretary-General on the situation in Somalia*, S/2009/132, 9 March 2009, p. 18, <http://www.unhcr.org/refworld/docid/49ba27f72.html>; UN Security Council, *Report of the Secretary-General on Somalia pursuant to Security Council resolution 1863 (2009)*, S/2009/210, 16 April 2009, p. 5, <http://www.unhcr.org/refworld/docid/49f1723c2.html>.

¹⁴ UNHCR Yemen. *Draft Annual Statistical Report*; 2009.

¹⁵ Internal Displacement Monitoring Centre (IDMC), *Somalia: Window of Opportunity for Addressing One of the World's Worst Internal Displacement Crises. A Profile of the Internal Displacement Situation*, 10 January 2006, <http://www.unhcr.org/refworld/docid/44031be04.html>.

¹⁶ United Nations, *Somalia Consolidated Appeal 2010*, p. 6 <http://ochaonline.un.org/Default.aspx?alias=ochaonline.un.org/somalia>.

and vehicle-borne bombs, grenade attacks in civilian areas, and deliberate attacks on civilian targets have been all too frequent. Asylum applicants in the region, but also in Yemen, Jordan, Egypt and Europe cited fighting between the Transitional Federal Government (TFG) and insurgent groups, including shelling of residential areas and bombing attacks on busy streets, as specific reasons for their flight, along with the destruction of property and lack of access to food, medical services and livelihoods.

There is substantial evidence of generalized violence resulting in indiscriminate harm,¹⁶ including Inter-Agency Standing Committee Protection Monitoring Network reports and interviews of IDPs who confirm the main reason for their displacement is the security situation in their respective places of origin.¹⁷ Also, information collected by the IASC Protection Monitoring Network indicates that there is a causal link between large scale sudden displacement and reported security incidents in the place of origin.¹⁸

In addition, there have been increasing numbers of Somalis fleeing due to fear of persecution linked to the recent political and human rights situation. Others may fear persecution due to perceived or actual contravention of traditional Somali social norms and practices. These include members of minority clans; women of specific profiles; victims of blood feuds; Christian converts; and lesbian, gay, bisexual and transgender individuals.

The groups at risk and the applicable refugee criteria contained in the 1951 Convention, the OAU Convention and UNHCR's Statute, however, vary between Somaliland, Puntland and southern and central Somalia and the Guidelines assess each region separately.

III. Background Information and Developments

The territory of Somalia is *de facto* divided into three distinct administrative areas: Somaliland, Puntland and the area south of the city of Galkacyo termed southern and central Somalia. Each area is characterized by distinct political, human rights and security situations. For these reasons, the Guidelines make specific recommendations concerning the international protection needs of individuals originating from the respective areas.

A. Southern and Central Somalia

Somalia has had no functioning government since January 1991, when former President Siad Barre was ousted. Since that time, fighting between Somali warlords, government forces and various alliances of Islamist insurgents has resulted in significant casualties among combatants and civilians alike and large population displacements within Somalia and beyond its borders.¹⁹

¹⁶ Details are provided in the following sections of the paper.

¹⁷ The methodology applied for assessing group displacement dynamics through a non representative sample of interviews is not scientific. The definition of 'insecurity' may include general insecurity or specific threats against the group, as anticipated, perceived or experienced by Somali IDP respondents. Respondents distinguished between localized or clan-based conflict, and insecurity arising from the national level conflict of the insurgency and counter-insurgency in southern and central Somalia. For a more detailed breakdown of data, please see IASC Somalia PMN and PMT reports 2007 to 2010, <http://ochaonline.un.org/somalia/Clusters/IDPsandProtection/tabid/2832/language/en-US/Default.aspx>.

¹⁸ The methodology applied for assessing group displacement dynamics through a non representative sample of interviews is not scientific. The definition of 'insecurity' may include general insecurity or specific threats against the group, as anticipated, perceived or experienced by Somali IDP respondents. Respondents distinguished between localized or clan-based conflict, and insecurity arising from the national level conflict of the insurgency and counter-insurgency in southern and central Somalia. For a more detailed breakdown of data, please see IASC Somalia PMN and PMT reports 2007 to 2009, <http://ochaonline.un.org/somalia/Clusters/IDPsandProtection/tabid/2832/language/en-US/Default.aspx>.

¹⁹ Integrated Regional Information Networks (IRIN), *Somalia: Conflict timeline from 2000*, 29 June 2009, <http://www.unhcr.org/refworld/docid/4a4c81b22c.html>.

The origins of the current political crisis stretch back over a decade, but the crisis has notably worsened since the formation of the Transitional Federal Government (TFG) in late 2004.²⁰ The TFG was perceived by some at the time as an entity that favored some clans (specifically, the Darod/Majerteen of the TFG President) and political interests as opposed to others.²¹ Factional competition facilitated the rise of the Islamic Courts Union (ICU)²² in early 2006 which filled a governance and security vacuum, but provoked an Ethiopian National Defense Forces (ENDF) intervention in support of the TFG. Initially, the TFG/ENDF coalition was militarily successful and by the end of 2006 had captured Mogadishu.²³ However, the intervention of Ethiopian troops triggered the spread of a more organized, radical Islamist armed insurgency.²⁴

The demise of the ICU, starting in December 2006, created a power vacuum that the TFG was not able to fill. Consequently, *de facto* political authority fell to clan leaders and, to some extent, resulted in a revival of local clan militias. This led to increased inter-clan conflicts throughout South-Central Somalia. Furthermore, the massive displacement from Mogadishu saturated the absorption capacity of receiving provinces and increased conflict over scarce resources.²⁵

By the end of 2008, insurgent groups – consisting of numerous armed groups opposed to the TFG with varying levels of coordination, leadership, organizational structures and constituents²⁶ – were in *de facto* control of most of southern and central Somalia, whilst the TFG and Ethiopian troops' presence was restricted to parts of Mogadishu and Baydhaba.

In January 2009, in line with key commitments made under the Djibouti Agreement between the TFG and the Alliance for the Reliberation of Somalia (ARS)²⁷ concluded on 9 June 2008,²⁸ the Ethiopian forces withdrew from Somalia. Furthermore, following the resignation of Abdullahi Yusuf as President of the TFG in late December 2008,²⁹ Sharif Ahmed was elected as the new TFG President in January 2009. The new President was, however, rejected by the leaders of the Asmara-wing of the

²⁰ The TFG was formed pursuant to Article 1 of the Somali Transitional Charter. See *Transitional Federal Charter for the Somali Republic*, February 2004, <http://www.unhcr.org/refworld/docid/4795c2d2.html>.

²¹ The TFG was formed pursuant to Article 1 of the Somali Transitional Charter. See *Transitional Federal Charter for the Somali Republic*, February 2004, <http://www.unhcr.org/refworld/docid/4795c2d2.html>.

²² In December 2004, just two months after the formation of the TFG, a group of clan-based courts that had been operating in Mogadishu for years joined to launch the ICU. Sheikh Sharif Sheikh Ahmed, a schoolteacher from Mogadishu, was appointed chair of the alliance. By 2005 there were 11 Islamic Courts from different clans operating in Mogadishu under Shari'a. In June 2006 the ICU drove the warlords from Mogadishu. Human Rights Watch, *Somalia: Shell-shocked - Civilians under Siege in Mogadishu*, 13 August 2007, Volume 19, No. 12(a), <http://www.unhcr.org/refworld/docid/46c17a5b2.html>.

²³ UN Security Council, *Report of the Secretary-General on the Situation in Somalia*, S/2007/115, 28 February 2007, p. 2, <http://www.unhcr.org/refworld/docid/45ffad782.html>.

²⁴ UN Security Council, *Report of the Secretary-General on the Situation in Somalia Pursuant to Paragraphs 3 and 9 of Security Council Resolution 1744 (2007)*, 20 April 2007, S/2007/204, p.5, <http://www.unhcr.org/refworld/docid/46404eb22.html>; WRITENET, *Somalia: A National and Regional Disaster?*, April 2009, p.3; <http://www.unhcr.org/refworld/docid/49f180d82.html>.

²⁵ IASC Somalia, *PMT Annual Report 2007*, <http://ochaonline.un.org/somalia/Clusters/IDPsandProtection/tabid/2832/language/en-US/Default.aspx>

²⁶ For a description of the main insurgent groups as of December 2008, see UN Security Council, *Report of the Monitoring Group on Somalia pursuant to Security Council resolution 1811 (2008)*, S/2008/769, 10 December 2008, pp. 17-22, <http://www.unhcr.org/refworld/docid/494900240.html>.

²⁷ Some ICU leaders constituted the Alliance for the Reliberation of Somalia (ARS). In 2008, the ARS split over the UN-sponsored Djibouti peace process, with a group led by Sheikh Sharif Sheikh Ahmed (the ARS-Djibouti) engaging in peace talks with the TFG and the other group led by Sheikh Hassan Dahir Aweys (the ARS Asmara) rejecting the Djibouti process. Amnesty International, *Somalia: International military and policing assistance should be reviewed*, 21 January 2010, AFR 52/001/2010, <http://www.unhcr.org/refworld/docid/4b5822312.html>.

²⁸ Djibouti Agreement, 9 June 2008, <http://unpos.unmissions.org/Portals/UNPOS/Repository%20UNPOS/080818%20-%20Djibouti%20Agreement.pdf>.

²⁹ UN Security Council, *Report of the Secretary-General on the situation in Somalia*, S/2009/132, 9 March 2009, p. 2, <http://www.unhcr.org/refworld/docid/49ba27f72.html>.

ARS, al-Shabaab³⁰ and the Islamic administrations of Baardheere (Gedo), Kismaayo and Marka, all of whom vowed to continue their fight against the TFG. The appointment of Omar Abdirashid Sharmarke as Prime Minister reestablished the clan balance between the Darod/Majerteen and the Hawiye/Abgal, the President's clan, while ensuring the Puntland administration's support for the transitional government.³¹

In January and February 2009, despite condemnation by opposition Islamist insurgent groups,³² the new TFG appeared to enjoy popular support. Ex-Islamic Court Union (ICU)/Hawiye affiliated militias (controlling large parts of Hiran, including Beletweyne, and Middle Shabelle, including Jowhar) also manifested their support for the new TFG. During this period, the first waves of internally displaced persons (IDPs) returning to Mogadishu were recorded, with IDPs citing the withdrawal of Ethiopian troops and hopes for peace as reasons for returning. The new TFG also took a series of initiatives which politically disarmed the remaining Islamist opposition. Firstly, President Sharif Ahmed called for steps to be taken to implement *Shari'a* law across Somalia – a move later endorsed by the Cabinet and the Transitional Federal Parliament.³³ In doing so, two of the insurgents' key demands – the withdrawal of Ethiopian forces and implementation of *Shari'a* law – were met, thereby weakening the justification for a continued insurgency in the eyes of the general public.

Insurgent forces, however, repeated their demand for the withdrawal of the peace-keeping forces deployed by the African Union Mission in Somalia (AMISOM).³⁴ The latter's presence in Somalia, which they depicted as a 'foreign invasion', served as their main justification for continuing to fight. The new TFG's gestures towards implementing *Shari'a* law, on the other hand, was branded as an insincere "plot against the Mujahideen".³⁵ The growing presence of foreign fighters,³⁶ some with battle experience, increased the military capacity of groups such as Al-Shabaab. The insurgents made significant territorial advances, and the occupation of Baydoba, the temporary seat of the TFG, by

³⁰ "Al-Shabaab is a radical offshoot of the Islamic Courts Union, the militia-backed coalition that held sway in Mogadishu for part of 2006 before being routed by Ethiopia's military intervention in Somalia. Some of al-Shabaab's leaders have ties to al-Qaeda, and the United States, the European Union, and many regional governments have viewed its rise with alarm. Today it is the most powerful single armed faction in Somalia, controlling more territory than any other group. In many areas, al-Shabaab rule has brought relative peace and order that contrasts dramatically with the chaos in Mogadishu. Residents from some of these areas told Human Rights Watch that they credit al-Shabaab with ending a constant menace of extortion, robbery, and murder from bandits and freelance militias. But even where this holds true, security has come at a steep price, especially for women....al-Shabaab is not a monolithic entity but rather an alliance of factions that have rallied under its banner. To the extent that the group's diverse leaders have a common agenda, it consists of defeating AMISOM and the TFG and extending extreme measures to justify as *Shari'a*, the Islamic system of laws and daily conduct, across Somalia. Across a large part of southern Somalia, local administrations that identify themselves as al-Shabaab appear to answer to authorities based in Kismayo. But in other areas, "al-Shabaab" administrations may be little more than preexisting clan-based power structures assuming a different name." Human Rights Watch, *Harsh War, Harsh Peace*, 19 April 2010, 1-56432-621-7, <http://www.unhcr.org/refworld/docid/4bcd64c82.html>.

³¹ WRITENET, *Somalia: A National and Regional Disaster?*, April 2009, p. 8, <http://www.unhcr.org/refworld/docid/49f180d82.html>; UN Security Council, *Report of the Secretary-General on the situation in Somalia*, S/2009/132, 9 March 2009, p. 2, <http://www.unhcr.org/refworld/docid/49ba27f72.html>.

³² The ASR-Asmara umbrella of groups and al-Shabaab.

³³ UN Security Council, *Report of the Secretary-General on the situation in Somalia*, S/2009/373, 20 July 2009, p. 2, <http://www.unhcr.org/refworld/docid/4a71600b2.html>; AlJazeera.net, *Somalia to Get Shari'a-Based Law*, 11 March 2009, <http://english.aljazeera.net/news/africa/2009/03/2009311043552606.html>; Reuters, *Somali Cabinet Votes to Implement Shari'a Law*, 10 March 2009, <http://www.reuters.com/article/africaCrisis/idUSLA575453>; Garowe Online, *Somalia's Cabinet Endorses Islamic Law*, 10 March 2009, http://www.garoweonline.com/artman2/publish/Somalia_27/Somalia_s_Cabinet_endorses_Islamic_law.shtml.

³⁴ AMISOM mission statement: AMISOM conducts a Peace Support Operation in Somalia to stabilize the security situation, including the take over from Ethiopian Forces, and to create a safe and secure environment in preparation for the transition to the UN, <http://www.africa-union.org/root/AU/AUC/Departments/PSC/AMISOM/amisom.htm>.

³⁵ Xinhua, *Somali Security Official Killed by Islamist Group's Attack in Capital*, 12 March 2009, http://news.xinhuanet.com/english/2009-03/12/content_10994685.htm.

³⁶ UN Security Council, *Report of the Secretary-General on the situation in Somalia*, 20 July 2009, S/2009/373, p.3, <http://www.unhcr.org/refworld/docid/4a71600b2.html>.

Al-Shabaab in late January 2009, following the withdrawal of Ethiopian forces, marked an important symbolic gain.³⁷

This shift in military momentum towards the insurgency was clearly reflected in a major new campaign in Mogadishu beginning on 7 May 2009.³⁸ In an attempt to remove the TFG and AMISOM forces from Mogadishu and take control of the entirety of Banadir, Al-Shabaab, Hizbul Islam³⁹ and other insurgent groups made a joint attack on the TFG and its allies.⁴⁰ The fighting was the worst in recent months with attacks and counter-attacks, with civilians again being caught in the cross-fire.

Since January 2007, more than 16,000 civilians have been killed in the ongoing fighting. In May 2009 alone, an estimated 200 people were killed and nearly 700 injured in Mogadishu, the majority of whom were reportedly civilians.⁴¹ Mortar shelling into heavily civilian-populated areas led to the killing of entire families and the displacement of an estimated 70,000 people in May.⁴² Reports suggest that approximately 1.38 million Somalis are internally displaced in southern and central Somalia,⁴³ while hundreds of thousands of refugees are hosted in neighbouring countries, including Kenya and Ethiopia.⁴⁴

In April 2010, the International Contact Group (ICG)⁴⁵ strongly condemned the violent actions of extremists which have led to continued suffering among the civilian population, and in particular attacks on human rights workers, judges, journalists and non-governmental organizations (NGOs).⁴⁶

³⁷ UN Security Council, *Report of the Secretary-General on the situation in Somalia*, 9 March 2009, S/2009/132, p. 3, <http://www.unhcr.org/refworld/docid/49ba27f72.html>; VOA, *Africa Union Condemns Al-Shabaab Takeover of Somali Parliament Building*, 27 January 2009, <http://www.voanews.com/english/Africa/2009-01-27-voa2.cfm>; Reuters, *Somali Islamists to rule by Shari'a law in Baidoa*, 27 January 2009, <http://www.reuters.com/article/homepageCrisis/idUSLR224194.CH.2400>; Associated Press, *Insurgents seize seat of Somalia's parliament*, 28 January 2009, http://www.google.com/hostednews/ap/article/ALeqM5g7OaI4_kjeHA-o4Uhlmp7vIWmrwD95VITAG0.

³⁸ IASC, *IASC Protection Cluster Monthly Report*, May 2009, <http://ochaonline.un.org/somalia/Clusters/IDPsandProtection/tabid/2832/language/en-US/Default.aspx>; BBC, *Somalis Fleeing Renewed Bloodshed*, 12 May 2009, <http://news.bbc.co.uk/2/hi/africa/8045491.stm>; VOA News, *AU Mission Blames Weekend Fighting on Anti-Peace Forces*, 11 May 2009, <http://www.voanews.com/english/Africa/2009-05-11-voa4.cfm>; Reuters, *Rival Islamist Fighters Clash in Somalia*, 13 May 2009; <http://www.reuters.com/article/africaCrisis/idUSLD817364>.

³⁹ "Like al-Shabaab, Hizbul Islam ("Party of Islam") is an armed group that espouses a Shari'a agenda and seeks to drive AMISOM and the TFG from Mogadishu. It came into being under the leadership of Hassan Dahir Aweys, a former ICU leader who broke with Sheikh Sharif when the two men were in exile. While Sharif was in Djibouti, Aweys spent his exile in Asmara and cultivated close ties with the Eritrean government. Aweys returned to Mogadishu in early 2009 and instead of allying himself with Sharif's government, joined with al-Shabaab to resume fighting. Hizbul Islam's tenuous alliance with al-Shabaab ended in October 2009 during the two groups' fight for Kismayo. A month after its Kismayo defeat, Hizbul Islam also lost the key border town of Dhobley to al-Shabaab forces, which both groups had previously occupied together." Human Rights Watch, *Harsh War, Harsh Peace*, 19 April 2010, 1-56432-621-7, <http://www.unhcr.org/refworld/docid/4bcd64c82.html>.

⁴⁰ UN Security Council, *Report of the Secretary-General on the situation in Somalia*, 20 July 2009, S/2009/373, p.3, <http://www.unhcr.org/refworld/docid/4a71600b2.html>.

⁴¹ IASC, *IASC Protection Cluster Monthly Report*, May 2009, <http://ochaonline.un.org/somalia/Clusters/IDPsandProtection/tabid/2832/language/en-US/Default.aspx>.

⁴² IASC, *IASC Protection Cluster Monthly Report*, May 2009, <http://ochaonline.un.org/somalia/Clusters/IDPsandProtection/tabid/2832/language/en-US/Default.aspx>; Reuters, *Thousands Flee Mogadishu, Death Toll Hits 113*, 12 May 2009; <http://www.reuters.com/article/latestCrisis/idUSLC789496>. NB this total has subsequently increased in June 2009.

⁴³ An area outside Mogadishu, known as the Afgooye corridor, contains the highest density of IDPs in the world.

⁴⁴ Amnesty International, *Amnesty International Report 2009 - Somalia*, 28 May 2009, <http://www.unhcr.org/refworld/docid/4a1fadcl40.html>.

⁴⁵ The Washington Post, *U.S. to Hold International Meeting on Somalia*, 10 June 2006, <http://www.washingtonpost.com/wp-dyn/content/article/2006/06/09/AR2006060901713.html>.

⁴⁶ The ICG consists of Algeria, Austria, Belgium, Canada, China, Denmark, Djibouti, Egypt, Ethiopia, Finland, France, Italy, Japan, Kenya, Libya, Malaysia, Norway, Oman, Qatar, Russia, Saudi Arabia, Somalia, South Africa, Spain, Sudan, Sweden, Turkey, the United Kingdom, the United States, Yemen, African Union, the European Union, the Islamic Development Bank, IGAD, League of Arab States, Organization of Islamic Conference, the United Nations

Presently, the principal parties to the conflict in southern and central Somalia are the TFG, AMISOM, Ahlu Sunna Wal Jama'a (ASWJ),⁴⁷ al-Shabaab, and the ARS-Asmara comprised of Hizbul Islam, Ras Camboni,⁴⁸ Al Muqawama Islamiya,⁴⁹ the Somali Islamic Front (Jabathul Islamiya or JABISO)⁵⁰ and Anole⁵¹ Camp.⁵² As of February 2010, the TFG, with the support of the AMISOM, has maintained its control of the strategic southern districts of Mogadishu, as well as the airport and seaport. Al-Shabaab is in control of Hiraan, Shabelle Dhexe, Bakool, Bay, Shabelle Hoose, Gedo, Juba Dhexe, Juba Hoose and shares control of Northern Mogadishu with Hizbul Islam.⁵³ Hizbul Islam⁵⁴ controls Belet Weyne, Luuq and Banadir and ASWJ controls Galduduud. Other parts of southern and central Somalia are controlled by various administrations including the Galmadug, Him/Heem, and Xarardheere which is under clan and pirate control.⁵⁵ It is, however, important to bear in mind that control of territory by

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- and the World Bank, UN News Service, *UN-backed group supports Somali Government's peace overtures to rivals*, 22 April 2010, <http://www.unhcr.org/refworld/docid/4bd53fb61d.html>.
- ⁴⁷ "Ahlu Sunna Waljamaca (roughly translated as "Adherents to the Sunnah and Congregation") is often described as an Islamist group rooted in traditional Somali Sufism that professes to support a "moderate" agenda, in opposition to the vision of al-Shabaab and Hizbul Islam. It is the only Somali faction that has enjoyed substantial military success against al-Shabaab and it has also been involved in clashes with Hizbul Islam forces. The group exists primarily in central Somalia, where it has managed to maintain control over large swaths of territory, predominantly in Galduduud and Hiran regions. Ethiopia has also provided support to Ahlu Sunna Waljamaca and as of early 2010 some of its fighters were reportedly undergoing training in Ethiopia." Human Rights Watch, *Harsh War, Harsh Peace*, 19 April 2010, 1-56432-621-7, <http://www.unhcr.org/refworld/docid/4bcd64c82.html>.
- ⁴⁸ Ras Kamboni (named after the headland), led by Hassan Turki, mostly Ogadeni, Africa Confidential, *The Sheik Sharif Show*, 20 February 2009, <http://www.africa-confidential.com/article/id/2986/The-Sheik-Sharif-show>.
- ⁴⁹ Al Muqawama Islamiya (Islamic Resistance), all Hawiye, mostly from the Ayr and Duduble, with some Gugundhabe, Africa Confidential, *The Sheik Sharif Show*, 20 February 2009, <http://www.africa-confidential.com/article/id/2986/The-Sheik-Sharif-show>.
- ⁵⁰ Jabhat al Islamiyya (Islamic Front), led by Abdulqader 'Kumandos' (Ajuran) and recruiting mostly among the Garre and Gaal Jecel (all Hawiye groups, with a warrior tradition), Africa Confidential, *The Sheik Sharif Show*, 20 February 2009, <http://www.africa-confidential.com/article/id/2986/The-Sheik-Sharif-show>.
- ⁵¹ Mu'askar Anole (Anole Camp), mostly Majerteen and Lelkasse from the Kismayo area, Africa Confidential, *The Sheik Sharif Show*, 20 February 2009, <http://www.africa-confidential.com/article/id/2986/The-Sheik-Sharif-show>.
- ⁵² Amnesty International, *Somalia: International military and policing assistance should be reviewed*, 21 January 2010, AFR 52/001/2010, <http://www.unhcr.org/refworld/docid/4b5822312.html>.
- ⁵³ "Al-Shabaab is a radical offshoot of the Islamic Courts Union, the militia-backed coalition that held sway in Mogadishu for part of 2006 before being routed by Ethiopia's military intervention in Somalia. Some of al-Shabaab's leaders have ties to al-Qaeda, and the United States, the European Union, and many regional governments have viewed its rise with alarm. Today it is the most powerful single armed faction in Somalia, controlling more territory than any other group. In many areas, al-Shabaab rule has brought relative peace and order that contrasts dramatically with the chaos in Mogadishu. Residents from some of these areas told Human Rights Watch that they credit al-Shabaab with ending a constant menace of extortion, robbery, and murder from bandits and freelance militias. But even where this holds true, security has come at a steep price, especially for women....al-Shabaab is not a monolithic entity but rather an alliance of factions that have rallied under its banner. To the extent that the group's diverse leaders have a common agenda, it consists of defeating AMISOM and the TFG and extending extreme measures it justifies as Shari'a, the Islamic system of laws and daily conduct, across Somalia. Across a large part of southern Somalia, local administrations that identify themselves as al-Shabaab appear to answer to authorities based in Kismayo. But in other areas, "al-Shabaab" administrations may be little more than preexisting clan-based power structures assuming a different name." Human Rights Watch, *Harsh War, Harsh Peace*, 19 April 2010, 1-56432-621-7, <http://www.unhcr.org/refworld/docid/4bcd64c82.html>.
- ⁵⁴ "Like al-Shabaab, Hizbul Islam ("Party of Islam") is an armed group that espouses a Shari'a agenda and seeks to drive AMISOM and the TFG from Mogadishu. It came into being under the leadership of Hassan Dahir Aweys, a former ICU leader who broke with Sheikh Sharif when the two men were in exile. While Sharif was in Djibouti, Aweys spent his exile in Asmara and cultivated close ties with the Eritrean government. Aweys returned to Mogadishu in early 2009 and instead of allying himself with Sharif's government, joined with al-Shabaab to resume fighting. Hizbul Islam's tenuous alliance with al-Shabaab ended in October 2009 during the two groups' fight for Kismayo. A month after its Kismayo defeat, Hizbul Islam also lost the key border town of Dhobley to al-Shabaab forces, which both groups had previously occupied together." Human Rights Watch, *Harsh War, Harsh Peace*, 19 April 2010, 1-56432-621-7, <http://www.unhcr.org/refworld/docid/4bcd64c82.html>.
- ⁵⁵ UN Human Rights Council, *Report of the Independent Expert on the Situation of Human Rights in Somalia*, Shamsul Bari, A/HRC/12/44, 17 September 2009, <http://www.unhcr.org/refworld/docid/4acb4abc2.html>.

the different factions is not static in southern and central Somalia and that shifts in territorial control are a common occurrence on the ongoing conflict.

A cooperation agreement was signed between the TFG and ASWJ on 21 June 2009. In February 2010, ASWJ signed a power-sharing and military unification pact with the TFG.⁵⁶ However, the other Islamic insurgent groups have refused to join the TFG as part of an inclusive administration.⁵⁷

B. Puntland

Military confrontations between Somaliland and Puntland forces occurred in Las Anod, a contested town on the border of the two territories in Sool province, in April and October 2007. The fighting resulted in the capture of the town by Somaliland forces, with several civilian casualties. As of December 2007, UNHCR estimated that the conflict in Sool had caused the displacement of between 22,000 and 54,000 persons. Tensions between Puntland and Somaliland have continued with both claiming sovereignty over Sool and Sanaag, with Puntland threatening to attack in order to recapture Las Anod. However, there have not been recent outbreaks of violence between Somaliland and Puntland over the disputed regions.⁵⁸

Government institutions, particularly the judiciary and the police, remain weak in Puntland.⁵⁹ While the Puntland authorities express their commitment to human rights, observers have noted that the death penalty was imposed under circumstances where the judicial process was considered as unfair.⁶⁰ Limited access to justice, particularly for women, the lack of capacity of the judiciary and, at times, the discriminatory application of traditional conflict resolution mechanisms are some other issues of concern.⁶¹

C. Somaliland

The self-declared Republic of Somaliland, which has not been recognized by the international community as an independent sovereign state, has been relatively peaceful and secure with the exception of the problematic presidential elections process.⁶²

Somaliland held parliamentary elections in 2005, the first such elections since 1969. However, the serious political crisis prompted by the repeatedly rescheduled presidential elections had a destabilizing impact. President Rayale's third term of office should have expired on 15 May 2008. The election would therefore have had to be held at least one month earlier. However, five attempts to schedule the elections remained unsuccessful, the last due to the unilateral decision of the National Electoral Commission (NEC) not to use a voter registration list tainted by alleged massive and systematic fraud, which caused both opposition parties to declare an election boycott and suspend cooperation with the Commission. The crisis was defused in late September 2009, when the parties – under strong external and internal pressure – accepted a memorandum of understanding agreeing to a change in the NEC's leadership and composition and the use of a refined voter registration list. The

⁵⁶ Human Rights Watch, *Harsh War, Harsh Peace*, 19 April 2010, 1-56432-621-7, <http://www.unhcr.org/refworld/docid/4bcd64c82.html>.

⁵⁷ UN Security Council, *Report of the Secretary-General on Somalia pursuant to Security Council resolution 1872 (2009)*, S/2009/503, 2 October 2009, <http://www.unhcr.org/refworld/docid/4acddae92.html>.

⁵⁸ United States Department of State, *2009 Country Reports on Human Rights Practices - Somalia*, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e52bdc.html>.

⁵⁹ Andre Le Sage, *Stateless Justice in Somalia: Formal and Informal Rule of Law initiatives*, Centre for Humanitarian Dialogue, July, 2005, pp. 28-32, http://www.hdcentre.org/files/Somalia_report.pdf

⁶⁰ UN Security Council, *Report of the Secretary-General on the situation in Somalia*, S/2009/373, 20 July 2009, p. 12, <http://www.unhcr.org/refworld/docid/4a71600b2.html>.

⁶¹ UN Security Council, *Report of the Secretary-General on the situation in Somalia*, S/2009/373, 20 July 2009, p. 12, <http://www.unhcr.org/refworld/docid/4a71600b2.html>.

⁶² Amnesty International, *Amnesty International Report 2009 - Somalia*, 28 May 2009, <http://www.unhcr.org/refworld/docid/4a1fadcl40.html>.

new National Electoral Commission (NEC) has scheduled the next elections for June 2010 and an electronic voting system has been established. The NEC has begun issuing voting registration cards to citizens.⁶³ However, progress achieved in democratic transformation, the implementation of the rule of law and peace and stability are at risk should fair and free elections and effective governance not materialize.⁶⁴

IV. Eligibility for International Protection

A. General Approach

In view of the serious and widespread violations of human rights and the ongoing armed conflict and insecurity in much of southern and central Somalia and some parts of Somaliland and Puntland, UNHCR considers that many Somali asylum-seekers are in need of international protection. Somalis from southern and central Somalia, Somaliland and Puntland may qualify, depending on the circumstances surrounding their flight, as refugees within the meaning of Article 1A(2) of the 1951 Convention and/or Article I(1) of the OAU Convention.

In countries where Somali asylum-seekers have arrived in large numbers, represent a discernible and similar pattern in the nature of their claims that demonstrate international protection needs, and where refugee status determination on an individual basis would exceed local capacities, UNHCR encourages the adoption of a group-based protection approach. Group-based approaches include the application of *prima facie* group recognition, applied by UNHCR and States to situations of mass influx, and temporary protection granted by States.

Due to reported violations of international humanitarian law and human rights law by various actors, some of the claims lodged by Somali asylum-seekers may give rise to concerns regarding possible exclusion from refugee status. Where relevant, grounds for exclusion from recognition and protection as a refugee should be assessed based on the exclusion clauses set out in Article 1F of the 1951 Convention and Article I(5) of the OAU Convention. Group-based protection approaches thus need to include appropriate screening mechanisms to identify potentially excludable claims.

UNHCR considers that no internal flight (or relocation) alternative (IFA/IRA) is available inside southern and central Somalia. Where recognition as a refugee is based on the refugee criteria under Article I(2) of the OAU Convention, the IFA/IRA test is not applicable. Where the examination of an IFA/IRA 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, in the framework of the relevance and reasonableness test and the guidance provided in this paper.

Whether an IFA/IRA exists in Puntland or Somaliland will depend on the circumstances of the individual case. For different reasons, as elaborated under Section E, neither Puntland nor Somaliland accept an entitlement to return to or reside in their territory except for persons able to establish that they originate from those territories. Such origin is primarily established through membership of a clan considered to originate from Puntland or Somaliland.⁶⁵ Persons unable to establish such a link may be subject to detention and/or deportation to territories where their lives and freedom could be threatened, including southern and central Somalia. The conflict between Puntland and Somaliland over Sool and Sanaag, the frequent eruption of violence along Puntland's southern border (with southern and central Somalia), the insufficiency of traditional, clan-based protection and the generally

⁶³ AFROL, *Somaliland finally prepares presidential polls*, 14 April 2010, <http://www.afrol.com/articles/35929>.

⁶⁴ International Crisis Group, *Somaliland: A Way out of the Electoral Crisis*, 7 December 2009, <http://www.crisisgroup.org/home/index.cfm?id=6420>.

⁶⁵ Kenneth Menkhaus, *Somalia: A Situation Analysis and Trend Assessment*, WRITENET, 1 August 2003, p. 27, <http://www.unhcr.org/refworld/docid/3f7c235f4.html>.

poor living conditions of displaced persons in Puntland and Somaliland suggest that an IFA/IRA is generally not available.

Somalis from southern and central Somalia seeking asylum and protection due to the situation of generalized violence and armed conflict in their places of origin or habitual residence and whose claims are considered as not meeting the refugee criteria under Article 1A(2) of the 1951 Convention⁶⁶ or Article I(1) of the OAU Convention,⁶⁷ should be granted international protection under the extended refugee definition in Article I(2) of the OAU Convention. In States in which the OAU Convention does not apply, a complementary/subsidiary form of protection should be granted under relevant national and regional legal frameworks. The widespread disregard of their obligations under international humanitarian law by all parties to the conflict and the reported scale of human rights violations make it clear that any person returned to southern and central Somalia would, solely on account of his/her presence in southern and central Somalia, face a real risk of serious harm.

With respect to persons originating from Puntland or Somaliland who are found not to be in need of international protection following a determination of their claims in fair and efficient procedures, UNHCR recommends that States exercise caution when considering their return. As mentioned already, Puntland and Somaliland will not accept the return of Somalis unable to establish that they originate from those territories. Therefore, individuals claiming to be from Puntland and Somaliland who are unable to establish that they originate from these territories should not be returned there.

Individuals already recognized as refugees, whether on a group-based protection approach or following individual status determination procedures, should retain this status. The refugee status of such persons should be reviewed only if there are indications, in an individual case, that there are grounds for cancellation of refugee status which was wrongly granted in the first instance; revocation of refugee status on the grounds of Article 1F of the 1951 Convention or Article I(5)(a), (c) or (d) of the OAU Convention; or cessation of refugee status on the basis of Article 1C(1-4) of the 1951 Convention or Article I(4)(a-d) of the OAU Convention.

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

UNHCR considers that groups set out in this section face a particular risk of persecution or serious harm in Somalia, including through cumulative discriminatory acts. The list is not necessarily exhaustive, hence a claim should not be automatically considered as without merit because it may not fall within any of these groups.

1. Southern and Central Somalia

a) Individuals Perceived as Supporting the TFG, AMISOM or the ENDF

Members of the TFG, including its troops and security forces, are regularly targeted by al-Shabaab and Hizbul Islam.⁶⁸ However, since 2008, civilians perceived to have links with the TFG and/or with the ENDF until its withdrawal, including translators and women selling food to soldiers, have also faced retribution.⁶⁹ Early 2009 saw a notable increase in applications received by UNHCR offices in

⁶⁶ UN General Assembly, *Convention relating to the Status of Refugees*, 28 July 1951, UN Treaty Series, vol. 189, p. 137, <http://www.unhcr.org/refworld/docid/3be01b964.html> (hereafter: "1951 Convention")

⁶⁷ Organization of African Unity, *Convention Governing the Specific Aspects of Refugee Problems in Africa*, 10 September 1969, 1001 U.N.T.S. 45, <http://www.unhcr.org/refworld/docid/3ae6b36018.html> (hereafter: "OAU Convention").

⁶⁸ CNN, *Violent extremists calling fighters to Somalia*, 27 April 2010, <http://edition.cnn.com/2010/WORLD/africa/04/27/somalia.al.shabaab/index.html?hpt=T1>.

⁶⁹ UN Security Council, *Report of the Secretary-General on the situation in Somalia*, S/2009/132, 9 March 2009, p. 18, <http://www.unhcr.org/refworld/docid/49ba27f72.html>.

neighbouring countries from TFG officials and their family members as well as perceived 'collaborators' with Ethiopian troops such as interpreters that were forced to flee by insurgent groups taking over territory that the TFG had previously controlled. The loss of territory resulted in the loss of protection for TFG officials by Ethiopian forces following their withdrawal in January 2009. Assassinations, and attempted assassinations, of persons linked to the TFG are continuing.⁷⁰

Human rights defenders, humanitarian aid workers and journalists reportedly continue to be threatened, attacked, abducted or killed in southern and central Somalia, often because they have been perceived as supporting the TFG, AMISOM or the ENDF during its presence in Somalia.⁷¹ Likewise, medical students and doctors have been targeted.⁷² In addition, the conflict has forced non-governmental organizations and UN agencies operating in Somalia to either reduce or suspend their activities.⁷³ Al-Shabaab has announced a ban on activities by UNDP, the United Nations Department of Safety and Security and the United Nations Political Office for Somalia in southern and central Somalia accusing the agencies of being enemies of Islam.⁷⁴ Due to continuous threats, extortion attempts and intimidation of its staff, the World Food Programme had to suspend food distribution in most regions of southern and central Somalia at the beginning of 2010.⁷⁵

UNHCR considers that persons belonging to the TFG or who have links with the TFG and/or ENDF or who have provided support or services to the TFG, ENDF or AMISOM, are at risk on grounds of their (imputed) political opinion, with ethnicity/race and religion as possible compounding factors.⁷⁶ However, with regard to members of the TFG, and in particular those belonging to the military or security forces, a careful examination of excludability is required.⁷⁷

b) Individuals Perceived as Contravening Islamic Laws or Decrees

Somalis in southern and central Somalia reportedly live in fear of being perceived as opposing al Shabaab's decrees.⁷⁸ Al-Shabaab has set up *Shari'a* courts and issued decrees to restrict social

⁷⁰ UN Security Council, *Report of the Secretary-General on the situation in Somalia*, S/2009/132, 9 March 2009, p. 17, <http://www.unhcr.org/refworld/docid/49ba27f72.html>. See also IRIN, *Somalia: Team to investigate Mogadishu*, 7 December 2009, <http://www.irinnews.org/Report.aspx?ReportId=87350>, describing the bombing of a graduation ceremony on 3 December 2009, which killed scores of people, including three cabinet ministers. See also United States Department of State, *2009 Country Reports on Human Rights Practices - Somalia*, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e52bdc.html>.

⁷¹ Further reasons leading to these groups becoming the target of persecution are elaborated under Section E.1.c).

⁷² Integrated Regional Information Networks (IRIN), *Somalia: "It is as if they want to kill any hopes of a better future"*, 3 December 2009, <http://www.unhcr.org/refworld/docid/4b1e0e061e.html> refers to the suicide bombing at the Shamo Hotel *ibid* [] where three TFG ministers and close to fifty people were killed in a suicide attack at a graduation ceremony for medical students at Benadir University in Mogadishu. Amnesty International, *No end in sight: The ongoing suffering of Somalia's civilians*, 25 March 2010 p.5 <http://www.amnesty.org/en/library/asset/AFR52/003/2010/en/6d0c975e-c16e-4974-a9ec-645d9a6aa5f2/af520032010en.pdf> describing an Al-Shabab statement which refers to the deaths of doctors following the shelling of an ANISOM field hospital as "a successful attack" and states that it considers ANISOM doctors as "enemy" doctors. See also CNN, *Violent extremists calling fighters to Somalia*, 27 April 2010, <http://edition.cnn.com/2010/WORLD/africa/04/27/somalia.al.shabaab/index.html?hpt=T1>. At the African Union base they opened the military hospital to the public in response to the lack of medical facilities in the city. When they run out of drugs and instead issue prescriptions, even the desperately ill throw them away, knowing the risks of being caught with such evidence of "collusion."

⁷³ Freedom House, *Freedom in the World 2009 – Somalia*, 16 July 2009, <http://www.unhcr.org/refworld/docid/4a645283c.html>.

⁷⁴ BBC News, *Somali Islamists ban UN agencies*, <http://news.bbc.co.uk/2/hi/africa/8159574.stm>.

⁷⁵ United Nations Radio, *WFP is forced to suspend operations in Somalia*, 5 January 2010, <http://www.unmultimedia.org/radio/english/detail/88510.html>.

⁷⁶ There was also a recent instance in October 2009 where two men were accused of spying and stoned to death in Merka, <http://www.news.bbc.co.uk/2/hi/8347216.stm+stoning+somalia+spying&cd=2&hl=en&ct=clnk&gl=uk>.

⁷⁷ See section on Exclusion for more details.

⁷⁸ CNN, *Violent extremists calling fighters to Somalia*, 27 April 2010, <http://edition.cnn.com/2010/WORLD/africa/04/27/somalia.al.shabaab/index.html?hpt=T1>.

behaviour it considers to violate Islamic law, including a ban on music, dancing in public⁷⁹ and *khat*,⁸⁰ and the closure of cinemas. Prayer times must also be respected and women are instructed to wear appropriate dress, which includes the hijab.⁸¹ There are reports that young men are threatened by al-Shabaab for engaging in activities like playing soccer or other games.⁸² School bells have been declared to be too Christian and banned.⁸³ Al-Shabaab has announced that anyone found not to be abiding by these laws will be punished.⁸⁴ *Shari'a* court procedures⁸⁵ and punishments have been generally harsh and inconsistent,⁸⁶ for instance amputations for theft which have been carried out in a number of locations.⁸⁷ Moreover, some interpretations of *Shari'a* law have been highly questionable. Some egregious examples include the condemnation to death by stoning of a 14 year old girl in Kismaayo for adultery, even though she had been gang raped and the execution of a military commander in Kismaayo as a "Murtadiin" (apostate) for working with the TFG, and by extension, the 'Christian' Ethiopians.⁸⁸

In addition to formal decisions by *Shari'a* courts, behavioural decrees are often enforced by militiamen. For instance in Bayhdaba, people have been fined or shot if found not to be attending prayer or not complying with the compulsory prayer five time a day.⁸⁹

In April 2010, Mogadishu's 14 private radio stations reportedly stopped playing music following threats from Hizbul al-Islam and al-Shabaab.⁹⁰

⁷⁹ IASC Protection Cluster Monthly Report, April 2009, <http://ochaonline.un.org/somalia/Clusters/IDPsandProtection/tabid/2832/language/en-US/Default.aspx>.

⁸⁰ Reuters, *Somalis Protest Against Al Shabab, Kenyans Taken*, 25 March 2009, <http://www.reuters.com/article/homepageCrisis/idUSL972817.CH.2400>; IASC Protection Cluster Monthly Report, March 2009, <http://ochaonline.un.org/somalia/Clusters/IDPsandProtection/tabid/2832/language/en-US/Default.aspx>.

⁸¹ In many areas, al-Shabaab officials require women to wear a particularly heavy type of *abaya*, a traditional form of Islamic dress that covers everything but the face, hands, and feet. Women who fail to do so are often arrested, publicly flogged, or both. Human Rights Watch, *Harsh War, Harsh Peace*, 19 April 2010, 1-56432-621-7, <http://www.unhcr.org/refworld/docid/4bcd64c82.html>.

⁸² Human Rights Watch, *Harsh War, Harsh Peace*, 19 April 2010, 1-56432-621-7, <http://www.unhcr.org/refworld/docid/4bcd64c82.html>.

⁸³ CNN, *Violent extremists calling fighters to Somalia*, 27 April 2010, <http://edition.cnn.com/2010/WORLD/africa/04/27/somalia.al.shabaab/index.html?hpt=T1>.

⁸⁴ IASC Protection Cluster Monthly Report, April 2009, <http://ochaonline.un.org/somalia/Clusters/IDPsandProtection/tabid/2832/language/en-US/Default.aspx>.

⁸⁵ UN Security Council, *Report of the Secretary-General on Somalia pursuant to Security Council resolution 1863 (2009)*, S/2009/210, 16 April 2009, p. 5, <http://www.unhcr.org/refworld/docid/49f1723c2.html>, according to which, "[a]rbitrary arrests and detentions, including prolonged detention before the initial court appearance, and executions following proceedings by Islamic courts have been documented in some parts of the country."

⁸⁶ In early April 2009, al-Shabaab forces reportedly beheaded a fighter of a local militia in Jamame, Lower Juba, and hung his head for public display. This occurred following clashes between Al-Shabab and local militias who refused to comply with the ban on khat, weapons, music, and public dancing, amongst others. At least another two people were killed and five others wounded. See Mareeg News, *Al-Shabab Beheads a Man in Southern Town*, 5 April 2009, <http://www.mareeg.com/fidsan.php?sid=11343&tirsan=3>; Garowe Online, *Armed Youngsters Reject Al Shabab Order, Fighting Erupts*, 5 April 2009, http://www.garoweonline.com/artman2/publish/Somalia_27/Somalia_Armed_youngsters_reject_Al_Shabab_order_fighting_erupts.shtml.

⁸⁷ Amnesty International, *Amputations carried out on four young men in Somalia*, 25 June 2009, <http://www.unhcr.org/refworld/docid/4a48858ca.html>; Amnesty International, *Somali armed group Al-Shabab should not carry out amputations*, 22 June 2009, <http://www.unhcr.org/refworld/docid/4a433c8cc.html>.

⁸⁸ IRIN, *Analysis: Who is fighting whom in Somalia*, 2 September 2009, <http://www.unhcr.org/refworld/docid/4aa0c1955.html>.

⁸⁹ On 17 April, a man was allegedly killed by al-Shabaab militia men also for failing to comply with this law. See IASC Somalia PMN, 24 April 2009 <http://ochaonline.un.org/somalia/Clusters/IDPsandProtection/tabid/2832/language/en-US/Default.aspx>; Garowe Online, *Al Shabab arrest 25 young people in Baidoa*, 15 April 2009, <http://www.google.com/hostednews/afp/article/ALeqM5jpfM3BENxHqZITDuzNsPHTQJPWkg>.

⁹⁰ CNN, *Somali stations air animal noises to protest extremists' music ban*, 13 April 2010, <http://edition.cnn.com/2010/WORLD/africa/04/13/somalia.radio/index.html?hpt=T2>.

The requirement to wear the *hijab* has been enforced with extreme measures. For example, two hundred women were recently arrested and flogged in Mogadishu for allegedly failing to wear the veil, while a separate flogging took place in northern Mogadishu, targeting women who wore bras, for violating Islam.⁹¹ In Jowhar, married women whose husbands or fathers were unable to pay for the *hijab*, were forcibly divorced and re-married to members of al-Shabaab. Such practices were not sanctioned by the higher echelons of al-Shabaab, and were eventually stopped, but these examples highlight how, due to their application by junior al-Shabaab fighters, such decrees appear even more extreme and abusive in their enforcement.⁹² In some areas, al-Shabaab edicts have provoked the formation of counter-insurgency militias, such as ASWJ,⁹³ resulting in armed confrontations between these counter-insurgency militias and al-Shabaab.

In view of the above, UNHCR considers that persons deviating from religious norms imposed by the Islamic militant groups in the areas they control (all areas outside TFG/AMISOM controlled parts of Mogadishu), especially if their individual profile suggests that the violation has not been coincidental/unintentional, would be at risk on account of their (imputed) political opinion and/or religious belief.

c) Civil Society Actors (Human Rights Defenders and Humanitarian Workers) and Journalists

In addition to the reasons mentioned under Section (a) above, journalists, civil society actors or humanitarian workers known to be sharing information on the conflict with the outside world or for expressing views criticizing the human rights situation in Somalia, have been targeted in southern and central Somalia by the Islamist militant groups, including al-Shabaab and Hizbul Islam. Reporting news on the conflict and security issues was indeed considered as a form of treason by all parties to the conflict and independent media was continuously targeted both by al-Shabaab and Hizbul Islam.⁹⁴

Journalists face intimidation, arbitrary arrest, detention and sentencing without due process.⁹⁵ In 2008, only two journalists were killed.⁹⁶ In 2009, seven were killed as a direct result of their work.⁹⁷ Radio stations and other news media also continue to face threats and intimidation.⁹⁸ A number of radio

⁹¹ *No end in sight: The ongoing suffering of Somalia's civilians*, 25 March 2010 p.10 <http://www.amnesty.org/en/library/asset/AFR52/003/2010/en/6d0c975e-c16e-4974-a9ec-645d9a6aa5f2/af520032010en.pdf> details these floggings in October 2009.

⁹² With regards to the compulsory wearing of the veil for women, some IDP women who could not afford to buy a veil (estimated price being 400,000 Somali Shillings) by the given deadline were allegedly arrested and held until a male relative came to bail them out. See *IASC Somalia PMN*, 24 April 2009, <http://ochaonline.un.org/somalia/Clusters/IDPsandProtection/tabid/2832/language/en-US/Default.aspx>.

⁹³ Ahlu Sunna Waljama is a Sufi sect, regarded as more moderate in its interpretation of Islam than al-Shabaab. It joined the fighting in late December 2008, dislodging al-Shabaab from the towns of Guri-Eil and Dusamareb in Galgadud region. It now controls all of Galgadud in central Somalia. See IRIN, *Analysis: Who is fighting whom in Somalia*, 2 September 2009, <http://www.unhcr.org/refworld/docid/4aa0c1955.html>.

⁹⁴ International Federation for Human Rights, *Observatory for the Protection of Human Rights Defenders, Annual Report 2009 - Somalia*, <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=4a5f300f23&skip=0&query=human%20rights%20activists%20in%20Somalia>

⁹⁵ UN Security Council, *Report of the Secretary-General on the situation in Somalia*, S/2009/132, 9 March 2009, p. 17, <http://www.unhcr.org/refworld/docid/49ba27f72.html>.

⁹⁶ Committee to Protection Journalists, *42 journalists killed in 2008*, <http://cpj.org/killed/2008/>.

⁹⁷ Committee to Protection Journalists, *Attacks on the Press 2009: Somalia*, 16 February 2010, <http://cpj.org/2010/02/attacks-on-the-press-2009-somalia.php>. This report also details a former Minister of Information as stating '[insurgents] will kill a journalist simply for being a journalist'. See also Amnesty International, *Somali journalist captured by al-Shabab must be released*, 23 February 2010, <http://www.unhcr.org/refworld/docid/4ba9d83ec.html>.

⁹⁸ UN Security Council, *Report of the Secretary-General on Somalia pursuant to Security Council resolution 1872 (2009)*, S/2009/503, 2 October 2009, <http://www.unhcr.org/refworld/docid/4acddae92.html>. See also Committee to Protect Journalists, *Attacks on the Press 2009 - Somalia*, 16 February 2010, <http://www.unhcr.org/refworld/docid/4b7bc2de37.html>; and Committee to Protect Journalists, *Somalia: Al-Shabaab abducts reporter*, 22 February 2010, <http://www.unhcr.org/refworld/docid/4b9658f91a.html>.

stations closed or were pressured to modify their reporting,⁹⁹ for instance following an al-Shabaab edict in September 2009. The edict forbade the airing of information against al-Shabaab in two towns in the Gedo region and imposed the death penalty on any journalist or media organisation which contravened it.¹⁰⁰

UNHCR considers that journalists who are perceived to be politically biased are most likely to be targeted by the various factions. Even interviewing or making contact with one side in the conflict may be sufficient to create such a perception.¹⁰¹

Since 2008, the situation of Somali humanitarian workers has worsened. Kidnappings of both international and national staff have taken place, including of the UNHCR Head of Office for Mogadishu in June 2008.¹⁰² The UNDP Head of Office for Mogadishu was assassinated on 6 July 2008.¹⁰³ According to the office of the UN Emergency Relief Coordinator, 47 human rights activists and humanitarian workers were killed between 2008 and 2009.¹⁰⁴ Assassinations of persons linked to the civil society continued in 2009.¹⁰⁵ Since January 2009, seven aid workers have been killed and

⁹⁹ National Union of Somali Journalists, *Private Radio Station Closed Down*, 9 April 2009, <http://www.nusoj.org/223/private-radio-station-closed-down>. AFP Media, *Somali Hardline Group Detains Three Journalists*, 27 April 2009, http://www.google.com/hostednews/afp/article/ALeqM5iDefBSQq7CUxfk6WKdTv8_Hl_PQ; AFP News, *Islamic Militia Detain Somali Journalist*, 19 April 2009, http://www.google.com/hostednews/afp/article/ALeqM5g1_crhBugCtAQRPEYBjX8TPQsf6w. Garowe Online, *Somalia: Journalist Detained by Al Shabab Released Unharmful*, 19 April 2009, http://www.garoweonline.com/artman2/publish/Somalia_27/Somalia_Journalist_detained_by_Al_Shabab_released_unharmful.shtml. Garowe Online, *Somalia: Al Shabab Release Journalists, But Ban Music and Girl Workers*, 28 April 2009, http://www.garoweonline.com/artman2/publish/Somalia_27/Somalia_Al_Shabab_release_journalists_but_ban_music_and_girl_workers.shtml.

¹⁰⁰ *No end in sight: The ongoing suffering of Somalia's civilians*, 25 March 2010 p.6 <http://www.amnesty.org/en/library/asset/AFR52/003/2010/en/6d0c975e-c16e-4974-a9ec-645d9a6aa5f2/af520032010en.pdf>, details these announcements in Belet-Hawo and in Bardhere town, see section entitled 'Threats to journalists'.

¹⁰¹ Committee to Protect Journalists, *Reporter dies of gunshot injuries; 4th fatality this year*, 26 May 2009, <http://www.unhcr.org/refworld/docid/4a840bc32d.html>. See also Committee to Protect Journalists, *Reporter killed in Mogadishu; third Somali fatality this year*, 22 May 2009, <http://www.unhcr.org/refworld/docid/4a1d5d7d28.html>. IRIN, *Somalia: No one left to tell the story*, 10 June 2009, <http://www.unhcr.org/refworld/docid/4a3b589b2.html>; UN Security Council, *Report of the Secretary-General on the situation in Somalia*, S/2009/373, 20 July 2009, p. 11, <http://www.unhcr.org/refworld/docid/4a71600b2.html>; UN Security Council, *Report of the Secretary-General on the situation in Somalia*, S/2009/132, 9 March 2009, p. 17, <http://www.unhcr.org/refworld/docid/49ba27f72.html>. Reports received from several IASC Protection Cluster partners and major media houses including Garowe Online, *Horn Afrik's second director assassinated since 2007*, 4 February 2009, http://www.garoweonline.com/artman2/publish/Somalia_27/Somalia_HornAfrik_s_second_director_assassinated_since_2007.shtml; National Union of Somali Journalists, *Prominent Somali Journalist Assassinated in Mogadishu*, 4 February 2009, <http://www.nusoj.org/211/prominent-somali-journalist-assassinated-in-mogadishu>. Reports from several media sources including Garowe Online, *Somali radio director stabbed; second journalist attacked in four days*, 9 February 2009, http://www.garoweonline.com/artman2/publish/Press_Releases_32/Somali_radio_director_stabbed_second_journalist_attacked_in_four_days.shtml; All Africa, *Provincial Radio Station Director Seriously Injured in Stabbing By Rival Clan Member*, 9 February 2009, <http://allafrica.com/stories/200902091404.html>; Mareeg, *Somali journalist stabbed; 2nd attack in a week*, 8 February 2009, <http://www.mareeg.com/fidsan.php?sid=10408&tirsan=3>; Integrated Regional Information Networks (IRIN), *Somalia: Journalists under fire*, 21 April 2010, <http://www.unhcr.org/refworld/docid/4bd53f871a.html>.

¹⁰² Hassan Mohammed Ali was released on 28 August 2008; see: UNHCR, *Abductors release UNHCR's Mogadishu office chief unharmed*, 28 August 2008, <http://www.unhcr.org/news/NEWS/48b6ca512.html>.

¹⁰³ IASC, *IASC Somalia PMN*, 11 July 2008; <http://ochaonline.un.org/OchaLinkClick.aspx?link=ocha&docId=1092094>.

¹⁰⁴ Amnesty International, *Fatal Insecurity: Attacks on aid workers and rights defenders in Somalia*, 6 November 2008, p. 1, <http://www.unhcr.org/refworld/docid/4913f9ce2.htm>. See also Human Rights Watch, *Harsh War, Harsh Peace*, 19 April 2010, 1-56432-621-7, <http://www.unhcr.org/refworld/docid/4bcd64c82.html>.

¹⁰⁵ UN Security Council, *Report of the Secretary-General on the situation in Somalia*, S/2009/132, 9 March 2009, p. 17, <http://www.unhcr.org/refworld/docid/49ba27f72.html>. See also IRIN, *Somalia: Team to investigate Mogadishu*, 7 December 2009, <http://www.irinnews.org/Report.aspx?ReportId=87350>, describing the bombing of a graduation ceremony on 3 December 2009, which killed scores of people, including three cabinet ministers.

seven abducted.¹⁰⁶ A total of 16 aid workers are still in captivity, some since 2008.¹⁰⁷ Somali NGOs have increasingly come under pressure, and some were forced to close¹⁰⁸ by al-Shabaab on accusations of being agents of Western governments, especially those NGOs engaged in human rights monitoring, reporting and advocacy.¹⁰⁹ Due to continuous threats, extortion attempts and intimidation of its staff, the World Food Programme had to suspend food distribution in most regions of southern and central Somalia at the beginning of 2010.¹¹⁰

In light of the above, UNHCR considers that journalists, civil society actors and humanitarian workers are at risk on the basis of their (imputed) political opinion, but factors like ethnicity/race and religion could also play a role in the individual case.

d) Members of Minority Clans

A description of minority clans in the Somalia context is provided in Section C of the Annex. The position of a Somali vis-à-vis the clan system of the ‘dominant’ ethnicity associated with the northern pastoralist groups (*Samaal*) continues to be the primary defining factor in that person’s social relations, access to justice and other civil and political rights.¹¹¹ An individual’s status as a member of a minority clan¹¹² may therefore increase his/her risk of ill-treatment.¹¹³ However, the availability of clan protection has also greatly diminished for members of majority clans as outlined in Section D.

Members of minority clans in southern and central Somalia include the Ashraf,¹¹⁴ Midgan, Bantu,¹¹⁵ Bravenese,¹¹⁶ Bajuni,¹¹⁷ Rerhamar, Eyle, Galgala, Tumul, Yibir, Gaboye,¹¹⁸ Hamar Hindi and

¹⁰⁶ See for example, Human Rights Watch, *Harsh War, Harsh Peace*, 19 April 2010, 1-56432-621-7, <http://www.unhcr.org/refworld/docid/4bcd64c82.html>.

¹⁰⁷ UN Human Rights Council, *Report of the Independent Expert on the Situation of Human Rights in Somalia*, Shamsul Bari, A/HRC/12/44, 17 September 2009, <http://www.unhcr.org/refworld/docid/4acb4abc2.html>.

¹⁰⁸ *No end in sight: The ongoing suffering of Somalia’s civilians*, 25 March 2010 p.9 <http://www.amnesty.org/en/library/asset/AFR52/003/2010/en/6d0c975e-c16e-4974-a9ec-645d9a6aa5f2/af520032010en.pdf>.

¹⁰⁹ IASC *Protection Cluster Monthly Report*, April 2009, <http://ochaonline.un.org/somalia/Clusters/IDPsandProtection/tabid/2832/language/en-US/Default.aspx>. See also Human Rights Watch, *Harsh War, Harsh Peace*, 19 April 2010, 1-56432-621-7, <http://www.unhcr.org/refworld/docid/4bcd64c82.html>.

¹¹⁰ United Nations Radio, WFP is forced to suspend operations in Somalia, 5 January 2010, <http://www.unmultimedia.org/radio/english/detail/88510.html>.

¹¹¹ G. Prunier, *Somalia: Civil War, Intervention and Withdrawal (1990-1995)*, Refugee Survey Quarterly Vol. 15(1), 1996, p. 36.

¹¹² See Annex: Somali Clans, Customary Law, Social Norms and Structures

¹¹³ *Refugee Appeal Nos. 76335 & 76364*, New Zealand Refugee Status Appeals Authority, 29 September 2009, <http://www.unhcr.org/refworld/docid/4ad4a5c92.html>.

¹¹⁴ *Salah Sheekh v. The Netherlands*, Council of Europe: European Court of Human Rights, 11 January 2007, <http://www.unhcr.org/refworld/docid/45cb3dfd2.html>; the Court held that minority clan members had been targeted because they belonged to a minority and for that reason it was known that they had no means of protection.

¹¹⁵ *Refugee Appeal No. 76062*, New Zealand Refugee Status Appeals Authority, 15 October 2007, <http://www.unhcr.org/refworld/docid/4742c1312.html>: “the Authority concludes that the appellant, as a person of Bantu origin whose group is affiliated to a minority Somali clan, would have little ability to obtain protection from any discrimination that he might encounter because of his Bantu origins. This discrimination has taken the form of killings, torture, kidnapping and the confiscation of property with impunity. While none of these things have happened to the appellant in the past because he left Somalia at a young age, the prevalence of these violations of the human rights over the past two decades is such that they are now embedded in the foundational clan-based structure of Somali society itself.”

¹¹⁶ See country guidance case *MN (Town Tunnis Regarded as Bravenese) Somalia* CG [2004] UKIAT 00224, United Kingdom Immigration Appellate Authority, 16 August 2004, <http://www.unhcr.org/refworld/docid/46836b140.html>.

¹¹⁷ *The Bajuni are a minority clan. They live generally in fishing communities on the coastal areas of Somalia south of Kismaayo, including the offshore islands such as Koyama, and north east Kenya. They are not able to provide protection by the use of militia and are subject to significant persecution. Given the lawless state of southern and central Somalia, a Somali Bajuni will normally qualify for protective status under the Refugee Convention. See, AA v.*

Oromos.¹¹⁹ 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.¹²⁰ They are therefore exposed to an increased risk of rape, attack, abduction and having their real and personal property confiscated in southern and central Somalia's lawless atmosphere.¹²¹ Inter-marriage between members of minority and majority clans is reportedly restricted. It is further reported that those representing minority clans, such as human rights activists, have received threats.¹²²

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.

Members of certain minority clans, such as the Midgan, Tumal and Yibir, who were previously residing near or with majority clans, may be able to call upon the protection of majority clans, if that historical relationship exists.¹²³ 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.¹²⁴

UNHCR considers that members of minority clans in southern and central Somalia are at risk on the ground of their ethnicity/race (especially the out-caste clans).

e) Individuals Forcibly Recruited

There are reports that increasing numbers of young Somali males are leaving southern and central Somalia due to the possibility of being forcibly recruited into the ranks of the various militia groups involved in the conflict.¹²⁵

Forced recruitment, including of children, has been reported on a regular basis.¹²⁶ UNICEF has documented the extensive recruitment and training of children, primarily by Islamist armed opposition groups such as al-Shabaab and Hizbul Islam, but also by TFG or TFG-allied forces, some as young as nine years old.¹²⁷ Young males arriving at the border with Kenya have stated that they feared forced

Secretary of State for the Home Department, [2009] CSIH 78, Court of Session (Scotland), 12 October 2009, <http://www.unhcr.org/refworld/docid/4ae1736c2.html>.

¹¹⁸ Refugee Documentation Centre (Ireland), *Somalia: Information regarding the treatment of the Bajuni clan in Somalia*, Q11219, 13 November 2009, <http://www.unhcr.org/refworld/docid/4b029f96f.html>.

¹¹⁹ UK Border Authority, *Country of Origin Information report: Somalia*, 13 November 2009, p94 and 96, http://www.ecoi.net/file_upload/1226_1259238050_somalia-161109.pdf.

¹²⁰ See Annex.

¹²¹ Minority Rights Group International, *State of the World's Minorities 2008 – Somalia*, 11 March 2008, <http://www.unhcr.org/refworld/docid/48a7ead82.html>.

¹²² Minority Rights Group International, *State of the World's Minorities and Indigenous Peoples 2009 – Somalia*, 16 July 2009, <http://www.unhcr.org/refworld/docid/4a66d9a64b.html>.

¹²³ Certain clans are referred to as “occupational castes” who perform certain tasks and labour on behalf of majority clans and therefore it was in the interests of the majority clans to protect members of such minority clans. See *MA (Galgale - Sab Clan) Somalia* CG [2006] UKIAT 00073, United Kingdom Immigration Appellate Authority, 17 July 2006, <http://www.unhcr.org/refworld/docid/467f8d9c2.html>.

¹²⁴ See also *HH & Others (Mogadishu: Armed Conflict: Risk) Somalia* CG [2008] UKAIT 00022, United Kingdom Asylum and Immigration Tribunal, 28 January 2008, <http://www.unhcr.org/refworld/docid/47dfd9172.html>.

¹²⁵ IRIN, *Somalia: Young men running from militia conscription*, 9 July 2009, <http://www.unhcr.org/refworld/docid/4a5aff9e1a.html>.

¹²⁶ UN Security Council, *Report of the Secretary-General on the situation in Somalia*, S/2009/132, 9 March 2009, p. 18, <http://www.unhcr.org/refworld/docid/49ba27f72.html>; *IASC PMN Monthly Report*, January, February 2009, <http://ochaonline.un.org/somalia/Clusters/IDPsandProtection/tabid/2832/language/en-US/Default.aspx>.

¹²⁷ UN Security Council, *Report of the Secretary-General on the situation in Somalia*, 20 July 2009, S/2009/373, p. 11, <http://www.unhcr.org/refworld/docid/4a71600b2.html>; *IASC Protection Cluster Monthly Report*, April 2009, <http://ochaonline.un.org/somalia/Clusters/IDPsandProtection/tabid/2832/language/en-US/Default.aspx>.

recruitment into the ranks of Islamic militias as the reason for their flight.¹²⁸ The recruitment, training and use of children in the fighting have reportedly caused parents to move to other areas or to seek refuge in neighbouring countries.¹²⁹

There are reports that al-Shabaab has killed relatives of deserters who do not cooperate in their efforts to try and locate the deserter.¹³⁰ Furthermore, there are reports of parents, who went looking for their children who were forcibly recruited, being killed by the militias.¹³¹

UNHCR considers that an individuals' refusal to join, or remain in, the Islamic militias would be perceived as an expression of political/religious opinion (opposition to fundamentalist Islamic beliefs and/or support for the TFG) and would, therefore, place them at risk.

f) Members of Minority Religious Groups

Somalia is a signatory to the International Covenant on Civil and Political Rights and thereby bound by its provisions related to freedom of religion as stipulated in Article 18. Article 14 of the Somali Transitional Federal Charter further stipulates that Somalia will recognize and enforce all conventions and treaties of which it is a party.¹³² Article 15 stipulates that all Somalis are equal before the law without distinction to race, birth, language, religion, sex or political affiliation.¹³³ However, Article 8 of the Somali Transitional Charter appears to be in conflict with its other provisions and the relevant articles of the ICCPR dealing with freedom of religion as it stipulates that Islam is the official religion in Somalia and *Shari'a* is the source of national law.

Furthermore, Article 71(2) of the Charter stipulates that the Somalia Constitution and other national laws shall apply "in respect of all matters not covered and not inconsistent with this Charter."¹³⁴ Article 29 of the Somalia Constitution states: "Every person has the right to freedom of conscience and to freely profess his own religion and to worship it subject to any limitations which may be prescribed by law for the purpose of safeguarding morals, public health, [and] order."

On May 10, 2009, the TFG passed legislation to implement *Shari'a* law nationwide. However, in practice, the TFG does not have the capacity or mechanisms to enforce the legislation uniformly across Somalia.¹³⁵ The judiciary in most regions adheres to a combination of *Shari'a*, traditional, and customary law (*xeer*), and the penal code of the pre-1991 Siad Barre government.¹³⁶

Over the past several years, a series of threats have been made by radical Islamist groups in Somalia against Somali Christians and especially Somalis who have converted to Christianity from Islam.¹³⁷ Although, in many cases, religious affiliation is the main factor for ill-treatment,¹³⁸ political opinion is increasingly linked to religious affiliation.

¹²⁸ IRIN, *Somalia: Young men running from militia conscription*, 9 July 2009, <http://www.unhcr.org/refworld/docid/4a5aff9e1a.html>. See also *Refugee Appeal No. 76311*, New Zealand Refugee Status Appeals Authority, 18 June 2009, <http://www.unhcr.org/refworld/docid/4a5ddbc22.html>.

¹²⁹ UN Human Rights Council, *Report of the Independent Expert on the Situation of Human Rights in Somalia*, Shamsul Bari, A/HRC/12/44, 17 September 2009, <http://www.unhcr.org/refworld/docid/4acb4abc2.html>.

¹³⁰ Human Rights Watch, *Harsh War, Harsh Peace*, 19 April 2010, 1-56432-621-7, <http://www.unhcr.org/refworld/docid/4bcd64c82.html>.

¹³¹ Ibid.

¹³² Article 14 of the Somali Transitional Charter, above footnote 20.

¹³³ Article 15 of the Somali Transitional Charter, above footnote 20.

¹³⁴ US Department of State, *2009 Report on International Religious Freedom – Somalia*, 26 October 2009, <http://www.unhcr.org/refworld/docid/4ae8610ac.html>.

¹³⁵ Ibid.

¹³⁶ Ibid.

¹³⁷ Militant Islam Monitor, *Somali Islamists declare: "we will slaughter Christians" – "Somalis are 100% Muslim and will always remain so"*, 17 October 2006, <http://www.militantislammonitor.org/article/id/2474>.

¹³⁸ See UNHCR, *Guidelines on International Protection No. 6: Religion-Based Refugee Claims under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees*, HCR/GIP/04/06, 28 April 2004, <http://www.unhcr.org/refworld/docid/4090f9794.html>.

Christians and Somalis who have converted to Christianity in southern and central Somalia are likely to be subjected to ill-treatment at the hands of Islamic insurgent groups. There are reports of killings of such individuals, including beheadings¹³⁹ and shootings, by al-Shabaab militants.¹⁴⁰ The Islamic insurgents do not appear to make a distinction between apostates or life long Christians, as both appear to be killed as punishment for not being Muslim.¹⁴¹

In the areas controlled by Islamic insurgent groups, such groups have reportedly systematically closed cinemas, burned kiosks selling the narcotic *khat*, shaved off the heads of persons wearing Western haircuts, ordered women to be fully veiled, instituted total bans on smoking and music, strictly banned behaviour they deemed un-Islamic, destroyed churches, executed persons considered to have committed adultery and assassinated prominent Sufis and clerics.¹⁴² These acts do not appear to be, according to the information available, perpetrated solely against religious minorities but also against Muslims who violate Islamic insurgent groups' perceived notions of acceptable Islamic behavior.

UNHCR considers non-Muslim individuals or those who have converted from Islam to Christianity to be at risk on account of their religion. Muslim Somalis residing in areas controlled by Islamic groups are at risk if they are engaged in activities prohibited by such groups.

g) Women and Girls

Women continue to face severe discrimination and ill-treatment in southern and central Somalia.¹⁴³ Punishment of women for non-conformity with al-Shabaab's decrees, for instance, to wear the *hijab* in Jowhar, Bayhdaba and Kismaayo, became particularly marked in late 2008 and 2009 as mentioned

¹³⁹ International Christian Concern, *Islamist extremist behead four Christian orphanage workers in Somalia*, 11 August 2009, <http://www.persecution.org/suffering/newsdetail.php?newscode=10638>.

¹⁴⁰ Compass Direct, *Convert from Islam Shot Dead*, 20 July 2009, <http://www.compassdirect.org/english/country/somalia/4496/>. See also The Voices of the Martyrs, *Seven Christians beheaded*, 10 July 2009, <http://www.persecution.net/so-2009-07-15.htm>; AGI, *Al-qaeda linked shabaab beheads 7 Christians*, 10 July 2009, http://www.agi.it/english-version/world/elenco-notizie/200907101221-cro-ren0027-somalia_al_qaeda_linked_shabaab_beheads_7_christians; Cf. Reuters, *Somali Islamist hardliners behead 7 people*, 10 July 2009, <http://www.reuters.com/article/latestCrisis/idUSLA469466>, claiming that some were Christians, but others were accused of spying for TFG.

¹⁴¹ International Christian Concern, *Islamist extremist behead four Christian orphanage workers in Somalia*, 11 August 2009, <http://www.persecution.org/suffering/newsdetail.php?newscode=10638>. See also Compact Direct, *Muslim Militants Slay Long-Time Christian in Somalia*, 18 September 2009, <http://www.compassdirect.org/english/country/somalia/9494/>. An elderly man, age 69, was reportedly shot and killed by militants loyal to Al Shabaab on 15 September 2009 at a checkpoint in Merka after he was discovered with 25 Somali Bibles. See also Compass Direct, *Somali Christian Shot Dead near Kenya Border*, 22 August 2009, <http://www.compassdirect.org/english/country/somalia/4893/>.

¹⁴² US Department of State, *2009 Report on International Religious Freedom – Somalia*, 26 October 2009, <http://www.unhcr.org/refworld/docid/4ae8610ac.html>.

¹⁴³ See *Refugee Appeal Nos. 76335 & 76364*, New Zealand Refugee Status Appeals Authority, September 2009, paras. 63 and 29, <http://www.unhcr.org/refworld/docid/4ad4a5c92.html>, where the Authority holds that:

“The prevalence of gender-based violence against women in Somalia together with the lack of protection afforded to women and the imposition in Islamist held areas of severe Shari’a sanctions against women create circumstances where women can properly be considered a particular social group”.

See also *HM (Somali Women - Particular Social Group) Somalia* [2005] UKIAT 00040, United Kingdom Asylum and Immigration Tribunal, 26 January 2005, <http://www.unhcr.org/refworld/docid/42c949ca4.html>:

“Women in Somalia form a PSG not just because they are women, but because they are extensively discriminated against. Second the measures of discrimination to which women in Somalia are exposed include legislative, judicial and police or militia discrimination in the way in which women can obtain and suffer from seeking protection from the (regionalized or local) clan based authorities. Thirdly, the serious harms they face from male sources arise in the context of very limited ability by these authorities to protect them. Finally, the measures of discrimination they face are extensive, intense and sustained.”

in section (b) above. Women's organizations have also been closed by al-Shabaab in an attempt to prevent women from working.¹⁴⁴

Sexual and gender-based violence (SGBV) is reportedly widespread for both the general population, in terms of early and forced marriage, domestic violence and female genital mutilation, and for IDP women, who may in addition experience rape on a regular basis, especially if they are members of a minority clan. As with most gender-based violence, accurate figures are difficult to obtain, in part due to under-reporting.¹⁴⁵ In Bossaso, several instances of forced marriage were reported in the IDP community of unaccompanied women and girls who had been staying with unrelated families.¹⁴⁶ IDP women in Bossaso and Bayhdaba have reported that they had been forced into prostitution either, in the case of accompanied women, by the families they were staying with, or, in the case of married women, by their husbands to pay off debts for *khat*¹⁴⁷ or other purposes.¹⁴⁸ Cases of rape are still being reported on a regular basis although some Protection Monitoring Network partners have stated that in areas controlled by al-Shabaab, fear of punishment has reduced the number of rapes being committed against IDPs from minority clans.¹⁴⁹

Female genital mutilation (FGM) is widely practiced; 98% of the women aged between 15 and 49 years have been circumcised, with 78% having experienced the extreme form of FGM. FGM raises the incidence of hemorrhage, prolonged and obstructed labour, infections and eclampsia, which contribute to maternal death. In addition to poor health care, this is the reason why Somali women remain among the most high risk groups in the world for maternal mortality. Only one-third of births are attended by skilled health personnel.¹⁵⁰

Women face inequality and discrimination vis-à-vis men in Somali society in both public and private spheres.¹⁵¹ Under customary law (*xeer*) and customary practices, women are not included or consulted on decisions taken by a clan. A number of *xeer* practices are clearly problematic from a human rights perspective. *Dumaal*, where a widow is made to marry a male relative of her deceased husband, does happen on a voluntary basis, although can also be forced.¹⁵² Raped women can also be forced to marry the perpetrator – based on a view that it is more important to protect the clan and the woman's honour and to retrieve a dowry from the attacker's clan which would otherwise be difficult to acquire. Women are traditionally denied the right to inherit property, especially if this would mean the

¹⁴⁴ ReliefWeb, *Somali rebels close women's organizations*, 2 November 2009, <http://www.reliefweb.int/rw/rwb.nsf/db900SID/VVOS-7XEQ9V?OpenDocument&RSS20=02-P>.

¹⁴⁵ UNHCR, *UNHCR Participatory Assessment, Gaalkacyo*, February to March 2007, (not published on-line, available from UNHCR Somalia). See also examples of reported SGBV cases in *IASC Protection Cluster Monthly Reports, January to June 2009*, <http://ochaonline.un.org/somalia/Clusters/IDPsandProtection/tabid/2832/language/en-US/Default.aspx>.

¹⁴⁶ *IASC Somalia PMN*, 7th December, 2007, <http://ochaonline.un.org/OchaLinkClick.aspx?link=ocha&docId=1096476>.

¹⁴⁷ Mildly narcotic but addictive leaf chewed across Somalia, mostly by men.

¹⁴⁸ *IASC Somalia PMN*, 23 November, 2007, <http://ochaonline.un.org/OchaLinkClick.aspx?link=ocha&docId=1096433>; Bay Women's Development Network, *Participatory Assessment in IDP Camps, Bayhdaba*, December 2008 (not published on-line, available from UNHCR Somalia).

¹⁴⁹ *IASC Protection Cluster Monthly Reports*, March, April, May 2009, <http://ochaonline.un.org/somalia/Clusters/IDPsandProtection/tabid/2832/language/en-US/Default.aspx>.

¹⁵⁰ All figures from this paragraph are taken from the United Nations Children's Fund (UNICEF), *Multiple Indicator Cluster Survey (MICS)*, 2006, http://www.childinfo.org/files/Nationallaunch_Presentation_MICS2006.ppt

¹⁵¹ World Bank/United Nations, *Somali Joint Needs Assessment: Social Services and Protection of Vulnerable Groups*, August 2006, pp. 81-82, http://www.somali-jna.org/index.cfm?module=ActiveWeb&page=WebPage&s=social_services.

¹⁵² Joakim Gundel, *The Predicament of the 'Oday': The Role of Traditional Structures in Security, Rights, Law and Development in Somalia*, Danish Refugee Council/OXFAM Novib, November 2006, pp. 55-56, <http://siteresources.worldbank.org/INTJUSFORPOOR/Resources/ThePredicamentoftheOday.doc>

husband's property passing out of his clan, and is linked to the practice of inheritance of a widow by a dead husband's brother (*dumaal*).¹⁵³

There is a prevalence of sexual and gender-based violence perpetrated against women and a lack of protection afforded to women, compounded by the imposition of strict *Shari'a* law in much of southern and central Somalia.

UNHCR considers that many Somali women, with the specific profiles mentioned above and originating from southern and central Somalia are at risk on account of their membership of a particular social group.¹⁵⁴

h) Children¹⁵⁵

Many children remain at risk in Somalia due to a number of factors. Violence against children, including child prostitution, is a serious problem, although no statistics are readily available. Children are among the primary victims of continuing societal violence in Somalia.¹⁵⁶

Members of the various militias operating in Somalia are accused of raping children during clashes and in the ensuing flight. All parties to the conflict have reportedly recruited and exploited children as soldiers.¹⁵⁷

There is also a report of children being held to ransom by landowners in an IDP camp in Galkacyo until their guardian is able to pay the rent for their hut to secure their release.¹⁵⁸

Several attacks have been recorded against schoolchildren in Somalia. Schools have been attacked by TNG/ENDF forces and Islamic insurgent groups, resulting in casualties.¹⁵⁹

Since 2007, there have been consistent reports of children killed and injured as a consequence of the fighting.¹⁶⁰ All parties to the conflict have used child combatants, and this has increased the risk that children are attacked on the assumption that they represent a threat.¹⁶¹ Insurgent forces have been particularly active in the recruitment of children into their militias, especially since the second half of 2008 and increasingly in 2009 – a campaign often accompanied by intimidation of parents and schools.¹⁶²

¹⁵³ Joakim Gundel, *The Predicament of the 'Oday': The Role of Traditional Structures in Security, Rights, Law and Development in Somalia*, Danish Refugee Council/OXFAM Novib, November 2006, pp. 55-56, <http://siteresources.worldbank.org/INTJUSFORPOOR/Resources/ThePredicamentoftheOday.doc>

¹⁵⁴ UNHCR, *Guidelines on International Protection No. 2: Membership of a Particular Social Group*, May 2002, <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=3d36f23f4&skip=0&query=Guidelines%20on%20particular%20social%20group>

¹⁵⁵ Please refer to previous section for assessment of FGM claims.

¹⁵⁶ United States Department of State, *2009 Country Reports on Human Rights Practices - Somalia*, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e52bdc.html>.

¹⁵⁷ Ibid.

¹⁵⁸ ReliefWeb, *Rapists, Huger and Hyenas stalk displaced Somali women*, 23 October 2009, <http://www.reliefweb.int/rw/rwb.nsf/db900SID/SNAA-7X48NJ?OpenDocument&RSS20=02-P>

¹⁵⁹ United States Department of State, *2009 Country Reports on Human Rights Practices - Somalia*, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e52bdc.html>.

¹⁶⁰ UN Security Council, *Report of the Secretary-General on children and armed conflict in Somalia*, S/2008/352, 30 May 2008, p. 1, <http://www.unhcr.org/refworld/docid/4850fe4e2.html>; UN Security Council, *Report of the Secretary-General on the situation in Somalia*, S/2009/132, 9 March 2009, p. 3, <http://www.unhcr.org/refworld/docid/49ba27f72.html>.

¹⁶¹ This includes attacks on schools by TFG security forces and, in late June 2008, by the SPF and shooting at children playing football near a police station in July 2008; see *IASC Somalia PMN*, 4 July 2008, <http://ochaonline.un.org/OchaLinkClick.aspx?link=ocha&docId=1091913>.

¹⁶² UN Security Council, *Report of the Secretary-General on the situation in Somalia*, S/2009/132, 9 March 2009, p. 18, <http://www.unhcr.org/refworld/docid/49ba27f72.html>. See also UN Security Council, *Report of the Secretary-General on Somalia pursuant to Security Council resolution 1872 (2009)*, S/2009/503, 2 October 2009, <http://www.unhcr.org/refworld/docid/4acddae92.html>.

Asylum claims lodged by children need to be assessed carefully against the aforementioned background information and in light of the UNHCR Guidance on Child Asylum Claims.¹⁶³

i) Lesbian, Gay, Bisexual and Transgender (LGBT) Individuals

Sexual intercourse with a person of the same sex is stipulated as a crime under Article 409 of the Somali Penal Code with punishment consisting of imprisonment from three months to three years. The Penal Code further stipulates that any “act of lust”, other than sexual intercourse, is punishable by imprisonment from two months to two years. The TFG is unable to enforce the penal code in southern and central Somalia given its inability to exert its authority on any territory outside areas of Mogadishu. Meanwhile, in most areas of southern and central Somalia, *Shari’a* law imposes death or flogging as a penalty for “homosexual conduct”. Cases have been reported of both men and women executed for “homosexual conduct”.¹⁶⁴

UNHCR considers that LGBT individuals from southern and central Somalia are at risk on the basis of their membership of a particular social group, i.e. their sexual orientation,¹⁶⁵ since they do not, or are perceived not to conform to prevailing legal, cultural and social norms.¹⁶⁶

j) Individuals Belonging to a Clan Engaged in a Blood Feud

A blood feud involves the members of one family killing members of another family in retaliatory acts of vengeance which are carried out according to an ancient code of honour and behaviour.

Women and men may be at risk of becoming victims of a blood feud in Somalia if they belong to a clan engaged in such collective vengeance mechanisms.¹⁶⁷ Blood feuds are usually the result of conflicts between opposing clans and remain common in southern and central Somalia, Puntland and Somaliland. It is important to carefully identify the concerned group in such cases, which would ordinarily require the identification of the lowest clan level of *mag*-paying groups.¹⁶⁸

UNHCR considers that blood feuds can constitute persecution as they involve a violation of the right to life, which includes the right not to be arbitrarily deprived of one’s life and the right to freedom

¹⁶³ UN High Commissioner for Refugees, *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, 22 December 2009, HCR/GIP/09/08, <http://www.unhcr.org/refworld/docid/4b2f4f6d2.html>.

¹⁶⁴ UK Home Office, *Country of Origin Information Report – Somalia*, 12 November 2007, para. 21.01, <http://www.unhcr.org/refworld/docid/473c0c162.html>.

¹⁶⁵ See UNHCR, *Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity*, 21 November 2008, <http://www.unhcr.org/refworld/docid/48abd5660.html>; UN High Commissioner for Refugees, *Guidelines on International Protection No. 2: "Membership of a Particular Social Group" Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, 7 May 2002, HCR/GIP/02/02, <http://www.unhcr.org/refworld/docid/3d36f23f4.html>. Many jurisdictions have recognized that homosexuals may constitute a “particular social group”. See, for instance, *Matter of Toboso-Alfonso*, 20 I& N. Dec 819, US Board of Immigration Appeals, 12 March 1990, <http://www.unhcr.org/refworld/docid/3ae6b6b84.html>; *Re GJ*, *Refugee Appeal No. 1312/93*, New Zealand Refugee Status Appeals Authority, 30 August 1995, <http://www.unhcr.org/refworld/docid/3ae6b6938.html>; *Appellant S395/2002 v. Minister for Immigration and Multicultural Affairs*; *Appellant S396/2002 v. Minister for Immigration and Multicultural Affairs* [2003] HCA 71, High Court of Australia, 9 December 2003, <http://www.unhcr.org/refworld/docid/3fd9eca84.html>.

¹⁶⁶ UNHCR, *Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity*, see above footnote 165, para. 7. See also UNHCR, *Guidelines on International Protection No. 1: Gender-Related Persecution*, see above footnote 165, paras. 6-7; and UNHCR, *Advisory Opinion by UNHCR to the Tokyo Bar Association Regarding Refugee Claims Based on Sexual Orientation*, 3 September 2004, para. 3, <http://www.unhcr.org/refworld/docid/4551c0d04.html>.

¹⁶⁷ UNHCR, *UNHCR Position on Claims for Refugee Status Under the 1951 Convention relating to the Status of Refugees Based on a Fear of Persecution Due to an Individual’s Membership of a Family or Clan Engaged in a Blood Feud*, 17 March 2006, <http://www.unhcr.org/refworld/docid/44201a574.html>.

¹⁶⁸ See Annex.

from torture.¹⁶⁹ When determining the risk and whether it is linked to a 1951 Convention ground, the nature of the blood feud, the experiences of other members of the family or clan engaged in the feud (e.g. whether any family members have been killed or injured by the opposing family or clan), and the cultural context need to be taken into account.

k) Victims of Trafficking

Assessments made by the International Organization for Migration (IOM) have indicated widespread domestic human trafficking of Somali women and children who are lured into forced prostitution in some areas of Somalia.¹⁷⁰ Somali women and children are also reportedly trafficked to destinations in the Middle East, including Iraq, Lebanon, and Syria, as well as to South Africa, for domestic labour and, to a lesser extent, sexual exploitation. Somali women refugees residing in Yemen are reportedly trafficked by Somali men into prostitution in Aden and Lahj governorates. Some in the Somali diaspora allegedly use false offers of marriage to lure unsuspecting victims, some of whom are allegedly relatives, to Europe for sexual exploitation.¹⁷¹ Somali men are reportedly trafficked into labour exploitation as herdsmen and menial workers in the Gulf States.¹⁷²

UNHCR considers that Somali victims of trafficking, and in particular women and children, may be at risk on account of their membership of a particular social group.¹⁷³

2. Puntland

a) Individuals Perceived as Critics or Opponents of the Puntland Authorities, Including Journalists and Members of Islamic Groups

There have been several reports of attacks against journalists in Puntland, most recently in July 2009.¹⁷⁴ Some reports allege that journalists covering linkages between the authorities and those involved in piracy are singled out for ill-treatment¹⁷⁵ as are journalists commenting on the political situation in Puntland.¹⁷⁶ Furthermore, journalists reporting or analyzing clan factions and conflicts may also be targeted by the various clans in Puntland.¹⁷⁷

¹⁶⁹ UN High Commissioner for Refugees, *UNHCR Position on Claims for Refugee Status Under the 1951 Convention relating to the Status of Refugees Based on a Fear of Persecution Due to an Individual's Membership of a Family or Clan Engaged in a Blood Feud*, 17 March 2006, <http://www.unhcr.org/refworld/docid/44201a574.html>.

¹⁷⁰ UNOCHA, *Somalia: Human Trafficking on the increase*, 12 April 2010, <http://www.irinnews.org/report.aspx?ReportID=88668>

¹⁷¹ US Department of State, *Trafficking in Persons Report 2008 – Special Cases – Somalia*, 4 June 2008, <http://www.unhcr.org/refworld/docid/484f9a4f2d.html>.

¹⁷² Ibid.

¹⁷³ UNHCR, *Guidelines on International Protection no. 7, The Application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons At Risk of Being Trafficked*, April 2006, <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=443679fa4&skip=0&query=Guidelines%20on%20trafficking>. See also See also the EU Qualification Directive, Article 9(2), which states that acts of persecution can inter alia take the form of "(a) acts of physical or mental violence, including acts of sexual violence" and "(f) acts of a gender-specific or child-specific nature." Article 9(3) further provides that 'gender related aspects might be considered' in relation to a particular social group.

¹⁷⁴ Committee to Protect Journalists, *Journalist beaten in Puntland courtroom*, 17 July 2009, <http://www.unhcr.org/refworld/docid/4a840beb23.html>.

¹⁷⁵ Ibid. See also Committee to Protect Journalists, *Four journalists kidnapped in Puntland*, 26 November 2008, <http://www.unhcr.org/refworld/docid/4947cb2728.html>.

¹⁷⁶ Reporters without Borders, *Freelance journalist gets two years in prison in Puntland on defamation charge*, 31 March 2009, <http://www.unhcr.org/refworld/docid/49dafc915.html>. See also United States Department of State, *2009 Country Reports on Human Rights Practices – Somalia*, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e52bdc.html>.

¹⁷⁷ Committee to Protect Journalists, *Radio director stabbed; 2nd journalist attacked in 4 days*, 9 February 2009, <http://www.unhcr.org/refworld/docid/49b7be61c.html>.

Members of Islamist groups have reportedly been targeted following the suicide attacks in Hargeysa and Bosaso in late 2008. Suspected Islamic militants with alleged links to al-Shabaab have been arrested, detained and killed.¹⁷⁸

UNHCR considers that journalists in Puntland engaging in reporting that is critical of the authorities, the political situation or clan factions are at risk on account of their perceived or actual political opinion. Members, or suspected members of Islamic groups, subject to an assessment of excludability, may be equally at risk if they are suspected of involvement in anti-government activities.

b) Individuals Perceived to be Opponents of Islamists

It has been reported that Islamist insurgent groups are commencing activities in Puntland and several violent incidents have been recorded, including several involving assassinations of Puntland officials.¹⁷⁹

UNHCR is of the view that due to the limited information available, the extent and profile of those at risk under this group of claimants cannot be definitively established. UNHCR recommends that a thorough examination of all such claims be conducted in light of the overall deteriorating situation in Puntland.

c) Members of Minority Religious Groups

The Puntland Constitution guarantees every person the freedom to worship but it also states that Muslims cannot renounce their religion, explicitly prohibiting apostasy.¹⁸⁰ Article 8 of the Constitution prohibits promotion of any religion other than Islam.¹⁸¹ Article 12 states that non-Muslims are free to practice their religion and cannot be forced to convert to Islam. Puntland security forces reportedly closely monitor religious activities.¹⁸²

There were reports of Christians targeted in Puntland, including women not wearing a veil.¹⁸³

UNHCR considers that Christians from Puntland engaging in activities that are perceived as being contrary to Islamic norms may be at risk on account of their religion.

d) Individuals Belonging to a Clan Engaged in a Blood Feud

On 5 August 2009, the Minister for Information was assassinated by unknown gunmen in Galkacyo, a trade town that links Puntland to the southern and central regions. The Minister had been appointed by the President of Puntland to facilitate talks between stakeholders and leading figures of the Mudug region in view of the formation of the regional administration. According to reports from the region,

¹⁷⁸ International Crisis Group (ICG), *Somalia: The Trouble with Puntland*, 12 August 2009, Africa Briefing N°64, <http://www.unhcr.org/refworld/docid/4a829a072.html>. See also VOA News, *Muslim Preachers Killed in Somalia's Puntland*, 12 August 2009, <http://www1.voanews.com/english/news/a-13-2009-08-12-voa50-68806002.html?rss=human+rights+and+law>. See also VOA News, *Fears Increase Over Insurgents in Somalia Threatening Puntland*, 22 January 2010, <http://www1.voanews.com/english/news/africa/Fears-Increase-over-Insurgents-in-Somalia-Threatening-Puntland-82401292.html>.

¹⁷⁹ VOA, *Somalia Terrorist Group Suspected in Killing of Puntland Judge*, 13 November 2009, <http://www1.voanews.com/english/news/LCRRyu-PuntlandAlShabab-69960072.html>. The judge was known for handing down strong sentences to Al-Shabab members, human traffickers and pirates. See also UN Security Council, Report of the Secretary-General on the situation in Somalia, 31 December 2009, S/2009/684, <http://www.unhcr.org/refworld/docid/4b66f4e10.html>. See also United States Department of State, 2009 Country Reports on Human Rights Practices - Somalia, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e52bdc.html>. Transitional Constitution of Puntland Regional Government [Somalia], 1 July 2001, <http://www.unhcr.org/refworld/docid/4bc589e92.html>.

¹⁸¹ Ibid.

¹⁸² US Department of State, *2009 Report on International Religious Freedom – Somalia*, 26 October 2009, <http://www.unhcr.org/refworld/docid/4ae8610ac.html>.

¹⁸³ Compass Direct, *Christian in Somalia Who Refused to Wear Veil is Killed*, 27 October 2009, <http://www.compassdirect.org/english/country/somalia/11061/>.

the murder was a sub-clan's revenge crime rather than a politically motivated killing.¹⁸⁴ As mentioned above, blood feuds are common in all parts of Somalia.

UNHCR considers that blood feuds can constitute persecution as they involve a violation of the right to life, which includes the right not to be arbitrarily deprived of one's life and the right to freedom from torture.¹⁸⁵ When determining the risk and whether it is linked to a 1951 Convention ground, the nature of the blood feud, the experiences of other members of the family or clan engaged in the feud (e.g. whether any family members have been killed or injured by the opposing family or clan), and the cultural context have to be taken into account.

e) Women and Girls

Female genital mutilation is almost universally prevalent in Somalia, including in Puntland.¹⁸⁶ SGBV is reportedly common in the IDP camps in Puntland.¹⁸⁷

UNHCR considers that women from Puntland, with the specific profiles mentioned above, may be at risk, on account of their membership of a particular social group.¹⁸⁸

f) LGBT Individuals

Article 409 of the Somalia penal code (which prohibits and criminalizes "homosexual conduct") is applied in Puntland. As the subject of sexual orientation is considered taboo throughout Somalia, including Puntland and Somaliland, little information is available on abuse and ill-treatment of LGBT individuals.

Nevertheless, UNHCR considers that LGBT individuals from Puntland are at risk on account of their membership of a particular social group, i.e. their sexual orientation,¹⁸⁹ since they do not, or are perceived not to conform to prevailing legal, cultural and social norms.¹⁹⁰

¹⁸⁴ UN Human Rights Council, *Report of the Independent Expert on the Situation of Human Rights in Somalia*, Shamsul Bari, A/HRC/12/44, 17 September 2009, <http://www.unhcr.org/refworld/docid/4acb4abc2.html>.

¹⁸⁵ UN High Commissioner for Refugees, *UNHCR Position on Claims for Refugee Status Under the 1951 Convention relating to the Status of Refugees Based on a Fear of Persecution Due to an Individual's Membership of a Family or Clan Engaged in a Blood Feud*, 17 March 2006, <http://www.unhcr.org/refworld/docid/44201a574.html>.

¹⁸⁶ UN Human Rights Council, *Report of the Independent Expert on the Situation of Human Rights in Somalia*, Shamsul Bari, A/HRC/12/44, 17 September 2009, <http://www.unhcr.org/refworld/docid/4acb4abc2.html>.

¹⁸⁷ IRIN, *Somalia: Instead of a safe haven, fear and rape in Galkacyo*, 23 September 2009, <http://www.unhcr.org/refworld/docid/4abb2d9d1a.html>.

¹⁸⁸ UNHCR, *Guidelines on International Protection No. 2: Membership of a Particular Social Group*, May 2002, <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=3d36f23f4&skip=0&query=Guidelines%20on%20particular%20social%20group>

¹⁸⁹ See UNHCR, *UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity*, 21 November 2008, <http://www.unhcr.org/refworld/docid/48abd5660.html>; UNHCR, *Guidelines on International Protection No. 2: Membership of a Particular Social Group*, above footnote 2007. Many jurisdictions have recognized that homosexuals may constitute a "particular social group". See, for instance, *Matter of Toboso-Alfonso*, 20 I& N. Dec 819, US Board of Immigration Appeals, 12 March 1990, <http://www.unhcr.org/refworld/docid/3ae6b6b84.html>; *Re G.J.*, Refugee Appeal No. 1312/93, New Zealand Refugee Status Appeals Authority, 30 August 1995, <http://www.unhcr.org/refworld/docid/3ae6b6938.html>; *Appellant S395/2002 v. Minister for Immigration and Multicultural Affairs*; *Appellant S396/2002 v. Minister for Immigration and Multicultural Affairs* [2003] HCA 71, High Court of Australia, 9 December 2003, <http://www.unhcr.org/refworld/docid/3fd9eca84.html>.

¹⁹⁰ UNHCR, *Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity*, see above footnote 165, para. 7. See also UNHCR, *Guidelines on International Protection No. 1: Gender-Related Persecution*, see above footnote 165, paras. 6-7; and UNHCR, *Advisory Opinion by UNHCR to the Tokyo Bar Association Regarding Refugee Claims Based on Sexual Orientation*, 3 September 2004, para. 3, <http://www.unhcr.org/refworld/docid/4551c0d04.html>.

3. *Somaliland*

Although violations of human rights in Somaliland are neither systematic nor widespread, there are well-established problems with the territory's administrative, police and judicial services.

The most common violations include arrests without warrant and detention without trial of government critics, human rights activists and journalists. The dominance of the *xeer* system means that foreigners, as well as members of clans who do not originate from Somaliland, do not enjoy effective access to justice through customary mechanisms, leaving them vulnerable to abuses. In this context, incidents of numerous rapes, robberies, physical mistreatments and harassments are reported from the IPD camps in Hargeysa.

a) Individuals Perceived as Critics or Opponents of the Somaliland Authorities

Since October 2008, when a suicide bombing attack targeted the Presidential compound in Hargeysa, arrests and detentions have been increasingly carried out outside of the normal judicial process. Security Committees operating outside of the constitutional framework are allegedly responsible for the arrests and detentions of up to 25% of all prisoners in Somaliland.¹⁹¹ There are reports about detainees who have been held without charge for periods up to three years.

Freedom of expression and the press are guaranteed by Somaliland's Constitution.¹⁹² However, several cases of arrests and beatings¹⁹³ of journalists perceived as being critical of government policies or reporting on conflict related events have been reported.¹⁹⁴ While all were eventually released, the targeting of journalists and others who are perceived as critics of the government continues.¹⁹⁵

There have also been reported arrests of opposition political and religious figures and those seen as political threats by the Riyale administration.¹⁹⁶ While reportedly subjected to detention and trials that did not respect constitutional protections, most were eventually released after public outcry.¹⁹⁷

In light of the above, UNHCR considers that individuals perceived as critical of, or opposing, the Somaliland authorities may be at risk on account of their perceived or actual political opinion.

¹⁹¹ Amnesty International, *Human Right Challenges: Somaliland Facing Elections*, 17 March 2009, <http://www.unhcr.org/refworld/docid/49c897d42.html>.

¹⁹² Article 32 of Somaliland's Constitution states that every citizen shall have the freedom, in accordance with the law, to express his opinions orally, visually, artistically or in writing in any other way.

¹⁹³ Some were arrested and charged while others detained and released. See Committee to Protect Journalists, *Somaliland government increases attacks on press*, 22 July 2009, <http://www.unhcr.org/refworld/docid/4a840beec.html>. See also Reporters without Borders, *Harassment of journalists continues in Somaliland with two arrested and one beaten*, 19 August 2009, <http://www.unhcr.org/refworld/docid/4a8d54601e.html>.

¹⁹⁴ Freedom House, *Freedom in the World 2009 – Somaliland*, 16 July 2009, <http://www.unhcr.org/refworld/docid/4a64528232.html>.

¹⁹⁵ UN Security Council, *Report of the Secretary-General on Somalia pursuant to Security Council resolution 1872 (2009)*, S/2009/503, 2 October 2009, <http://www.unhcr.org/refworld/docid/4acddae92.html>.

¹⁹⁶ Human Rights Watch, *"Hostages to Peace": Threats to Human Rights and Democracy in Somaliland*, 13 July 2009, <http://www.unhcr.org/refworld/docid/4a5b28772.html>. See also United States Department of State, 2009 Country Reports on Human Rights Practices - Somalia, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e52bdc.html>.

¹⁹⁷ Amnesty International, *Human Right Challenges: Somaliland Facing Elections*, 17 March 2009, <http://www.unhcr.org/refworld/docid/49c897d42.html>. See also UN Security Council, *Report of the Secretary-General on Somalia pursuant to Security Council resolution 1872 (2009)*, S/2009/503, 2 October 2009, <http://www.unhcr.org/refworld/docid/4acddae92.html>. See also United States Department of State, 2009 Country Reports on Human Rights Practices - Somalia, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e52bdc.html>, which details several instances of perceived political opponents arrested and detained without charge. Furthermore, several deaths were recorded after authorities used excessive force to break up peaceful demonstrations in September 2009. Over 100 arrests and dozens of convictions for involvement in the protests were recorded.

b) Members of Minority Religious Groups

Article 5 (1-2) of the Somaliland Constitution establishes Islam as the official religion and prohibits the promotion of any other religion.¹⁹⁸ Article 313 of the Somaliland criminal code outlines penalties for Muslims who change their religion.¹⁹⁹ Articles 41 and 82 state that candidates for Presidency, Vice Presidency or the House of Representatives must be Muslim.²⁰⁰ Article 15 stipulates that Islamic education is compulsory at all levels and that the promotion of Qur'anic schools is the responsibility of the State. The Constitution further states that the laws of the nation shall derive from and not contradict Islam. There are reports that Christian converts distributing religious literature have been arrested and imprisoned by the authorities.²⁰¹

Given that, in law, Somaliland discriminates against minority religious groups and, in practice, there is some evidence of ill-treatment of certain minority religious groups, UNHCR considers that minority religious groups from Somaliland engaging in activities that are contrary to statutory provisions or Islamic norms may be at risk on account of their religion.

c) Women and Girls

According to reports, FGM is practiced on the vast majority of women in Somaliland²⁰² despite the fact that it is illegal. The legal ban of this practice is reportedly not enforced²⁰³ and an estimated 90 percent of girls undergo the procedure as societal attitudes still encourage the practice, particularly to prepare girls for marriage.²⁰⁴

Sexual violence, including a rise in the number of reported cases of gang rapes of teenage girls (and younger) in IDP camps has been reported.²⁰⁵ Perpetrators were reportedly able to rely on impunity for their actions. Most cases were not reported, and when they were, they were most often settled by clan mechanisms, involving no direct punishment of the perpetrator.²⁰⁶ Instances of SGBV in IDP camps have also been reported to be on the increase.²⁰⁷

UNHCR considers that women from Somaliland, with the specific profiles mentioned above, are at risk, on account of their membership of a particular social group.²⁰⁸

d) Individuals Belonging to a Clan Engaged in a Blood Feud

Several clashes broke out in 2009 between clans in Somaliland. It is reported that the attacks and reprisals are rooted in land conflicts dating back to the 1990s.²⁰⁹ These inter-clan conflicts put the clan

¹⁹⁸ Constitution of the Republic of Somaliland [Somalia], 31 May 2001, <http://www.unhcr.org/refworld/docid/4bc581222.html>.

¹⁹⁹ Ibid.

²⁰⁰ Ibid.

²⁰¹ Compact Direct, *Imprisoned Christian in Somaliland on Hunger Strike*, 16 October 2009, <http://www.compassdirect.org/english/country/somalia/10593/>

²⁰² Freedom House, *Freedom in the World 2009 – Somaliland*, 16 July 2009, <http://www.unhcr.org/refworld/docid/4a64528232.html>.

²⁰³ United States Department of State, *2009 Country Reports on Human Rights Practices – Somalia*, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e52bdc.html>.

²⁰⁴ IRIN, *Somalia: "One message" on FGM/C in Somaliland*, 3 November 2008, <http://www.unhcr.org/refworld/docid/4917f25ac.html>.

²⁰⁵ UN Human Rights Council, *Report of the Independent Expert on the Situation of Human Rights in Somalia*, Shamsul Bari, A/HRC/12/44, 17 September 2009, <http://www.unhcr.org/refworld/docid/4acb4abc2.html>.

²⁰⁶ Ibid.

²⁰⁷ UN Security Council, *Report of the Secretary-General on the situation in Somalia*, 31 December 2009, http://www.ecoi.net/file_upload/1226_1263217042_n0965340.pdf.

²⁰⁸ UNHCR, *Guidelines on International Protection No. 2: Membership of a Particular Social Group*, May 2002, <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=3d36f23f4&skip=0&query=Guidelines%20on%20particular%20social%20group>

members at risk while persons not belonging to the concerned clans are also fleeing the fighting owing to a fear for their safety and security. The Hared and the Nour clans are implicated in at least one conflict related to disputed farmland.²¹⁰

UNHCR considers that blood feuds can constitute persecution as they involve a violation of the right to life, which includes the right not to be arbitrarily deprived of one's life and the right to freedom from torture.²¹¹ When determining the risk and whether it is linked to a 1951 Convention ground, the nature of the blood feud, the experiences of other members of the family or clan engaged in the feud (e.g. whether any family members have been killed or injured by the opposing family or clan), and the cultural context have to be taken into account.

e) **LGBT Individuals**

Article 409 of the Somalia penal code, which prohibits and criminalizes "homosexual conduct", is applied in Somaliland. As the subject of sexual orientation is considered taboo throughout Somalia, including Puntland and Somaliland, little information is available on abuse and ill-treatment of LGBT individuals. HIV and AIDS sufferers are reportedly ill-treated, rejected by families and at risk of workplace discrimination and termination.²¹²

UNHCR considers that LGBT individuals from Somaliland are at risk on account of their membership of a particular social group, i.e. their sexual orientation,²¹³ as they do not, or are perceived not to, conform to prevailing legal, cultural and social norms.²¹⁴

f) **Victims of Trafficking**

The Somaliland Minister for Family and Social Affairs declared in April 2010 that human trafficking, particularly of children, occurs in Somaliland and is on the increase.²¹⁵ Although limited information on trafficking in Somaliland is available, UNHCR considers that victims of trafficking may be in need

²⁰⁹ IRIN, *Somalia: Hundreds flee inter-clan clashes in Somaliland*, 8 April 2009, <http://www.unhcr.org/refworld/docid/49ddfa651e.html>.

²¹⁰ IRIN, *Somalia: Somaliland clans in ceasefire over disputed farmland*, 20 May 2009, <http://www.unhcr.org/refworld/docid/4a1b97a7c.html>.

²¹¹ UN High Commissioner for Refugees, *UNHCR Position on Claims for Refugee Status Under the 1951 Convention relating to the Status of Refugees Based on a Fear of Persecution Due to an Individual's Membership of a Family or Clan Engaged in a Blood Feud*, 17 March 2006, <http://www.unhcr.org/refworld/docid/44201a574.html>.

²¹² US Department of State, *2008 Country Reports on Human Rights Practices – Somalia*, 25 February 2009, <http://www.unhcr.org/refworld/docid/49a8f153c.html>.

²¹³ See UNHCR, *UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity*, 21 November 2008, <http://www.unhcr.org/refworld/docid/48abd5660.html>; UNHCR, *Guidelines on International Protection No. 2: Membership of a Particular Social Group*, above footnote 2007. Many jurisdictions have recognized that homosexuals may constitute a "particular social group". See, for instance, *Matter of Toboso-Alfonso*, 20 I& N. Dec 819, US Board of Immigration Appeals, 12 March 1990, <http://www.unhcr.org/refworld/docid/3ae6b6b84.html>; *Re GJ, Refugee Appeal No. 1312/93*, New Zealand Refugee Status Appeals Authority, 30 August 1995, <http://www.unhcr.org/refworld/docid/3ae6b6938.html>; *Appellant S395/2002 v. Minister for Immigration and Multicultural Affairs*; *Appellant S396/2002 v. Minister for Immigration and Multicultural Affairs* [2003] HCA 71, High Court of Australia, 9 December 2003, <http://www.unhcr.org/refworld/docid/3fd9eca84.html>.

²¹⁴ UNHCR, *Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity*, see above footnote 165, para. 7. See also UNHCR, *Guidelines on International Protection No. 1: Gender-Related Persecution*, see above footnote 165, paras. 6-7; and UNHCR, *Advisory Opinion by UNHCR to the Tokyo Bar Association Regarding Refugee Claims Based on Sexual Orientation*, 3 September 2004, para. 3, <http://www.unhcr.org/refworld/docid/4551c0d04.html>.

²¹⁵ OCHA, *Somalia: Human Trafficking on the increase*, 12 April 2010, <http://www.irinnews.org/report.aspx?ReportID=88668>.

of international protection because of their membership of a particular social group as determined on a case-by-case basis.²¹⁶

C. Agents of Persecution

This Section concentrates on the situation in southern and central Somalia from where the majority of the asylum-seekers originate. For Puntland and Somaliland, the relevant agents of persecution are identified in Sections C.2. and C.3 within specific categories of claims.

In southern and central Somalia non-State actors are the principal agents of persecution. Islamist insurgent control of territory, although remaining highly fragmented and regionalized in terms of command structures and loyalty, was consolidated. Islamic administrations have been set up in urban centres, including towns such as Bayhdaba and Jowhar. Although much of the rank and file of the Islamist militias come from local clans, the high ranking leadership – especially the ‘Walis’ or regional governors – are reportedly purposely appointed to govern areas that are not their clan base.²¹⁷

1. Islamic Militant Groups

The principal Islamic militant groups in southern and central Somalia seeking to overthrow the TFG and its allies are al-Shabaab and Hizbul Islam.²¹⁸ In the context of the conflict, both al-Shabaab and Hizbul Islam have been accused of, and they have admitted to, using the civilian population as human shields during their military operations.²¹⁹

Al-Shabaab and Hizbul Islam have conducted a systematic campaign of intimidation and assassination of civilians working for, associated with, or perceived to be collaborating with the TFG, AMISOM or ENDF.²²⁰ Al-Shabaab and Hizbul Islam have also threatened civilians or conducted targeted killings. All sides have recruited young people and children into their ranks, often with threats of force or violence.²²¹ Al-Shabaab has also been implicated in the use of suicide bombings against TFG targets, often resulting in significant civilian casualties.²²²

The increasing number of Islamist administrations set up *Shari’a* courts and issued decrees to restrict social behaviour.²²³ Violations of these norms are punished severely by *Shari’a* courts, including on the basis of questionable interpretations of the *Shari’a*,²²⁴ and the enforcement of behaviour decrees is often extreme and abusive.²²⁵

²¹⁶ UNHCR, *Guidelines on International Protection no. 7, The Application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons At Risk of Being Trafficked*, April 2006, <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=443679fa4&skip=0&query=Guidelines%20on%20trafficking>.

²¹⁷ For instance, as of July 2009, the Islamist governors of Bayhdaba were Dir; of Kismaayo were Isaaq; of Merka were Darod/Ogadeni; and of Jowhar were Rahanweyne.

²¹⁸ UN Security Council, *Report of the Monitoring Group on Somalia pursuant to Security Council resolution 1811 (2008)*, S/2008/769, 10 December 2008, pp. 17-22, <http://www.unhcr.org/refworld/docid/494900240.html>.

²¹⁹ Human Rights Watch, *Harsh War, Harsh Peace*, 19 April 2010, 1-56432-621-7, <http://www.unhcr.org/refworld/docid/4bcd64c82.html>.

²²⁰ Human Rights Watch, *“So Much to Fear”: War Crimes and the Devastation of Somalia*, December 2008, pp. 67-71, <http://www.unhcr.org/refworld/docid/493e374b2.html>.

²²¹ Human Rights Watch, *Harsh War, Harsh Peace*, 19 April 2010, 1-56432-621-7, <http://www.unhcr.org/refworld/docid/4bcd64c82.html>.

²²² Ibid.

²²³ Reuters, *Somalis Protest Against Al Shabab, Kenyans Taken*, 25 March 2009, http://www.reuters.com/article/homepageCrisis/idUSLP972817.CH_2400; IASC Protection Cluster Monthly Report, March 2009, <http://ochaonline.un.org/somalia/Clusters/IDPsandProtection/tabid/2832/language/en-US/Default.aspx>.

²²⁴ In early April 2009, Al-Shabab forces reportedly beheaded a fighter of a local militia in Jamame, Lower Juba, and hung his head for public display. This occurred following clashes between Al-Shabab and local militias who refused to comply with the ban on khat, weapons, music, and public dancing, amongst others. At least another two people

2. *Criminality Following the Collapse of Clan Protection in Mogadishu*

Criminality in Mogadishu has increased since 2008, reflected in a wave of armed robberies, looting, killings and kidnapping for ransom.²²⁶ Business persons and civil society figures were particularly at risk.²²⁷

A number of reasons are responsible for the increase in criminality. Firstly, in early 2007, the TFG and ENDF enforced a collection of weapons from clan militias, community watch groups and business-owned security watch groups, thereby removing an important deterrent to criminal activities. Secondly, since 2008, the TFG has been unable to enforce law and order in the face of mounting insurgent military attacks, yet insurgent groups are also not providing effective security for businesses and civilians, leaving the latter highly exposed to criminal attacks. Thirdly, elements within the TFG and insurgent forces have both allegedly committed criminal acts.²²⁸ Fourthly, the authority of traditional clan elders and the ability of even majority clans to provide protection for their members have been undermined by the conflict. While not fully controlling territory, neither the TFG nor the insurgents would allow competing power from clan leaders.

3. *Transitional Federal Government and AMISOM*

The TFG was formed in 2004 and installed in Mogadishu in early 2007 and is recognized as the legitimate government of Somalia by the United Nations. The TFG provides few, if any, public services and its forces are focused on maintaining what control it has left over the capital.²²⁹ TFG security forces are composed of the Somali National Police Force (SPF), the National Security Agency (NSA) and the Somali National Army (SNA). In December 2008, the UN Arms Monitoring Group described these forces as “disorganized and undisciplined, and to a large extent function as semi-autonomous militias.”²³⁰ Units tend to be divided along clan lines, reflecting the clan and political affiliation of their commanders.²³¹

were killed and five others wounded. Mareeg News, *Al-Shabab Beheads a Man in Southern Town*, 5 April 2009, <http://www.mareeg.com/fidsan.php?sid=11343&tirsan=3>; Garowe Online, *Armed Youngsters Reject Al Shabab Order, Fighting Erupts*, 5 April 2009, http://www.garoweonline.com/artman2/publish/Somalia_27/Somalia_Armed_youngsters_reject_Al_Shabab_order_fighting_erupts.shtml. See also Human Rights Watch, *Harsh War, Harsh Peace*, 19 April 2010, 1-56432-621-7, <http://www.unhcr.org/refworld/docid/4bcd64c82.html>.

²²⁵ *With regards to the compulsory wearing of the veil for women, some IDP women who could not afford to buy a veil (estimated price being 400,000 Somali Shillings) by the given deadline were allegedly arrested and held until a male relative came to bail them out.* IASC PMN Update 24 April 2009, <http://ochaonline.un.org/somalia/Clusters/IDPsandProtection/tabid/2832/language/en-US/Default.aspx>. See also Human Rights Watch, *Harsh War, Harsh Peace*, 19 April 2010, 1-56432-621-7, <http://www.unhcr.org/refworld/docid/4bcd64c82.html>.

²²⁶ UN Security Council, *Report of the Monitoring Group on Somalia pursuant to Security Council resolution 1811 (2008)*, S/2008/769, 10 December 2008, p. 10, <http://www.unhcr.org/refworld/docid/494900240.html>.

²²⁷ IASC Somalia PMN, 11 January 2008, <http://ochaonline.un.org/OchaLinkClick.aspx?link=ocha&docId=1086635>, according to which “a businessman was shot dead, allegedly by insurgent forces, in Yaaqshiid district, Mogadishu”; see also IASC Somalia PMN, 4 July 2008, <http://ochaonline.un.org/OchaLinkClick.aspx?link=ocha&docId=1091913>, according to which “the Director of Mogadishu International Airport was targeted by a roadside bomb which exploded in Wadajir, severely wounding several of his bodyguards”. See also Amnesty International, *Routinely Targeted: Attacks on Civilians in Somalia*, 6 May 2008, pp. 13-14, <http://www.unhcr.org/refworld/docid/4821614e2.html>.

²²⁸ Human Rights Watch, *“So Much to Fear”: War Crimes and the Devastation of Somalia*, December 2008, p. 75, <http://www.unhcr.org/refworld/docid/493e374b2.html>; Kenneth Menkhaus, *Somalia: A Country in Peril, a Policy Nightmare*, ENOUGH Strategy Paper, September 2008, p. 4, http://www.enoughproject.org/somalia_report_090308.

²²⁹ Human Rights Watch, *Harsh War, Harsh Peace*, 19 April 2010, 1-56432-621-7, <http://www.unhcr.org/refworld/docid/4bcd64c82.html>.

²³⁰ UN Security Council, *Report of the Monitoring Group on Somalia pursuant to Security Council resolution 1811 (2008)*, S/2008/769, 10 December 2008, p. 11, <http://www.unhcr.org/refworld/docid/494900240.html>.

²³¹ *Ibid.*

In 2008, the SPF was accused of being a military force, involved in looting of property, and of using its powers of arrest to detain and ransom civilians.²³² The NSA was allegedly responsible for several blockages of the supply of humanitarian aid and masterminding the arrest of the World Food Programme's Head of Office in Mogadishu in October 2007.²³³ It also reportedly managed a series of unofficial detention centres, including one within a structure called Villa Somalia compound and another at the old NSS prison, the Barista Hisbiga, in Mogadishu.²³⁴

One interviewee explained to UNHCR how he had been interrogated by both SPF/Criminal Investigation Department and Ethiopian counter-terrorism officers inside Barista Hisbiga, providing a testimony that corroborates those collected from other ex-detainees by Human Rights Watch in 2008, including allegations that detainees were ransomed to secure their release.²³⁵ Human Rights Watch also documented detention and ransoming by the SPF at district level police stations.²³⁶

Reportedly poorly disciplined and organized,²³⁷ the SNA is said to be dominated by *Darod* leaders and has received additional support from Puntland (*Darod*) militias.²³⁸

There have also been accusations of looting and other criminal activities against persons in uniform or persons perhaps posing as TFG soldiers or members of the SPF. Furthermore, there have been consistent reports of looting by TFG security forces during house-to house-searches.²³⁹ Army and police uniforms are available on the market, so it is difficult to determine who precisely has been responsible for incidents attributed to TFG/SPF.²⁴⁰

²³² Human Rights Watch, "So Much to Fear": War Crimes and the Devastation of Somalia, December 2008, pp 51-53; <http://www.hrw.org/sites/default/files/reports/somalia1208web.pdf>; UNHCR interviews conducted in Nairobi, April, August 2008 (interviewees' names withheld). UN Security Council, *Report of the Monitoring Group on Somalia Pursuant to Security Council Resolution 1766* (2007), S/2008/274, 24 April 2008, p. 7, <http://www.un.org/sc/committees/751/mongroup.shtml>. "[T]he Somali Police Force no longer differs from other actors in the armed conflict, despite the fact that many of its members have received training in accordance with international standards. There is a certain confusion in the streets about who is part of the Somali Police Force, as it operates jointly with the militia of Mohamed Omar Habeeb "Dheere" and the Somali National Army. Former militia leaders have also been integrated into the Somali Police Force command, along with some of their men. The Somali Police Force has purchased arms in Yemen, in violation of the arms embargo, not having requested an exemption from the Committee. Police commanders are also acting as buyers and sellers of arms at the Mogadishu arms markets".

²³³ UN Security Council, *Report of the Secretary-General on the situation in Somalia*, S/2007/658, 7 November 2007, p. 9, <http://www.unhcr.org/refworld/docid/473967e22.html>.

²³⁴ Human Rights Watch, "So Much to Fear": War Crimes and the Devastation of Somalia, December 2008, pp 51-53; <http://www.hrw.org/sites/default/files/reports/somalia1208web.pdf>; UNHCR interviews conducted in Nairobi, April, August 2008 (interviewees' names withheld). For a critical review of General Darwish and interviews with Barista Hisbiga former inmates, see Channel 4 Dispatches, *Warlord Next Door?*, Broadcast 23 May 2008; <http://www.channel4.com/news/articles/dispatches/warlords+next+door/2243452>.

²³⁵ Human Rights Watch, "So Much to Fear": War Crimes and the Devastation of Somalia, December 2008, pp.51-53, <http://www.unhcr.org/refworld/docid/493e374b2.html>; UNHCR interviews conducted in Nairobi, April; August 2008 (interviewees' names withheld).

²³⁶ Ibid.

²³⁷ UN Security Council, *Report of the Monitoring Group on Somalia Pursuant to Security Council Resolution 1766* (2007), S/2008/274, 24 April 2008, p. 10, <http://www.un.org/sc/committees/751/mongroup.shtml>; UN Security Council, *Report of the Monitoring Group on Somalia pursuant to Security Council resolution 1811* (2008), 10 December 2008. S/2008/769, pp. 11-12; <http://www.unhcr.org/refworld/docid/494900240.html>.

²³⁸ UN Security Council, *Report of the Monitoring Group on Somalia Pursuant to Security Council Resolution 1766* (2007), S/2008/274, 24 April 2008, pp. 10-11, <http://www.un.org/sc/committees/751/mongroup.shtml>.

²³⁹ See Human Rights Watch, "So Much to Fear": War Crimes and the Devastation of Somalia, December 2008, pp. 53-55; <http://www.unhcr.org/refworld/docid/493e374b2.html>; IASC Somalia PMN, 20 June 2008, <http://ochaonline.un.org/somalia/Clusters/IDPsandProtection/tabid/2832/language/en-US/Default.aspx>; and IASC Somalia PMN, 13 July 2007, <http://ochaonline.un.org/OchaLinkClick.aspx?link=ocha&docId=1096477>; IASC Somalia PMN, 28 September 2007, <http://ochaonline.un.org/OchaLinkClick.aspx?link=ocha&docId=1096435>.

²⁴⁰ Human Rights Watch, "So Much to Fear": War Crimes and the Devastation of Somalia, December 2008, p. 43, <http://www.unhcr.org/refworld/docid/493e374b2.html>.

The TFG's human rights record has reportedly improved since 2009. It is noted that the TFG was not responsible for politically motivated killings, executions, or disappearances. Allegations against the TFG and its organs decreased and its police and prison personnel were generally responsive on human rights problems.²⁴¹

AMISOM is deployed to Mogadishu to bolster the TFG.²⁴² It consists of an estimated 5,300 Ugandan, Burundian and Djiboutian troops. AMISOM forces suffered two suicide bomb attacks in 2009 that claimed the lives of at least 21 people, including the deputy force commander.²⁴³

The TFG and AMISOM are accused of indiscriminately shelling civilian areas of Mogadishu in reprisal to mortar attacks launched by opposition forces.²⁴⁴ This shelling has resulted in significant loss of life, particularly among the civilian population, as well as destruction of property. TFG and AMISOM forces have also been accused of firing indiscriminately at civilians.²⁴⁵

D. The Availability of Effective State or *De Facto* Protection in Somalia, Somaliland and Puntland

1. State Protection

Effective State protection is unavailable in southern and central Somalia given the situation of armed conflict and the inability of the government authorities to extend control over any territory outside a few districts in Mogadishu.

In Puntland and Somaliland, in regions not affected by conflict, effective protection by governing authorities may exist against acts of persecution emanating from non-state agents. In regions which have been affected by conflict, such as Sool, Sanaag and Mudug, the availability of effective protection should be assessed on a case-by-case basis taking into account the level of enforcement of rule of law, safety, and security.

2. Clan Protection

Clan identity and membership in Somalia have historically been important in determining whether individuals could rely on effective protection when State protection was not available. Clan protection was bolstered and supported by customary law (*xeer*).²⁴⁶ Prior to 2007, effective protection could be

²⁴¹ United States Department of State, *2009 Country Reports on Human Rights Practices - Somalia*, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e52bdc.html>.

²⁴² UN Security Council, *Security Council resolution 1910 (2010) [on renewal of the authorization of Member States of the African Union to maintain the African Union Mission in Somalia (AMISOM)]*, 28 January 2010, S/RES/1910(2010), <http://www.unhcr.org/refworld/docid/4bb1b3cb2.html>.

²⁴³ Human Rights Watch, *Harsh War, Harsh Peace*, 19 April 2010, 1-56432-621-7, <http://www.unhcr.org/refworld/docid/4bcd64c82.html>.

²⁴⁴ Ibid.

²⁴⁵ United States Department of State, *2009 Country Reports on Human Rights Practices - Somalia*, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e52bdc.html>.

²⁴⁶ Somali *xeer* or customary law, are unwritten agreements, passed down orally from generation to generation. Primarily concerning management of daily issues within a clan, *xeer* can and has been expanded to manage inter-clan relations, including marriage, hospitality, rules of resource use, and compensation for crimes committed by members of one clan against another. *Xeer* hold the entire *mag*-paying group collectively responsible for a crime committed by one or more of its members. If the *mag* is not paid, then the aggrieved clan may opt to kill the criminal or other members of that person's clan – a form of collective criminal responsibility that in theory acts as a deterrent against crimes being committed in the first place, and as a way of enforcing payment compensation. Non-payment and subsequent attacks can set off a cycle of blood vengeance between two clans until elders agree a resolution through peace negotiations and further *mag*-payment. See Joakim Gundel, *The Predicament of the 'Oday': The Role of Traditional Structures in Security, Rights, Law and Development in Somalia*, Danish Refugee Council/OXFAM Novib, November 2006, p. 9, <http://siteresources.worldbank.org/INTJUSFORPOOR/Resources/ThePredicamentoftheOday.doc>.

relied on by members of majority clans.²⁴⁷ Since 2007, clan protection has been undermined in Mogadishu but also increasingly in other regions of southern and central Somalia by the ongoing conflict and the diminution of the traditional clan systems of justice due to the favoured strict interpretations of *Shari'a* law being implemented by the Islamist groups al-Shabaab and Hizbul Islam in areas under their control.²⁴⁸

The absence of State protection coupled with weakened clan protection mechanisms have led to an increase in uncertainty, criminality and impunity. Contrary to the past, clan protection can no longer be reasonably relied on to systematically and uniformly provide effective protection to Somalis anywhere in southern and central Somalia.²⁴⁹

The Annex to these Guidelines contains important information on the structure of clans, Somalis that are not members of any clan, the *xeer* system and what protection clan membership can provide to certain Somalis.

3. *Shari'a Courts in Areas Controlled by Islamic Insurgents*

In all areas of southern and central Somalia currently controlled by Islamist groups, *Shari'a* decisions are reportedly applied inconsistently, and, in some cases, are influenced by clan considerations.²⁵⁰ For instance, in June 2009, a *Darod* woman living in *Rahanweyne*-dominated Bayhdaba was sentenced by an al-Shabaab *Shari'a* court to death by stoning for adultery. Although the punishment was struck down for a number of reasons, including new evidence being presented, *Rahanweyne* elders reportedly advised caution that if the *Darod* woman was executed, then a *Rahanweyne* in Puntland would be killed in revenge.²⁵¹

UNHCR considers that inconsistencies in the application of *Shari'a* coupled with potentially harsh punishments for certain infractions preclude reliance on *Shari'a* as an effective protection mechanism in lieu of State protection.

4. *AMISOM*

On 20 February 2007, the UN Security Council, in Resolution 1744 (2007), endorsed the establishment of the African Union Mission to Somalia (AMISOM).²⁵²

AMISOM has faced a number of criticisms and allegations. Firstly, because AMISOM is mandated to support transitional federal institutions, it has been increasingly seen as supporting a government which is perceived as weak. This perception of weakness is related to the ongoing fighting with al-Shabaab, but also to activities of senior security officers within the TFG who are involved in sales of large quantities of weapons and ammunition to the arms markets, some of which are bought back by

²⁴⁷ The main clan families include the *Darod*, *Hawiye*, *Dir* and, arguably, the *Isaaq*. See Joakim Gundel, *The Predicament of the 'Oday': The Role of Traditional Structures in Security, Rights, Law and Development in Somalia*, Danish Refugee Council/OXFAM Novib, November 2006, p. 5, <http://siteresources.worldbank.org/INTJUSFORPOOR/Resources/ThePredicamentoftheOday.doc>.

²⁴⁸ International Crisis Group, *Somalia: To Move Beyond the Failed State*, 23 December 2008, p. 4, <http://www.unhcr.org/refworld/docid/4950e75f2.html>.

²⁴⁹ "In the past, it was only the minority clans who were persecuted in Mogadishu. Now we are all minority clans. It is not enough to be Hebr Gedir or Abgal – rather you have to be Al-Shabab or TFG. There is no middle ground..... The streets are now deserted; people avoid talking to each other – there is a constant suspicion that a friend or brother could be an informant for Al-Shabab or the TFG.", UNHCR interviews conducted in Nairobi, April 2008.

²⁵⁰ As of writing, the Islamist militant groups control all areas of southern and central Somalia excluding those areas of Mogadishu under the control of the TFG and AMISOM forces.

²⁵¹ UNHCR, *Somalia Mission Report, Bayhdaba*, June 2009, available on file with UNHCR Somalia.

²⁵² UN Security Council, *Resolution 1744 (2007) The Situation in Somalia, S/RES/1744 (2007)*, 21 February 2007, <http://www.unhcr.org/refworld/docid/4600f97e2.html>.

al-Shabaab to be used against the TFG.²⁵³ Secondly, the UN Arms Monitoring Group has accused the Ugandan members of AMISOM of selling weapons in Mogadishu, which have indirectly arrived in the hands of insurgent groups.²⁵⁴ Thirdly, AMISOM forces have been increasingly viewed as legitimate targets for the insurgency,²⁵⁵ regarded as a ‘foreign force’ by Islamist militant groups.²⁵⁶ Furthermore, AMISOM forces attacked by insurgents, especially since September 2008, have reportedly responded with excessive force and indiscriminate fire which have resulted in civilian casualties.²⁵⁷ This has undermined their credibility in the eyes of the local population. It has been suggested that al-Shabaab has deliberately tried to provoke AMISOM into killing civilians as part of the former’s strategy to win over public opinion.²⁵⁸ For the above reasons, UNHCR considers that AMISOM is unable to provide effective protection to Somalis in the areas where it is operating.

E. Internal Flight or Relocation Alternative (IFA/IRA)²⁵⁹

1. General Considerations

A detailed analytical framework for assessing the availability of an internal flight alternative or internal relocation alternative (IFA/IRA), is contained in UNHCR’s 2003 “*Guidelines on International Protection: the “Internal Flight or Relocation Alternative” within the context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*”.²⁶⁰

In order to assess the possibility of applying an IFA/IRA, two main sets of analyses should be undertaken, namely whether internal relocation is (i) **relevant** and, if so, whether it is (ii) **reasonable**. In assessing a refugee claim in which a well-founded fear of persecution has been established in some localized part of the country of origin, the determination of whether the proposed internal flight or relocation area is an appropriate alternative in the particular case requires an assessment over time, taking into account not only the circumstances that gave rise to the persecution feared, and that prompted flight from the original area, but also whether the proposed area provides a meaningful alternative. The personal circumstances of the individual applicant and the conditions in the country of origin need to be considered.²⁶¹

²⁵³ UN Security Council, *Report of the Monitoring Group on Somalia Pursuant to Security Council Resolution 1766 (2007)*, S/2008/274, 24 April 2008, p. 31, <http://www.unhcr.org/refworld/docid/494900230.html>.

²⁵⁴ Ibid.

²⁵⁵ IASC *Somalia PMN*, 16 November 2007, <http://ochaonline.un.org/OchaLinkClick.aspx?link=ocha&docId=1096433>.

²⁵⁶ Elizabeth Kennedy, *Warning to UN Somalia force*, The Independent, 26th July 2008, <http://www.independent.co.uk/news/world/africa/warning-to-un-somalia-force-877900.html>.

²⁵⁷ IASC *Somalia PMN*, 26 September 2008, <http://ochaonline.un.org/OchaLinkClick.aspx?link=ocha&docId=1094816>.

²⁵⁸ United Nations, *Independent Expert on the situation of human rights in Somalia denounces the killing of civilians, appeals for calm and immediate cease fire*, 23 April 2008, <http://www.unhchr.ch/huricane/hurricane.nsf/view01/D429ADDA2D1F2368C1257434002D98EB?opendocument>.

²⁵⁹ IFA/IRA is not relevant in the context of determining eligibility for refugee status under Articles I(1) and I(2) of the OAU Convention. IFA/IRA is relevant in the context of determining eligibility for refugee status under the 1951 Convention and its 1967 Protocol, UNHCR Mandate RSD (including the extended refugee definition), as well as determination of eligibility under certain complementary/subsidiary forms of protection as stipulated in regional instruments.

²⁶⁰ See in general UNHCR, *Guidelines on International Protection: “Internal Flight or Relocation Alternative” within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003, <http://www.unhcr.org/refworld/docid/3f2791a44.html> (Hereafter: “UNHCR, *Internal Flight or Relocation Alternative Guidelines*”).

²⁶¹ UNHCR, *Internal Flight or Relocation Alternative Guidelines*, p. 3.

2. *Southern and Central Somalia*

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 for the application of the IFA/IRA concept. Furthermore, the customary law systems cannot be considered as sources of effective and durable protection²⁶² due to their fragmented nature, the recent breakdown of traditional clan protection mechanisms, bias towards majority clans and the contradictions between customary law and international human rights law, particularly in relation to the rights of women.

In the absence of a risk of persecution or other serious harm upon relocation, it must also be “reasonable” for a claimant to relocate. Such an assessment must take into account the elements of safety and security, respect for human rights and options for economic survival in order to evaluate if the individual would be able to live a relatively normal life without undue hardship given his or her situation.²⁶³

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.

Access to land, water, services and security in southern and central Somalia is generally defined by clan membership. In such situations, it would not be reasonable to expect someone to take up residence in an area or community where persons with a different clan background are settled, or where they would otherwise be considered aliens. There is evidence from the IDP settlements in urban areas across Somalia, including Puntland and Somaliland, of daily abuse faced by members of clans which are not considered to ‘originate’ from the area in which they find themselves displaced.

Furthermore, it would also not be reasonable for persons who have a well-founded fear of persecution to relocate within or to southern and central Somalia due to the massive displacement from Mogadishu, which has drained the absorption capacity of host communities in most areas of southern and central Somalia – even if the displaced persons are of the same clan as members of the host community. Economic collapse and massive displacement has saturated clan social and economic support in home clan areas. In Galgaduud, which has received one of the largest numbers of IDPs in 2007, it was one of the few regions which also witnessed returns to Mogadishu. Interviewees reported to UNHCR that they had reached a level of desperation so severe that they preferred the misery and insecurity in Mogadishu.

Based on the above, UNHCR considers that there is no available internal flight or relocation alternative in any part of southern and central Somalia.

3. *Somaliland and Puntland*

Somaliland and Puntland already host tens of thousands of IDPs, by far exceeding their absorption capacity. Moreover, as explained above, the authorities in both Somaliland and Puntland have implemented strict policies with respect to Somalis not considered to originate from these areas. In Somaliland, such persons are considered as ‘foreigners’ under the Constitution of the self-declared independent State and in Puntland, national security concerns against persons from southern and central Somalia in the wake of the 2008 suicide bombings²⁶⁴ have led to detention and deportation back to southern and central Somalia and to Somaliland and Puntland, respectively.

²⁶² Ibid, paras. 16-17.

²⁶³ Ibid, p. 3.

²⁶⁴ The New York Times, 5 suicide bomb attacks hit Somalia, 29 October 2008, <http://www.nytimes.com/2008/10/30/world/africa/30somalia.html>.

Furthermore, in the absence of clan protection and support, a Somali originating from another territory in Somalia would face the general fate of IDPs, including lack of protection, limited access to education and health services, vulnerability to sexual exploitation or rape,²⁶⁵ forced labour, perpetual threat of eviction, and destruction or confiscation of assets.

Large numbers of persons displaced from southern and central Somalia live in Puntland, collected in urban slums in the main towns of Bossaso, Galkacyo and Garoowe. While many of the displaced are from the Darod clan and thus afforded some protection under the *xeer* system of customary law, minority clans or clans who do not constitute a majority in Puntland have suffered a number of abuses in IDP settlements and are essentially without recourse to justice through either formal or informal legal mechanisms. Reported abuses have included rife sexual and gender-based violence, arbitrary arrest, hostage-taking by private landlords until actual or alleged rent payments have been made, enforced child labour, arson and murder. In addition, on a number of occasions in recent years the Puntland authorities have deported large numbers of persons considered not to originate from Puntland, including persons fleeing the violence in southern and central Somalia. There are reports that many women fleeing the violence in southern and central Somalia and who seek protection in Galkacyo are being subjected to sexual violence. The women are reportedly targeted even within IDP camps as perpetrators come by night and take them away.²⁶⁶

Furthermore, in December 2009, some 1,700 IDPs in North Galkacyo fled attacks by mobs targeting their businesses, homes and shelters over suspicions that the IDPs were involved in explosions in the town. Cases of killings and explosions had increased in the preceding weeks, with rumours attributing the trend to the displaced community, although these rumours were confirmed to be unfounded by Galkacyo Mayor Abdirahman Mahamud Haji.²⁶⁷

Whether an IFA/IRA 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 where IFA/IRA is being considered. The generally deplorable living conditions of displaced persons in Puntland and Somaliland, however, indicate that an IFA/IRA is generally not available for individuals from southern and central Somalia in these territories.

F. Exclusion from International Refugee Protection

In light of Somalia's long history of armed conflict, serious human rights violations and transgressions of international humanitarian law, exclusion considerations under Article 1F of the 1951 Convention may arise in relation to individual asylum claims by Somali asylum-seekers. Exclusion considerations may be triggered in any individual case if there are elements in the applicant's claim that suggest that he or she may have been associated or involved with criminal acts that fall within the scope of Article 1F of the 1951 Convention.

In the context of Somalia, exclusion considerations may arise in the cases of Somali asylum-seekers with certain backgrounds and profiles, including persons who have been engaged in the hostilities and armed conflict. In particular, careful attention should be given to the following profiles: (1) members of the previous Barre regime and its armed forces, especially if active in conflict with opposition

²⁶⁵ IRIN, *Somalia: Instead of a safe haven, fear and rape in Galkacyo*, 23 September 2009, <http://www.unhcr.org/refworld/docid/4abb2d9d1a.html>.

²⁶⁶ Asylum Aid, *Women's Asylum News: Issue No. 87*, October 2009, Issue No. 87, 15 October 2009, <http://www.unhcr.org/refworld/docid/4ad8231c2.html>.

²⁶⁷ Integrated Regional Information Networks (IRIN), *Somalia: IDPs targeted over violence in Galkayo*, 21 December 2009, <http://www.unhcr.org/refworld/docid/4b39caec1e.html>.

groups such as in Somaliland;²⁶⁸ (2) members of the previous Barre regime associated with the police, the security and intelligence apparatus, especially persons linked to the National Security Service, National Security Courts,²⁶⁹ the military police (who also served as presidential guard), the military intelligence service, the militia-styled Victory Pioneers;²⁷⁰ (3) members of armed groups opposing the Barre regime which participated in the subsequent competition for control of Somalia after the collapse of the State, including the United Somali Congress (USC), Somali National Movement (SNM), Somali Salvation Democratic Front (SSDF), Al-Itihaad al-Islamiya (AIAI), Rahanweyn Resistance Army (RRA);²⁷¹ (4) members of armed groups which have continued to compete for power or exercise *de facto* control over territory since the establishment of the Transitional National Government (TNG) created in October 2000²⁷² and the TFG, including the Alliance for the Restoration of Peace and Counter-Terrorism (ARPCT) founded in February 2006,²⁷³ ICU,²⁷⁴ ARS,²⁷⁵

²⁶⁸ The Siad Barre regime (1969 – 1991), forbade clanism and stressed loyalty to central authorities. See Metz, Helen C. (1992), *Siad Barre's Repressive Measures, Somalia: A Country Study*, Washington, D.C.: Library of Congress, [http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field\(DOCID+so0039\)](http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+so0039)).

²⁶⁹ I.M Lewis, *A Modern History of Somalia: Nation and State in the Horn of Africa*, Boulder: Westview Press, 1988, p. 212

²⁷⁰ Barre's regime reportedly used summary killings, arbitrary arrests, torture, rape and simulated executions, as performed by Barre's National Security Service (NSS). Barre's elite unit, the Red Berets (*Duub Cas*), and the paramilitary unit called the Victory Pioneers allegedly carried out systematic violence against the Majeerteen, the Hawiye, and the Isaaq clans from the late 1970s onwards. See Metz, Helen C. (1992), *Siad Barre's Repressive Measures, Somalia: A Country Study*, Washington, D.C.: Library of Congress, [http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field\(DOCID+so0039\)](http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+so0039)). See also I.M Lewis, *A Modern History of Somalia: Nation and State in the Horn of Africa*, Boulder: Westview Press, 1988, p. 213.

²⁷¹ All of the following armed factions were founded prior to the fall of Siad Barre: (i) The USC (United Somali Congress), founded by members of the Hawiye clan in response to massacres of the Hawiye by the Barre regime, is one of the major paramilitary and political organizations in Somalia. It forced Barre into exile by reportedly storming the Presidential palace in Mogadishu in 1991 and then taking control of the capital, <http://66.102.9.132/search?q=cache:lhgK7mpmEf8J:www.state.gov/r/pa/ei/bgn/2863.htm+USC+Somalia&cd=3&hl=en&ct=clnk&gl=uk>; (ii) the SNM (Somali National Movement) was founded by Isaaq dissidents in London in 1981 and began guerrilla operations into Somalia from Ethiopia from 1982. It was key to the establishment of Somaliland, <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=3ae6ab4a70&skip=0&query=USC>; (iii) SSDF (Somali Salvation Democratic Front) has its power base in the Majeerteen clan and has been a major political and paramilitary organization since its founding in 1981, attempting a coup in 1982 and helping proclaim the State of Puntland in 1998, <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=4b0bde4e2&skip=0&query=Somali%20Salvation%20Democratic%20Front&searchin=title&display=10&sort=date>; (iv) AIAI (Al-Itihaad al-Islamiya), has declined considerably in terms of its importance over the years. It is said to have had ties with Al-Qaeda and to have had its assets blocked by the Bush administration after 9/11, Annex D, <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=486a53780&skip=0&query=Al-Itihaad%20al-Islamiya>; (v) Rahanweyn Resistance Army (RRA), also known as the Reewin Resistance Army, is an autonomist militant group operating in the two southwestern regions of Somalia, Bay and Bakool. It was the first Reewin armed faction to emerge during the Somali civil war. The stated goal of the RRA is the creation and recognition of an independent state of Southwestern Somalia. It is currently under the authority of the Transitional Federal Government, <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=486a53780&skip=0&query=Al-Itihaad%20al-Islamiya>. According to the Secretary-General's report on Children and Armed Conflict S/2005/72, the USC, the Rahanweyn Resistance Army and the SSDF all recruit or use children in armed conflict. See UN General Assembly, Children and armed conflict : report of the Secretary-General, 9 February 2005, A/59/695-S/2005/72, <http://www.unhcr.org/refworld/docid/49997ae55.html>.

²⁷² The TNG's term officially ended on 12 August 2003, see Global Security <http://www.globalsecurity.org/military/world/war/somalia-south.htm>.

²⁷³ For more details see Source Watch <http://www.sourcewatch.org/index.php?title=Alliance+for+the+Restoration+of+Peace+and+Counter-Terrorism> (ARPCT).

²⁷⁴ ICU or the Islamic Courts Union was a group of Shari'a Courts who united themselves to form a rival administration to the TFG. They controlled most of southern Somalia and the vast majority of the population until the end of 2006 when hardline Islamists broke ranks from the ICU and formed other militant groups, such as al-Shabaab and Hizbul Islam, to continue the war against the government. The courts adhered to a strict interpretation of Shari'a which included the banning of music and the endorsement of hudud punishments. See BBC News, *Profile: Somalia's Islamic Courts*, <http://news.bbc.co.uk/2/hi/5051588.stm>

²⁷⁵ ARS or the Alliance for the Re-liberation of Somalia was created in September 2007 to fight the TFG. It is based in Eritrea and its membership includes Somali Islamists and members of the former ICU as well as former members of

Al-Shabaab,²⁷⁶ Hizub Islam²⁷⁷ and other insurgent groups; (5) members of the TFG Executive, Army, National Security Agency, Police or *Benadir* Administration, in function since the start of 2007, especially if exercising functions linked to military and security operations; (6) members of clan-based militias in control of or having influence over certain areas;²⁷⁸ (7) members of criminal gangs, especially those operating in South-Central Somalia since 2007.²⁷⁹

Particularly careful examination should be given to asylum claims of individuals associated or involved with acts which have occurred both before and after the fall of the Barre regime, including conflicts between armed factions and attacks on civilian groups. In addition, the recent period of conflict between the TFG/ENDF forces and the various insurgent groups operating in southern and central Somalia are of concern. Reports and the testimony from refugees, internally displaced persons and other sources allege that insurgent groups have violated international humanitarian law by intentionally taking the conflict into areas populated or frequented by civilians.²⁸⁰ Similarly, other acts that may raise exclusion considerations include those committed during the following periods:

- 1988: indiscriminate bombing of Hargeysa by the Somali National Army, and suppression of the *Issaq*-led Somali National Movement in Somaliland as well as kidnapping, torture and killing of civilians;²⁸¹

the TFG. Its stated aim is to remove the TFG through negotiation or war, Delegation of the European Commission in Kenya Somalia Operations Unit, *Annual Operational Review of Cooperation between The People of Somalia and The European Community in 2007*, 2007, http://ec.europa.eu/development/icenter/repository/jar07_so_en.pdf.

²⁷⁶ Al-Shabab or Harakat al-Shabaab Mujahideen ("Movement of Warrior Youth") is an off-shoot from the ICU above and imposes a particularly harsh form of Shari'a law. It is reported to have begun in 2006. The group is said to control most of southern and central Somalia and is reported to have declared war on the TFG, AMISOM, the UN and on Western non-governmental organizations distributing food aid. It has killed 42 aid workers in the past two years and has been designated a terrorist organization with links to Al-Qaeda, <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=4a1fadcl40&skip=0&query=Al%20Shabab%20background> and also <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=4913f9ce2&skip=0&query=al%20shabab%20aid%20workers>. See Section on 'Main Categories of Claims' for details of Al-Shabab administered punishments such as lashes, amputations and stonings.

²⁷⁷ Hizbul-Islam was formed in 2009 after four Islamist groups merged to fight the new TFG and the AU forces in Mogadishu. The four groups were Hassan Aweys' ARS-Eritrea, Jabhatul Islamiya ("Islamic Front"), Hassan Abdullah Hersi al-Turki's Mu'askar Ras Kamboni (Ras Kamboni Brigade) and Muaskar Anole. http://209.85.129.132/search?q=cache:rXL-JdLmHcMJ:www.longwarjournal.org/archives/2009/07/somalias_shabaab_hiz.php+Hizbul-Islam+who+are+they%3F&cd=2&hl=en&ct=clnk&gl=uk. On October, 1, 2009, armed conflict between Hizbul Islam and Al-Shabaab began over who was in control of the port town of Kisimayo. On the battle that followed Hizbul Islam was expelled from the city and it was expelled from most of Southern Somalia in the following months. Their presence only remains in Gedo region, Hiraa region and the capital, BBC News, Behind Somalia's Islamist rivalry, 1 October 2009, <http://news.bbc.co.uk/2/hi/8284958.stm>.

²⁷⁸ Clan based militias are the militias which belong to many of the Somali clans to protect their land and kin. Many are now run by Warlords. The TFG attempted to disarm the militias of the country in late 2006. According to the UN/World Bank's Joint Needs Assessment (JNA) coordination secretariat, "the total estimated number of militias [militia members] to be demobilized [was] 53,000", <http://escolapau.uab.cat/img/programas/desarme/mapa/somaliai.pdf>. Clan militias are continuing to fight heavily in the Mudug region of Somalia which have caused deaths, injuries and loss of properties as of April 2010, <http://allafrica.com/stories/201004020594.html>. See section on Main Categories of Claims for more information on the clan system.

²⁷⁹ It is reported that criminal gangs in Somalia are often former militias lured into criminal activities for the financial rewards from activities such as kidnapping and the lucrative business of boarding ships in the Gulf of Aden or the Indian and holding them, their crews and cargos for ransoms. Some of these gangs are also led by former Somali naval officers, <http://www.nationaldefensemagazine.org/archive/2010/April/Pages/SomaliPiracyTacticsEvolve.aspx>.

²⁸⁰ UN Human Rights Council, *Report of the Independent Expert on the Situation of Human Rights in Somalia*, Shamsul Bari, A/HRC/12/44, 17 September 2009, <http://www.unhcr.org/refworld/docid/4acb4abc2.html>.

²⁸¹ For detailed accounts of the 1988 situation in the North West, see Robert Gersony, *Why Somalis Flee: A Synthesis of Conflict Experience in Northern Somalia, by Somali Refugees, Displaced Persons and Others*, US Department of State, Bureau of Refugee Program, 1989, also published in *International Journal of Refugee Law*, Vol. 2 No. 1, 1990, <http://ijrl.oxfordjournals.org/cgi/reprint/2/1/4-a>; and Human Rights Watch (Africa Watch), *A Government at War with its Own People: Testimonies About the Killings and the Conflict in the North*, London, 1990.

- 1988-1991: arbitrary detention and torture of prisoners of conscience, systematic torture of political prisoners by the national security service in southern Somalia by the Barre regime;²⁸²
- 1989-1990: acts committed by both the United Somalia Congress (USC) and the Somali Patriotic Front (SPF) in their initial opposition to the disintegrating ‘national army’ in Hiraan and Galgaduud, and Bay and Lower Juba respectively;²⁸³
- 1991-1992: violent attacks in Mogadishu by *Hawiye* against all non-*Hawiye* (most specifically against *Darod* clan members);²⁸⁴
- 1991-1994: attacks by various factions against the *Bantu* in the Juba and Wabi Shabelle valleys, including burning of villages, rape and plunder of goods; followed by the slave-like occupation by the Central Region warlords;²⁸⁵
- 1999: killing and razing of villages by forces loyal to Hussin Mohammed Aideed and those from the *Rahanweyn* Resistance Army in Baydhaba;²⁸⁶
- 2002-2003: civilian killings during conflicts around Baydhaba between factions of the *Rahanweyn* Resistance Army (RRA);²⁸⁷
- 2007-2009: military operations by TFG, ENDF and insurgent forces, particularly in Mogadishu, but also in Galgaduud, Bay, Bakool, Hiraan, Gedo, Shabelles and Juba provinces.

G. Eligibility Under an Extended/Broader Refugee Criteria or on the Basis of Complementary/Subsidiary Forms of Protection in a Situation of Generalized Violence

This section of the Guidelines aims to provide guidance for the determination of eligibility of Somalis who claim to have fled Somalia due to the dangers associated with the armed conflict or generalized violence prevailing in Somalia.

It is important to note that persons fleeing their country of origin in situations of armed conflict and generalized violence may have a well-founded fear of persecution based on one or more of the grounds outlined in Article 1A(2) of the 1951 Convention and/or Article I(1) of the OAU Convention.²⁸⁸ The criteria for refugee status under these two provisions should be interpreted in such a manner that individuals or groups of persons who meet these criteria are duly recognized and protected under these instruments. This is particularly relevant where, as in southern and central Somalia, the internal armed conflict is rooted in religious, ethnic and/or political disputes, and where specific groups or individuals are being targeted. Given the widespread human rights violations against individuals with specific profiles, it can be expected that many asylum-seekers from southern and central Somalia, including those originating from areas where armed conflict is being waged, will be eligible for refugee protection under the aforementioned provisions.²⁸⁹

²⁸² See, for example Catherine Besteman, *The Struggle for Land in Southern Somalia: The War Behind the War*, Boulder, Colorado, 1996.

²⁸³ For brief background on the operations of the USC and the SPM, see Gérard Prunier, *Somalia: Civil War, Intervention and Withdrawal*, Refugee Survey Quarterly, Vol. 15, No. 1, 1996, <http://rsq.oxfordjournals.org/cgi/reprint/15/1/35>.

²⁸⁴ See, for example, Said S. Samatar, *Somalia: A Nation in Turmoil*, Minority Rights Group International, 20 June 1991.
²⁸⁵ Nearly all the clan-based militias operating in the south were engaged in violations against the group widely described as Bantu.

²⁸⁶ See Reuters, *Cautious Welcome for Peace Deals at OUA Meet*, 8 July 1999.

²⁸⁷ See IRIN Reports, including *Baidoa uneasy as RRA leaders wrangle*, 27 June 2002, <http://www.irinnews.org/report.aspx?reportid=32707>.

²⁸⁸ UNHCR Handbook, para. 164.

²⁸⁹ When examining the link to a 1951 Convention ground in the claims of persons who are fleeing a situation of armed conflict, there is no requirement that the individual be known to, and sought personally by the agent(s) of persecution. Whole communities may risk or suffer persecution for 1951 Convention reasons, and there is no requirement that an individual suffer a form or degree of harm which is different than that suffered by other individuals with the same

The extended/broader refugee criteria enshrined in several regional refugee instruments (the 1984 Cartagena Declaration and the 1969 OAU Convention) and UNHCR's mandate, are critical in responding to the international protection needs of persons who do not meet the Convention criteria and who are outside of their country of origin because of a serious threat to their life, liberty or security as a result of generalized violence or events seriously disturbing public order.²⁹⁰

In other regions, the 1951 Convention refugee definition has not been extended, but rather complemented through the establishment of specifically tailored mechanisms to offer a form of international protection to persons who are considered to be in need of international protection but who fall outside the scope of the 1951 Convention. In the European Union, for example, "subsidiary protection"²⁹¹ shall be granted to persons who have been found not to meet the criteria for refugee status under the 1951 Conventions, but are at risk of serious harm by dint of indiscriminate violence in situations of international or internal armed conflict.

In addition to the above, complementary/subsidiary forms of protection as a result of States' obligations under international and regional human rights law are available to meet the protection needs arising from other dangers to the life or physical integrity of individuals.²⁹²

1. *Armed Conflict in Southern and Central Somalia*

Parties to the conflict in Mogadishu, and elsewhere in southern and central Somalia, appear to consistently fail to respect basic principles of international humanitarian law, and pose serious threats to the lives of civilians.²⁹³ The civilian population is bearing the brunt of the fighting in southern and central Somalia which has sparked waves of displacement within the region as well as outward flows towards, for example, Kenya and Yemen. Fighting in southern and central Somalia continues between pro- and anti-government forces, although there are also reports of infighting in some areas²⁹⁴ between al-Shabaab, Hizbul Islam and Ahlu Sunna Wal Jama.²⁹⁵ This has resulted in a significant death toll among civilians and large scale displacements. The UN Humanitarian Coordinator for Somalia has commented on the very high levels of civilian casualties during fighting in Mogadishu in April 2010 and acknowledged hospital reports which show over 900 civilian casualties for the period

profile. Furthermore, many ordinary civilians may be at risk of harm from bombs, shelling, suicide attacks, and improvised explosive devices. These methods of violence may be used against targets or in areas where civilians of specific ethnic or political profiles predominantly reside or gather, and for this reason, may be linked to a 1951 Convention ground.

²⁹⁰ UNHCR, *Note on International Protection (submitted by the High Commissioner)*, A/AC.96/830, 7 September 1994, <http://www.unhcr.org/refworld/docid/3f0a935f2.html>.

²⁹¹ Art. 15 (c) of the Qualification Directive, see footnote 4.

²⁹² UNHCR, *EXCOM, Conclusion on the Provision of International Protection Including through Complementary Forms of Protection*, No. 103 (LVI) – 2005, 7 October 2005, <http://www.unhcr.org/refworld/docid/43576e292.html>. Complementary forms of protection may be sought by citizens of Kosovo under various international instruments including, inter alia, the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, resolution adopted by the General Assembly, entry into force 10 December 1984, A/RES/39/46, <http://www.unhcr.org/refworld/docid/3b00f2224.html>; Covenant on Civil and Political Rights, *General Assembly resolution 2200A (XXI)*, 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976; Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, 4 November 1950, ETS 5, <http://www.unhcr.org/refworld/docid/3ae6b3b04.html>.

²⁹³ IRIN, *Somalia: "People may be dying in their homes and we don't know about it"*, 9 June 2009, <http://www.unhcr.org/refworld/docid/4a3b58991a.html>. See also Amnesty International, *Somalia: Allegations of AU force firing on civilians need investigating*, 5 February 2009, <http://www.unhcr.org/refworld/docid/498fe0671e.html>; and VOA News, *Somalia Peacekeepers Accused of Firing Into Civilian Areas*, Alisha Ryu, 22 October 2009, <http://www.voanews.com/english/2009-10-22-voa11.cfm>, reporting claims that AMISOM troops use excessive and indiscriminate force when attacked by Islamist insurgents groups in the capital causing significant casualties among the civilian population.

²⁹⁴ IRIN, *Somalia: Civilians flee fighting in Kismaayo*, 1 October 2009, <http://www.unhcr.org/refworld/docid/4acaea871e.html>.

²⁹⁵ OCHA, *Somalia: Dwindling shelter and little water*, 13 April 2010, <http://www.irinnews.org/report.aspx?ReportID=87977>.

between March-April 2010.²⁹⁶ Serious threats to life are the main reason why some 36,000 Somalis sought refuge in Kenya in the first half of 2009, while some 12,000 people have found temporary shelter in the town of Bossaso in Puntland between May and September 2009.²⁹⁷ The killing or injuring of civilians during fighting between all parties to the conflict continue to be consistently reported, including through repeated, inaccurate and indiscriminate exchanges of mortar fire,²⁹⁸ indiscriminate firing of heavy artillery into markets and residential areas,²⁹⁹ road-side and vehicle-borne bombs, and subsequent exchanges of light weapons fire.³⁰⁰

In Mogadishu, where the most frequent reports of violence and conflict are recorded, civilians and combatants alike are killed and injured in significant numbers, estimates range from between 20 to 50 fatalities per week.³⁰¹ Due to the types of munitions and tactics employed by all sides in the conflict, including indiscriminate shelling in the city itself, civilians³⁰² are regularly caught in the crossfire.³⁰³ On National Army Day on 13 April 2010, 18 people were killed by shelling or a road side bomb in Mogadishu.³⁰⁴

In September 2009, 145 people were reported killed and another 285 injured in heavy clashes throughout southern and central Somalia, mainly in Kismaayo and Mogadishu.³⁰⁵ MSF has noted a total lack of regard for the safety of civilians following the admittance in early 2010 of 66 women and children injured in fighting to Daynite Hospital, Mogadishu over a 72 hour period, and highlights that in 2009 just under half of the 1,137 people admitted to this hospital were women and children under 14.³⁰⁶

The territorial control over Mogadishu is divided between the pro- and anti-government forces and this struggle for control is reflected in the frequent outbreaks of fighting, resulting in civilian deaths

²⁹⁶ United Nations Radio, *Humanitarian chief is concerned about plight of civilians in Mogadishu*, 14 April 2010, <http://www.unmultimedia.org/radio/english/detail/93864.html>.

²⁹⁷ UN Human Rights Council, *Report of the Independent Expert on the Situation of Human Rights in Somalia*, Shamsul Bari, A/HRC/12/44, 17 September 2009, <http://www.unhcr.org/refworld/docid/4acb4abc2.html>.

²⁹⁸ Amnesty International, *Somalia: End indiscriminate shelling in Mogadishu*, 19 June 2009, <http://www.unhcr.org/refworld/docid/4a56080d2.html>.

²⁹⁹ BBC News, *Somalia: MSF condemns indiscriminate attacks*, 4 February 2010, <http://news.bbc.co.uk/2/hi/africa/8497981.stm>.

³⁰⁰ UN Security Council, *Report of the Secretary-General on the situation in Somalia*, S/2009/132, 9 March 2009, p. 18, <http://www.unhcr.org/refworld/docid/49ba27f72.html>; UN Security Council, *Report of the Secretary-General on Somalia pursuant to Security Council resolution 1863 (2009)*, S/2009/210, 16 April 2009, p. 5, <http://www.unhcr.org/refworld/docid/49f1723c2.html>.

³⁰¹ UN Security Council, *Report of the Secretary-General on Somalia pursuant to Security Council resolution 1872 (2009)*, S/2009/503, 2 October 2009, <http://www.unhcr.org/refworld/docid/4acddae92.html>.

³⁰² Amnesty International, *Somalia: Civilians pay the price of intense fighting in Mogadishu*, 4 March 2009, <http://www.unhcr.org/refworld/docid/49b668732.html>.

³⁰³ IRIN, *Somalia: Blast kills group of disabled war veterans in Mogadishu*, 14 September 2009, <http://www.unhcr.org/refworld/docid/4ab892252.html>. See also IRIN, *Somalia: Vulnerable children hardest-hit in Mogadishu fighting*, 14 July 2009, <http://www.unhcr.org/refworld/docid/4a5d996d1e.html>. See also Amnesty International, *Somalia: End indiscriminate shelling in Mogadishu*, 19 June 2009, <http://www.unhcr.org/refworld/docid/4a56080d2.html>. See also BBC News, *Shelling 'kills Somali civilians'*, 22 October 2009, <http://news.bbc.co.uk/2/hi/africa/8319917.stm>. See also, Elman Peace Centre, *Shell fire kills at least 30 in Mogadishu*, 22 October 2009, http://www.elmanpeace.org/news-2009-Oct-22/13/shell_fire_kills_at_least_30_in_mogadishu.aspx.

³⁰⁴ CNN, *Fighting in Somalia kills 18, wounds dozens*, 13 April 2010, <http://edition.cnn.com/2010/WORLD/africa/04/12/somalia.fighting/index.html?hpt=T2>.

³⁰⁵ UNHCR, *New fighting erupts in Somalia, number of casualties increases*, Briefing Notes, 1 October 2009, <http://www.unhcr.org/4ac5d8ed9.html>.

³⁰⁶ MSF, *66 women and children injured by indiscriminate shelling, admitted to Daynite Hospital in Mogadishu, Somalia*, <http://www.msf.org/msfinternational/invoke.cfm?objectid=93C50769-15C5-F00A-25CF88378425ACDB&component=toolkit.article&method=full.html>, The MSF Head of Mission stated that all parties are to blame for indiscriminate shelling.

and injuries, and frequently resulting in territorial stalemates.³⁰⁷ While Mogadishu has consistently been at the centre of the conflict, other parts of southern and central Somalia are also being affected by the violence³⁰⁸ including areas in Galgadud and Hiraan.³⁰⁹ There are reports of population displacements due to violence from Jowhar to Harardhere. Fighting between Hizbul Islam and ASWJ around the central towns of Dhusamareb and Beletweyne displaced more than 25,000 people at the beginning of 2010.³¹⁰

Aggravating the situation of large scale population displacements due to the ongoing conflict is food insecurity. The suspension of food distribution by WFP to most regions of southern and central Somalia is compounded by the drought affecting many IDP camps and host communities. The conflict is also taking a toll on the logistical capacities of aid organizations to deliver much needed assistance to populations in need as the conflict affects main road arteries³¹¹ and due to threats against humanitarian workers.

Given the above, UNHCR considers that the prevailing situation in southern and central Somalia with the reported high frequency of significant casualties among the civilian population represents events seriously disturbing public order in the meaning of the extended refugee definition of Article I(2) of the OAU Convention or – in the European context – a situation of indiscriminate violence in a situation of internal armed conflict in the meaning of Article 15(c) of the EU Qualification Directive.³¹² In addition, UNHCR considers that no reliable safety zones exist in southern and central Somalia given the unpredictable evolution of the conflict, characterized by constant struggle for territorial control by parties to the conflict and outbreaks of violence in previously unaffected areas and, therefore, any individual present on the territory would be at risk of serious harm.

2. *Armed Conflict in Puntland and Somaliland*

Territorial disputes between Puntland and Somaliland and within each entity have, in recent years, resulted in violent clashes. The Sool and Sanaag regions are claimed by both Puntland and Somaliland. Somaliland troops took control of Sool and Sanaag regions and Somaliland is governing all three territories.³¹³ There are reports that Somaliland troops continue to occasionally fight militia loyal to Puntland in these areas and there are sporadic reports of bombings, assassinations and civilian

³⁰⁷ IRIN, *Somalia: Mogadishu battle "marks turning point"*, 15 July 2009, <http://www.unhcr.org/refworld/docid/4a642a0d2c.html>.

³⁰⁸ IRIN, *Somalia: Record number of displaced at 1.5 million*, 7 September 2009, <http://www.unhcr.org/refworld/docid/4aae3fa71a.html>.

³⁰⁹ OCHA, *Somalia: Dwindling shelter and little water*, 13 April 2010, <http://www.irinnews.org/report.aspx?ReportID=87977>, At least 29,000 fled Dhusamareb in Galgadud, while 25,000 fled renewed clashes in Beled Weyne in Hiraan, UNHCR said in February 2010.

³¹⁰ Human Rights Watch, *Harsh War, Harsh Peace*, 19 April 2010, 1-56432-621-7, <http://www.unhcr.org/refworld/docid/4bcd64c82.html>.

³¹¹ IRIN, *Somalia: Millions to remain in need of aid, says agency*, 21 July 2009, <http://www.unhcr.org/refworld/docid/4a682441c.html>. See also Internal Displacement Monitoring Centre (IDMC), *Somalia: Political and Security Crises, Access Limits and Donor Cuts Increasing IDP Vulnerability*, 10 December 2009, <http://www.unhcr.org/refworld/docid/4b20f2df2.html>.

³¹² AM & AM (*Armed Conflict: Risk Categories*) Somalia CG [2008] UKAIT 00091, United Kingdom Asylum and Immigration Tribunal, 27 January 2009, <http://www.unhcr.org/refworld/docid/4934f7542.html>, which supersedes previous country guidance in *HH & Others (Mogadishu: Armed Conflict: Risk) Somalia* CG [2008] UKAIT 00022 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.”

³¹³ Somaliland Press, *Puntland president vows to recapture Sool, Sanaag and Cayn from Somaliland*, 2 August 2009, <http://somalilandpress.com/7827/puntland-president-vows-to-recapture-sool-sanaag-and-cayn-from-somaliland/>.

casualties.³¹⁴ Many of those displaced from these areas are reportedly too fearful to return, particularly those who had supported Puntland forces which lost control of the territories.³¹⁵

However, UNHCR considers that a situation of generalized violence or events seriously disturbing public order does not exist to the extent that an individual present in either Puntland or Somaliland would be at risk of serious harm.

³¹⁴ Somaliland Press, *Somaliland Forces Advance Towards Puntland*, 24 April 2009, <http://somalilandpress.com/4647/somaliland-forces-advance-towards-puntland/>. See also United States Department of State, *2009 Country Reports on Human Rights Practices - Somalia*, 11 March 2010, <http://www.unhcr.org/refworld/docid/4b9e52bdc.html>.

³¹⁵ IRIN, *Somalia: Instead of a safe haven, fear and rape in Galkacyo*, 23 September 2009, <http://www.unhcr.org/refworld/docid/4abb2d9d1a.html>.

V. Annex: Somali Clans, Customary Law, Social Norms and Structures

This annex aims to provide background on clans and customary law which continue to expose certain profiles to human rights violations. This section does not attempt to cover the issue comprehensively, however, some key points are highlighted which are relevant during asylum procedures, while references are provided for further reading.

Somalis are not an ethnically homogenous population, and there are significant variations in culture and language, especially between communities in southern and central Somalia.³¹⁶ There is, however, a ‘dominant’ ethnicity associated with the northern pastoralist groups, the *Samaal*, whose social structures have become pervasive in Somali society over several centuries. The history of the *Samaal* expansion into modern-day southern and central Somalia has been one of interaction with, but eventually domination of other ethnic groups, including of the sedentary agro-pastoralists in the inter-riverine area, as well as other minority or “out-caste” groups.³¹⁷ The latter non-*Samaal* groups have either been allowed to adapt to *Samaal* culture, or face social exclusion, discrimination and, in some cases, persecution.

A. Dominant Social Structures³¹⁸

The position of a Somali vis-à-vis the clan system of the *Samaal* continues to be a primary defining factor in that person’s social relations, access to justice and other civil and political rights, and their political allegiances.³¹⁹

The clan structure is based on a “vertically oriented segmentary lineage system”³²⁰ in which an individual’s clan identity is passed down through the male line. The segmentary lineage system can be differentiated into categories of *clan-family*, *clan*, *sub-clan*, *primary lineage* and *mag-paying group* as divisions of varying size.

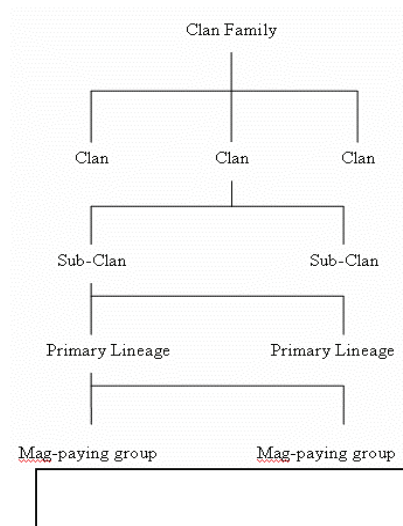
³¹⁶ World Bank, *Conflict in Somalia: Drivers and Dynamics*, January 2005, p. 7, <http://siteresources.worldbank.org/INTSOMALIA/Resources/conflictinsomalia.pdf>. Cf. I.M. Lewis, *A Pastoral Democracy: A Study of Pastoralism and Politics Among the Northern Somali of the Horn of Africa*, James Currey, 1961; Lee Cassanelli, *Shaping of Somali Society (1600 to 1900)*, Philadelphia, Pennsylvania Press, 1982; and Ahmed Jimale Ahmed, *The Invention of Somalia*, Lawrenceville, Red Sea Press, 1995.

³¹⁷ Joakim Gundel, *The Predicament of the ‘Oday’: The Role of Traditional Structures in Security, Rights, Law and Development in Somalia*, Danish Refugee Council/OXFAM Novib, November 2006, p. 4, <http://siteresources.worldbank.org/INTJUSFORPOOR/Resources/ThePredicamentoftheOday.doc>. See also I.M. Lewis, *A Modern History of the Somali, Eastern African Studies*, James Currey, 4th rev. edition, 2002, pp. 27-32, on the expansion of the Somali from the northern coast into what is now southern and central Somalia.

³¹⁸ The following section is summarized from Joakim Gundel, *The Predicament of the ‘Oday’: The Role of Traditional Structures in Security, Rights, Law and Development in Somalia*, Danish Refugee Council/OXFAM Novib, November 2006, p. 2, <http://siteresources.worldbank.org/INTJUSFORPOOR/Resources/ThePredicamentoftheOday.doc>, which provides a concise description of the social structure of nomadic pastoralists. See also Guido Ambroso, *Clanship, Conflict and Refugees: Somalis in the Horn of Africa*, Unpublished / Manuscript, Brussels, March 2002, based on I.M. Lewis, *A Pastoral Democracy: A Study of Pastoralism and Politics Among the Northern Somali of the Horn of Africa*, James Currey, 1961.

³¹⁹ G. Prunier, *Somalia: Civil War, Intervention and Withdrawal (1990-1995)*, Refugee Survey Quarterly Vol. 15(1), 1996, p. 36.

³²⁰ Joakim Gundel, *The Predicament of the ‘Oday’: The Role of Traditional Structures in Security, Rights, Law and Development in Somalia*, Danish Refugee Council/OXFAM Novib, November 2006, p. 5, <http://siteresources.worldbank.org/INTJUSFORPOOR/Resources/ThePredicamentoftheOday.doc>.



Although the lineages of *Samaal* can be united by a common descent from a mythical forefather, the *clan-family* is generally the largest grouping defining clan identity.³²¹ The main clan-families include the *Darod*, *Hawiye*, *Dir* and, arguably, the *Isaaq*.³²² The *Rahanweyn*,³²³ currently inhabiting parts of Bay, Bakool and Gedo regions, are distinct from the pastoralist Somalis, and have a different genealogy, although they claim a similar mythological descent as the *Qurayshi*. The clan-families are often so large that they rarely function as political units; however, clan-family identities have been mobilized and exploited by political leaders,³²⁴ and clan-family identities frame overriding conflict lines.³²⁵

Clan-families are in turn divided into clans and sub-clans, again vertically connected to a common ancestor, generally over 15 to 20 generations. Clans and sub-clans are then divided into primary and secondary lineages, generally between 10 and 15 generations from the individual clan or sub-clan.³²⁶

Perhaps the most immediately evoked social relationship is, however, the “*diya*” or “*mag*” paying groups, a unit consisting of a few hundred to a few thousand close patrilineal kinsmen (known as

³²¹ Ibid.

³²² Footnote extracted from Joakim Gundel, *The Predicament of the ‘Oday’: The Role of Traditional Structures in Security, Rights, Law and Development in Somalia*, Danish Refugee Council/OXFAM Novib, November 2006, p. 5, <http://siteresources.worldbank.org/INTJUSFORPOOR/Resources/ThePredicamentoftheOday.doc>:

“Already in 1961, IM Lewis described the Isaaq as a clan family in its own right, because the Isaaq so regard themselves despite other Somalis group them with the Dir. Furthermore, they do act as a separate clan-family. According to IM Lewis (1961) the Isaaq claim to descend from Ali Bin Abi-Talib and not his brother Aqil as the other clans claim. However, this is a contentious issue which also plays into the present perceptions of the right of the Isaaq to claim independence in Somaliland versus the ‘others’ perception of belonging to the Dir and hence duty to join the family of a greater Somali union.”

³²³ Rahanweyn are often referred to as Digil/Mirifle. For the purpose of this paper, the differing clan-family names of Digil, Digil/Mirifle and Rahanweyn are all referred to as ‘Rahanweyn’, although RSD practitioners should note that Somalis may use these names interchangeably.

³²⁴ For an example of use of the Absame as a ‘bridging’ group to try and bring together Ogadeen with Bartere clans for political purposes, see Peter D. Little, *Somalia: Economy without a State; African Issues*, Indiana University Press, November 2003, pp. 48-50.

³²⁵ World Bank, *Conflict in Somalia: Drivers and Dynamics*, January 2005, p. 18, <http://siteresources.worldbank.org/INTSOMALIA/Resources/conflictinsomalia.pdf>.

³²⁶ Guido Ambroso, *Clanship, Conflict and Refugees: Somalis in the Horn of Africa*, Unpublished / Manuscript, Brussels, March 2002, p. 4.

“*tol*”). This group assumes the collective responsibility of paying and receiving blood compensation for a variety of offences, most commonly where a group member is wounded or killed.³²⁷

B. Customary Law (Xeer)

Somali *xeer*, or customary law, are unwritten agreements, passed down orally from generation to generation. Primarily concerning management of daily issues within a clan, *xeer* can and has been expanded to manage inter-clan relations, including marriage, hospitality, rules of resource use, and compensation for crimes committed by members of one clan against another. *Xeer* hold the entire *mag*-paying group collectively responsible for a crime committed by one or more of its members. If the *mag* is not paid, then the aggrieved clan may opt to kill the criminal or other members of that person’s clan – a form of collective criminal responsibility that in theory acts as a deterrent against crimes being committed in the first place, and as a way of enforcing payment compensation. Non-payment and subsequent attacks can set off a cycle of blood vengeance between two clans until elders agree a resolution through peace negotiations and further *mag*-payment.³²⁸

C. Interaction with other ethnic groups

Significant numbers of Somalis are not members of any clan or are broadly grouped as ‘*Sab*’ or ‘non-*Samaal*’. These include people of Arab-Persian descent in coastal cities, Somali-speaking people of slavery heritage, and Islamic Somali-speaking people of non-Somali ancestry along the Shabelle River. The definition of ‘minority groups’ varies between sources, but are generally held to include *Bantu/Jareer* (including *Gosha*, *Makane*, *Shiidle*, *Reer Shabelle*, *Mushunguli*); *Bravenese*, *Rerhamar*, *Bajuni*, *Eeyle*, *Jaaji/Reer Maanyo*, *Barawani*, *Galgala*, *Tumaal*, *Yibir/Yibro*, *Midgan/Gaboye* (*Madhibaan*; *Muuse Dhariyo*, *Howleh*, *Hawtaar*).³²⁹ Other groups are considered minorities, but are closely associated with specific majority clans, such as *Biymaal* with the Dir, and *Sheikhaal* with the *Hawiye*; while the *Rahanweyn* are considered ‘non-*Samaal*’, but dominate and constitute a majority in their home regions. The position of these groups in relation to the *Samaal* clan system and *xeer* varies and has changed over time, as does their access to security, justice and other rights.³³⁰

Minorities may have ethnic origins distinct from *Samaal*, such as *Bantu* people of slavery heritage, and as the *Gosha*, who live in the inter-riverine area. They are called various derogatory names by other Somali clans, such as *boon* (person of low status) and *addoon* (slave), to label and identify the Juba valley slave descendants. Along with other *Bantu*, they are also referred to as *Jareer* (from *tiin Jareer* – meaning ‘hard hair’).³³¹

³²⁷ Guido Ambroso, *Clanship, Conflict and Refugees: Somalis in the Horn of Africa*, Unpublished / Manuscript, Brussels, March 2002, p. 4.

³²⁸ Joakim Gundel, *The Predicament of the ‘Oday’: The Role of Traditional Structures in Security, Rights, Law and Development in Somalia*, Danish Refugee Council/OXFAM Novib, November 2006, p. 9, <http://siteresources.worldbank.org/INTJUSFORPOOR/Resources/ThePredicamentoftheOday.doc>.

³²⁹ UNOCHA Somalia, *A Study on Minorities in Somalia*, UNCU/UNOCHA Somalia, July 2002, <http://somraf.org/downloads/SOMALIA%20-%20COUNTRY%20OF%20ORIGIN%20INFORMATION%20REPORT-%20UK%202008.pdf>; see also Lee Casanelli, *Victims and Vulnerable Groups in South Somalia*, Immigration and Refugee Board of Canada, 1995, <http://somraf.org/downloads/VICTIMS%20AND%20VULNERABLE%20GROUPS%20IN%20SOUTHERN%20SOMALIA%20by%20Lee%20Casanelli%20%201995.pdf>; see also Gundel, Joakim, *Clans in Somalia*, ACCORD Workshop, Vienna, 15 May 2009 [unpublished; available through ACCORD or UNHCR].

³³⁰ Catherine Besteman, *Unravelling Somalia: Race, Violence and the legacy of Slavery*, University of Pennsylvania Press, 1999, p. 21; see also Somali Minority Rights and Aid Forum website for minority clan lists, <http://www.somraf.org/clans.htm>; Minority Rights Group International, *State of the World’s Minorities and Indigenous Peoples 2009 – Somalia*, 16 July 2009, <http://www.unhcr.org/refworld/docid/4a66d9a64b.html>.

³³¹ Catherine Besteman, *Unravelling Somalia: Race, Violence and the legacy of Slavery*, University of Pennsylvania Press, 1999, p. 115.

Some ‘Out-caste’ groups, including the *Yibir*, *Tumal* and *Midgan*, may appear physically similar to *Samaal*, but their inferior or ‘untouchable’ status is reinforced by their association with certain ‘inferior’ occupations and their exclusion from social interaction with *Samaal*, including prohibition for a majority clan member to marry a person from such an outcaste group.³³² The *Tumaal* are traditional blacksmiths, making spears, knives, arrowheads and swords. The *Yibir* and *Midgan* are traditionally hunters and weavers. *Midgan* are also referred to collectively as *Mahdiban*, *Boon*, or *Gaboye*, depending on the location.³³³ These occupational castes traditionally could not own cattle or horses, or other ‘noble’ possessions and their work opportunities were mainly confined to menial jobs or specific trades.³³⁴

The *Rahanweyn* in Bay, Bakool and Gedo regions differ from the *Samaal* in their practices, their culture and their language. As sedentary agriculturalists, the *Rahanweyn* developed more hierarchical and static social structures prior to the migration of the *Samaal* to the south.³³⁵ Through gradual interaction with *Samaal*, the *Rahanweyn* adapted and developed mixed lineages, and today are divided into two main sub-clan groupings known as ‘*Sieed*’ and ‘*Sagaal*’ (the eight and the nine), which refers to the number of sub-clans under each clan.³³⁶ Although a relatively strong clan, *Rahanweyn* can face the same discrimination and/or persecution as minority groups when outside their home regions.

Distinctions can also be made between groups by differences in language. *Benadiri*, for example, speak a different dialect from the standard Somali *Af-Mathiri*. The *Benadiri* of Mogadishu speak a dialect called *Af-Reer Hamar*; the dialect spoken by *Benadiri* in Merka is called *Af-Merka*; and for those in Brava, the dialect is *Af-Brava*. The first two sub-dialects, *Af-Merka* and *Af-Hamar*, are quite similar and can be understood by other *Benadiri*.³³⁷ Groups such as *Eeyle*, *Madhibaan*, *Tumal* and *Yibir* speak the Somali dialect of the clan to which they are attached, although the *Midgan* and *Yibir* also have a special dialect that the major Somali clans do not understand. The *Rahanweyn* speak a separate Somali dialect called *Af-May*, which was ignored when “standard” Somali was adopted as the official language of the State.³³⁸ While some ‘*Bantu*’ groups have maintained their own dialect, with a heavy influence of Swahili, many dialects have been lost. Many of the groups however speak standard Somali and other Somali dialects. The *Mushunguli* of Lower Juba speak ‘*Kizigua*’ while others speak the language of their ancestors who originally came from Tanzania, Malawi and Mozambique.³³⁹

³³² Danish Immigration Service, *Report on political, security and human rights developments in southern and central Somalia, including South West State of Somalia, and Puntland State of Somalia: Joint British - Danish fact-finding mission to Nairobi (Kenya) and Baidoa and Belet Weyne (Somalia) (20 May to 1 June 2002)*, 25 July 2002, southern and central. p. 55, <http://www.unhcr.org/refworld/docid/3df8c0ec2.html>; see also Professor Asha A. Samad, *Statement to The Committee on the Elimination of Racial Discrimination*, August 2002, Brief Review of Somali Outcaste Groups, <http://www.madhibaan.org/news/news-post-02-08-1.htm>.

³³³ Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), *Ethiopia: Treatment of Madhiban/Midgan/Medigan minority clan originating from the Ogaden area by Ethiopian forces in the area and by members of majority clans*, 20 May 2009, a-6754, <http://www.unhcr.org/refworld/docid/4a16a50b2.html>.

³³⁴ Danish Immigration Service, *Report on Minority groups in Somalia*, 24 September 2000, p. 52, <http://www.unhcr.org/refworld/docid/3ae6a5fa0.html>.

³³⁵ Joakim Gundel, *The Predicament of the ‘Oday’: The Role of Traditional Structures in Security, Rights, Law and Development in Somalia*, Danish Refugee Council/OXFAM Novib, November 2006, p. 32, <http://siteresources.worldbank.org/INTJUSFORPOOR/Resources/ThePredicamentoftheOday.doc>.

³³⁶ Ibid. See also I.M Lewis, *A Modern History of the Somali, Eastern African Studies*, James Currey, 4th rev. edition, 2002, pp. 13-14. For a detailed analysis of the *Rahanweyn*, see Bernhard Helander, *Rahanweyn Sociability: A Model for Other Somalis?*, Voice and Power, ed. R.J. Hayward & I.M. Lewis, African Languages and Culture Supplement 3, 1996, pp. 195-204.

³³⁷ Danish Immigration Service, *Report on Minority groups in Somalia*, 24 September 2000, p. 42, <http://www.unhcr.org/refworld/docid/3ae6a5fa0.html>.

³³⁸ Ibid, p. 57.

³³⁹ Ibid, p. 33.

D. Clan Protection and Customary Legal Justice

Discrimination against minority groups is embedded in the history of Somalia. Many groups have long faced exclusion from economic, political and social spheres dominated by *Samaal*.³⁴⁰ At one extreme, being a member of an outcaste group has been described as to “suffer life-long indignities, to be deemed impure, unlucky, sinful, polluting, and thus meriting the disdain, avoidance, and abuse of others.”³⁴¹ Such treatment continues today. UNHCR discussions with *Eeyle* in Bayhdaba in early 2009 revealed that their women were not even allowed to collect water from the same well as the dominant *Rahanweyn*; while, despite their desperate poverty, the *Eeyle* asked UNHCR not to be provided humanitarian assistance for fear that they would be looted by dominant clan members as a result.³⁴²

It was the civil war of the 1990s and rise of clan-based violence at the national level, which exposed many minority groups to massive and widespread human rights abuses.³⁴³ The role of some minority groups within the Barre government, from whom they received limited protection, exacerbated attacks on such groups when the State collapsed.³⁴⁴ The subsequent inter-clan violence led to massacres, ethnic cleansing, and a massive exodus of displaced persons in all directions. Hundreds of thousands of Somalis crossed the Kenyan and Ethiopian borders. In the south, armed battles swept across the countryside between factions of the *Darod* and *Hawiye* clans.³⁴⁵ In the midst of the fighting, non-*Samaal* agricultural communities in the Bay region, the Lower Shabelle and the Juba valley, were repeatedly looted and attacked by all sides until they were starving.³⁴⁶

Although the abuses against minorities have reduced in scale since the 1990s, low intensity violence against minorities continues to characterize Somali society today, largely because the same underlining social structures are still active. While social exclusion of minorities, including prohibition on inter-marriage and unequal social and political rights, may have been grounded upon disdain for their ethnic origin, violations of minorities’ rights occur primarily because they lack the threat of military force.³⁴⁷

Resolution of a dispute between majority clan members, for instance, over a killing, relies on negotiation between elders using established *xeer*, the subsequent setting of compensation, and payment within a specified time-frame. This process is initiated and enforced by the threat of force – blood vengeance is the fall-back option for the aggrieved clan if they are not satisfied by the terms of the resolution. Military capacity is therefore a crucial factor in deterring attacks and enforcing

³⁴⁰ UNOCHA Somalia, *A Study on Minorities in Somalia*, UNCU/UNOCHA Somalia, July 2002; p. 3, <http://somraf.org/downloads/SOMALIA%20-%20COUNTRY%20OF%20ORIGIN%20INFORMATION%20REPORT-%20UK%202008.pdf>.

³⁴¹ Professor Asha A. Samad, *Statement to the Committee on the Elimination of Racial Discrimination*, August 2002, Brief Review of Somali Outcaste Groups, <http://www.madhibaan.org/news/news-post-02-08-1.htm>.

³⁴² UNHCR Mission Report, Bayhdaba, Bay Region, March 2009 [unpublished]. The latter findings are supported by a description of the *Eeyle* in Danish Immigration Service, *Report on Minority groups in Somalia*, 24 September 2000, pp. 47-48, <http://www.unhcr.org/refworld/docid/3ae6a5fa0.html>.

³⁴³ Danish Immigration Service, *Report on Minority groups in Somalia*, 24 September 2000, p. 9, <http://www.unhcr.org/refworld/docid/3ae6a5fa0.html>.

³⁴⁴ Danish Immigration Service, *Report on political, security and human rights developments in southern and central Somalia, including South West State of Somalia, and Puntland State of Somalia: Joint British - Danish fact-finding mission to Nairobi (Kenya) and Baidoa and Belet Weyne (Somalia) (20 May to 1 June 2002)*, 25 July 2002, 21 <http://www.unhcr.org/refworld/docid/3df8c0ec2.html>.

³⁴⁵ John Prendergast, *The Forgotten Agenda in Somalia*, *Review of African Political Economy*, Vol. 21, No. 59, March 1994, pp. 67-68.

³⁴⁶ World Bank, *Conflict in Somalia: Drivers and Dynamics*, January 2005, p. 11, <http://siteresources.worldbank.org/INTSOMALIA/Resources/conflictinsomalia.pdf>.

³⁴⁷ US Department of State: *Country Reports on Human Rights Practices 2008 – Somalia*, 25 February 2009, Section 5, <http://www.state.gov/g/drl/rls/hrrpt/2008/af/119024.htm>.

compensation.³⁴⁸ Minority groups often do not have sufficient military capacity, which, in turn, means that majority clans have no incentive to negotiate or pay compensation to minorities when one of their members attacks the minority group.³⁴⁹ This effectively allows members of majority clans to abuse minorities with impunity.³⁵⁰

The extent of this impunity does vary depending on location and on whether a client-patron relationship has been forged between a minority and the majority clans. In the mid-1990s, in their home areas, especially where living in homogenous communities away from majority clans, some minority groups did develop some military capacity to at least stave off attacks from majority clan militias.³⁵¹ For instance, although not strictly a minority,³⁵² *Rahanweyn* clans are militarily strong in their home regions and would be a force to reckon with for *Samaal* clans living in or near to these areas. However, when *Rahanweyne* are displaced outside of their home areas, for instance, to Puntland and Somaliland, their lack of military strength in these areas leaves them with little recourse or deterrent.³⁵³

By comparison, for some majority clans, clan protection can stretch into areas where other majority clans are more dominant, even though the former lack military strength in that area. For instance, if a Darod/Marjerteen was killed in Somaliland by an Isaaq, compensation might not be immediately paid by the offending Isaaq sub-clan, given that the Darod/Marjerteen are outside of their home area of Puntland. However, if no compensation is provided, it is very likely that an Isaaq living in Puntland would be targeted by the Darod/Marjerteen in revenge. There is therefore some incentive to provide due process for majority clans outside of their home area, although depending on the relationship between the majority clans, and whether other political factors come into play, such as the Somaliland-Puntland conflict.

Client-patron relationships between minorities and majority clans have also acted as a means of protection for minority groups. A majority clan can extend its protection to a minority group through mutual agreement, although the options available or ability to negotiate the agreement for minority groups would, of course, be very limited. For instance, through adoption (*'sheegad'*), a minority group may be allowed to take on the lineage of the majority clan, to the extent that the majority clan will protect the minority and even pay 'mag'/compensation should they come into conflict with another clan.³⁵⁴ Other mechanisms involve the minority making a payment to the majority in return for protection, but these arrangements appear to be more unstable and/or exploitative. For instance, in the early 2000s, *Shiidle* 'jareer' groups in Jowhar paid a local Hawiye/Abgal warlord taxes on their agricultural produce, in return for security guarantees.³⁵⁵ Such arrangements are inherently unstable,

³⁴⁸ Joakim Gundel, *Clans in Somalia: A report on a lecture by Joakim Gundel*, COI Workshop, ACCORD, Austria, 15 May 2009, p. 19 <http://www.ecoi.net/news/190134::somalia/79.report-based-on-coi-workshop-clans-in-somalia.htm>.

³⁴⁹ US Department of State: *Country Reports on Human Rights Practices 2008 – Somalia*, 25 February 2009, Section 5, <http://www.state.gov/g/drl/rls/hrrpt/2008/af/119024.htm>; Andre Le Sage, *Stateless Justice in Somalia: Formal and Informal Rule of Law initiatives*, Centre for Humanitarian Dialogue, July, 2005, p. 36, http://www.hdcentre.org/files/Somalia_report.pdf.

³⁵⁰ US Department of State, *Country Report on Human Rights Practices 2006*, 6 March 2007, <http://www.state.gov/g/drl/rls/hrrpt/2006/78757.htm>, section on National/Racial/Ethnic Minorities; Andre Le Sage, *Stateless Justice in Somalia: Formal and Informal Rule of Law initiatives*, Centre for Humanitarian Dialogue, July, 2005, p. 36, http://www.hdcentre.org/files/Somalia_report.pdf.

³⁵¹ Danish Immigration Service, *Report on Minority groups in Somalia*, 24 September 2000, p. 22, <http://www.unhcr.org/refworld/docid/3ae6a5fa0.html>.

³⁵² Ibid, p. 56.

³⁵³ Inter-Agency Standing Committee, *Mixed Migration through Somalia and across the Gulf of Aden*, April 2008, p. 12, <http://www.unhcr.org/refworld/docid/484d44ba2.html>; UNHCR, *UNHCR Participatory Assessment, Gaalkacyo*, February to March 2007; UNHCR, *UNHCR/DRC Rapid Assessment*, Bossaso, November 2007 (not published online; available from UNHCR Somalia).

³⁵⁴ Joakim Gundel, *The Predicament of the 'Oday': The Role of Traditional Structures in Security, Rights, Law and Development in Somalia*, Danish Refugee Council/OXFAM Novib, November 2006, p. 57, <http://siteresources.worldbank.org/INTJUSFORPOOR/Resources/ThePredicamentoftheOday.doc>.

³⁵⁵ Ibid, pp. 40 and 57-58.

especially in turbulent southern and central Somalia, where sudden shifts in power and control of territory between majority clans can leave protection agreements invalidated or supposed ‘protectors’ no longer able to fulfill their part of the bargain.³⁵⁶

Inter-clan marriages between majority clans or their sub-clans are encouraged through the mag-compensation negotiations, and are sometimes part of the actual agreement.³⁵⁷ Women maintain their original family’s clan identity, although any resulting children will bear the clan of the father. Such maternal clan linkages can inject into clan relations a “vital flexibility for individuals conducting business or seeking security across clan lines”.³⁵⁸ A mother’s clan identity does not systematically provide clan protection guarantees for her children or her husband, but blood ties do add an extra incentive for seeking negotiation and compromise before conflict.³⁵⁹ Again, most minority groups and especially outcaste clans do not inter-marry with majority clans, although some minorities are more acceptable for marriage than others.³⁶⁰

National political dynamics do interact with clan relations at national and local levels and vice-versa. Somaliland, a self-proclaimed yet unrecognized State, has defined Somaliland citizenship primarily through membership of clans considered to originate from Somaliland territory, and officially the government treats persons from Puntland or southern and central Somalia as ‘foreigners’.³⁶¹ Animosity against southern and central Somalia clans came to the fore after a suicide bombing in Hargeisa in October 2008, allegedly by Islamists originating from southern and central Somalia. National security and identity trumped any clan protection considerations, with the Somaliland government and civilian groups harassing and attacking persons from southern and central Somalia clans.³⁶²

The sub-clan level of the applicant to be identified during asylum procedures is that which is most relevant, either as a trigger, mitigating or exacerbating factor, of the persecution in the eyes of the agent of persecution. For instance, if an applicant has fled to avoid a blood feud, then the applicant’s mag-paying group, and that of the opposing clan, should be established. A blood feud in Gaalkacyo, for instance, means little at the clan family level of the applicant.

Other threats could be triggered by the higher clan-levels of the applicant, for instance, a Darod/Majerteen found in Mogadishu today may be killed by a Hawiye/Hebr Gedir simply out of

³⁵⁶ For instance, Marehan dominance of Kismaayo was suddenly overturned by Islamist militias in August 2008; see *IASC Somalia PMN*, 22 August 2008, <http://ochaonline.un.org/OchaLinkClick.aspx?link=ocha&docId=1093670>.

³⁵⁷ Joakim Gundel, *The Predicament of the ‘Oday’: The Role of Traditional Structures in Security, Rights, Law and Development in Somalia*, Danish Refugee Council/OXFAM Novib, November 2006, p. 55 <http://siteresources.worldbank.org/INTJUSFORPOOR/Resources/ThePredicamentoftheOday.doc>; Joakim Gundel, *Clans in Somalia: A report on a lecture by Joakim Gundel*, COI Workshop, ACCORD, Austria, 15 May 2009, p. 14 <http://www.ecoi.net/news/190134::somalia/79.report-based-on-coi-workshop-clans-in-somalia.htm>.

³⁵⁸ Danish Immigration Service, *Report on Minority groups in Somalia*, 24 September 2000, pp. 8-9, <http://www.unhcr.org/refworld/docid/3ae6a5fa0.html>.

³⁵⁹ Joakim Gundel, *The Predicament of the ‘Oday’: The Role of Traditional Structures in Security, Rights, Law and Development in Somalia*, Danish Refugee Council/OXFAM Novib, November 2006, p. 55 <http://siteresources.worldbank.org/INTJUSFORPOOR/Resources/ThePredicamentoftheOday.doc>.

³⁶⁰ An example being the ‘Golcade’ minority, outcaste from within the Darod/Ogadeni clan family. Their outcaste status is not widely known by other Samaal clans, so, for instance, Golcade have been known to inter-marry with Isaaq, and live relatively safely in Somaliland. A well-known and popular Somali musician from the Golcade has arguably positively changed the perception of his clan. UNHCR Somalia correspondence with the Canadian High Commission, Nairobi, 3 July 2009, on-file with UNHCR Somalia. See also Minority Rights Group International, *State of the World’s Minorities and Indigenous Peoples 2009 – Somalia*, 16 July 2009, <http://www.unhcr.org/refworld/docid/4a66d9a64b.html>.

³⁶¹ Kenneth Menkhaus, *Somalia: A Situation Analysis and Trend Assessment*, WRITENET, 1 August 2003, p. 27, <http://www.unhcr.org/refworld/docid/3f7c235f4.html>.

³⁶² IRIN, *Somalia: Suicide bombers strike Bossaso, Hargeisa, killing dozens*, 29 October 2008, <http://www.unhcr.org/refworld/docid/490ad4cdc.html>; see also *IASC Somalia PMN*, 16 November 2008, <http://ochaonline.un.org/OchaLinkClick.aspx?link=ocha&docId=1096207>.

revenge for acts committed by the previous Darod/Majerteen-dominated TFG against Hawiye civilians in Mogadishu in 2007 and 2008. The victim's mag-paying group is irrelevant, the agent of persecution was only interested in attacking a member of the ex-President's broader clan grouping.

Even when the primary reason for persecution feared appears to be, for instance, political opinion, the clan identity of the applicant will influence the extent or impact of the persecution. For instance, an applicant may be a journalist working in Mogadishu arrested by the National Security Agency in early 2008 because of broadcasting details of civilian deaths that occurred during clashes in the capital. If, in addition, he belonged to the Hawiye/Hebr Gedir/'Ayr sub-clan, which was perceived to be associated with the insurgency, he could be suspected of insurgent links, face more intensive interrogation and torture, and be detained for a longer period. If he was of the Hawiye/Hebr Gedir/Sa'ad sub clan, as police chief Qeybdid, he might have avoided arrest in the first place, or been able to call upon a family member in the police to secure his release. That being said, even if he was not Sa'ad, but had maternal clan links to someone in the police or NSA, he may have been able to draw on these links also to reduce the length of his detention.

Clan identity as a factor which can exacerbate or mitigate against persecution for reasons of the applicant's political opinion, reflect the interaction between political interests at the national level with local and primarily clan-based interests. During this interaction, the agent of persecution at the national level assesses whether his political interest in persecuting the applicant outweighs the consequences he would face triggered by the applicant's clan identity and the protection this affords. Prior to 2007, the protection afforded by majority clan identity would often trump the national political interest in persecuting the applicant. However, particularly since 2007 in Mogadishu, but increasingly in other regions of southern and central Somalia, this relationship has partially reversed. Clan protection has been undermined and national level political or ideological reasons for persecution are less likely to be deflected by majority clan identity.