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Somalia

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1. Introduction

1.1 This document summarises the general, political and human rights situation in Somalia and provides information on the nature and handling of claims frequently received from nationals/residents of that province. It must be read in conjunction with the Somalia Country Report and any COI Bulletins.

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

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

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

1.4 Asylum and human rights claims must be considered on their individual merits. However, if following consideration, the claim is refused, caseworkers should consider whether the claim can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality, Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail. The information set out below contains relevant country information, the most common types of claim and guidance from the courts, including guidance on whether certain types of claim are likely to be clearly unfounded.

Source documents

1.5 Where paragraph numbers have been cited, these refer to the CIPU Somalia Country Report October 2004. Other source documents are listed at the end of this note.

2. Country assessment

2.1 Political structures

Since the fall of President Siad Barre in January 1991, Somalia has been without a functional, recognised central government, [5.5] [1a] (p 1) making it the longest-running instance of complete state collapse in post-colonial history. [1a] (p 1)

2.1.1 Transitional Federal Parliament and President

2.1.1.1 On 29 January 2004, faction leaders at the two-year Somali National Reconciliation Conference in Kenya completed an agreement that provided for the establishment of a national 275-member Parliament and President. [4.24] By mid-September 2004, 268 of the 275 MPs nominated by the faction leaders and drawn from the four major clan families and allied clans, had been sworn in and a Speaker elected. [2a] (p 2) On 10 October 2004, the MPs elected Abdullahi Yusuf Ahmed, the pre-eminent leader of the autonomous region of Puntland, as president of the transitional administration. On 3 November 2004, President Yusuf appointed Ali Mohammed Ghedi, a member of the Hawiye clan and well-known in Mogadishu, as Prime Minister. Ghedi will form a cabinet before the new administration can relocate to Mogadishu. The president and government have a five-year

mandate. The administration has no formal presence in Somalia as yet. It is based in Nairobi for security reasons, as Mogadishu is not considered sufficiently safe. [3a] [4b]

2.1.1.2 The new administration effectively replaces the lapsed Transitional National Government (TNG). Led by President Abdiqassim Salad Hassan, the TNG was established at the Arta peace talks in August 2000 with a three-year mandate. The TNG faced considerable internal opposition from the outset, and was never able to extend its administration beyond portions of Mogadishu and surrounding areas. When its mandate ended in August 2003, it continued to exist more as a political faction representing the Habr Gedir/Ayr clan than as a national authority. [4.16 ? 4.19] [4.22] [4.25] [1a] (p 3)

2.1.2 Somaliland (north west) / Puntland (north east)

2.1.2.1 In Somaliland in the northwest (comprising the regions Awdal, Woqooyi Galbeed, Togdheer, Sanag and Sool), a local de facto administration functions effectively in lieu of a central government. The 'Republic of Somaliland' declared its independence from the rest of Somalia in 1991, although this is not recognised internationally. In terms of clan structure, the Majerteen sub-clan dominates. [5.21- 5.23] [Annex B] Somaliland did not take part in the National Reconciliation Conference in Kenya and following the establishment of the Transitional Federal Parliament and President in the autumn of 2004, re-emphasised its autonomy and territorial boundaries. [3a] [4a]

2.1.2.2 The self-declared "Puntland State of Somalia" in the north-east (comprising Bari, Nugal & northern Mudug), has been led since 1998 by President Abdullahi Yusuf and is dominated by the Isaaq clan family. Puntland has said that it has no aspirations to form a separate state. [5.21- 5.23] [Annex B] A dispute between Somaliland and Puntland over control of Sool and Sanaag regions has been ongoing since December 2003. Troops from both sides are still deployed in the border region and the conflict remains unresolved. [1a] (p 10) [2a] (p 6) A prominent participant in the 2-year reconciliation process in Kenya, Yusuf was elected President of the Transitional Federal Government in October 2004. [3a] He remains the pre-eminent leader in Puntland.

2.1.3 Other parts of southern/central Somalia

2.1.3.1 The zone of Somalia from Galkayo to the Kenyan border is the most volatile portion of the country. The following is a summary of systems of local governance, dominant clan(s), and the main instances of clan-based armed conflict in 2003-4, by region:

2.1.3.2 Central Somalia. The regions of southern Mudug, Galgaduud (where the Habr Gedir clan dominates) and Hiran (Hawadle and Galje'el) lack any meaningful administration beyond local councils of elders. [5.15] [5.17] [6.148] Unusually heavy clan clashes in arid pastoral areas and several small towns have broken out. These have generally been fought over control of wells and pasture, but have spiralled out of control, producing casualty levels sometimes exceeding one hundred people. Inter-clan fighting between Dir and Marehan in Galgaduud region was especially protracted and fierce in late 2003, as have clashes within the Galje'el clan in eastern Hiran region. [1a] (p 7) [6.144 ? 6.148] [2a] (pp 5, 6)

2.1.3.3 Mogadishu has no single authority and is mainly split between faction leaders affiliated to the SRRC, the militias of Musa Sude (Abgal) and small portions occupied by the TNG (Habr Gedir/Ayr). [5.10] [1a] (p 3) The heaviest fighting in Mogadishu has been in the north of the city, pitting Abgal sub-clans and their militia commanders against one another. [2a] (p 5) In May 2004 the militias of Musa Sude and seaport businessman Bashir Raghe clashed when Musa Sude demanded a portion of seaport revenues. Over one hundred died in the fighting, and thousands were displaced. [1a] (pp. 7-8) Intra-Abgal violence spilled over into the southern districts of Medina in mid-2003, and Bermuda in mid-2004. [6.127 ? 6.129] The rest of Mogadishu has not suffered significant armed clashes in 2004. [1a] (pp 7-8) [2a] (p 5)

2.1.3.4 Bay and Bakool. Intra-clan battles within the dominant Rahanweyn clan, stoked by splits within the leadership of the de facto administration led by the Rahanweyn Resistance Army (RRA), resulted in hundreds killed and thousands displaced in parts of Bay and Bakool in 2003. [5.20] [6.140] [1a] (p 8) Some of these attacks intentionally targeted civilians, and included rape. [1a] (p 8) In February 2004, clan elders brokered a peace, allowing the rival militias to reunite in Baidoa town. As of September 2004, this peace has generally held, allowing the region to slowly return to normalcy. [6.141] [1a] (p 8) [2a] (p 5)

2.1.3.5 Gedo. Ongoing disputes over control of key towns between rival sub-clans of the Marehan clan [2a] (p 5) has rendered much of the region one of the more unstable regions in southern Somalia. This insecurity periodically produces flows of refugees across the Kenyan border. [1a] (p 8) Although the region was generally

quiet during 2003 and early 2004, no clear authority has emerged and many of the clans are embroiled in disputes, resulting in occasional killings. In December 2003, Garre militia wrested control of El-Wak from the Marehan. Further intra-Marehan conflict resulted in thousands displaced in Belet-Hawa district in May 2004. [5.18] [6.143]

2.1.3.6 Middle Juba. Armed conflicts have plagued key towns in Middle Juba in 2003-04. Buale was the scene of inter-clan clashes within the Absame clan, and the Jilib area has been conflict-prone due to struggles between local Sheikal and other clans against the Marehan and Ayr clan militias comprising the Juba Valley Alliance (JVA). [1a] (p 8) [6.136 ? 6.137]

2.1.3.7 Lower Juba. The JVA (Marehan/Ayr) established an informal administration in Kismayo June 2001, since when it established a system of tax collection and disarmament campaigns. [5.12] [6.135] Tensions within the JVA in 2003-4 have led to recurring security incidents and firefights, as unpaid Marehan militias demand salaries from the JVA. These militias have at times occupied the Kismayo seaport. In September 2004, General Morgan (Marehan) and his mainly Majerteen militia and local opposition clan militias, attempted an unsuccessful bid to take Kismayo by force from the divided JVA. [2a] (p 5) Kismayo, perhaps the most unstable city in southern Somalia since 1990, remains tense following the failed attack. [1a] (p 8)

2.1.3.8 Lower Shabelle. As outside clan militias (Habr Gedir/Ayr) occupy much of this valuable riverine region, endemic outbreaks of violence here are typically associated with land rights and political control. In 2004, clashes over land occurred in the Afgoye areas between the militias of Indha Adde (Ayr), which occupy Merka, and Mohamed Qanyare (Murosade). [5.13] [1a] (p 8) [2a] (p 5)

2.1.3.9 Middle Shabelle has been dominated by the Abgal sub-clan and the administration of Mohammed Dhareh since the early 1990s. Tensions between competing faction led by Mogadishu warlord Musa Sude and Dhareh led to fierce clashes around Jowhar in July 2003, although calm was restored by early September 2003. Overall Jowhar stabilised through the course of 2003. In 2004, Dhareh maintained control of the areas down to Balad and Mahaday. [5.14 & 6.163]

2.2 Human Rights situation

2.2.1 The country's human rights situation remained poor and serious human rights abuses continued in 2003. The UNCHR position paper of January 2004 stated "Throughout the country, human rights violations remain endemic. These include murder, looting and destruction of property, use of child soldiers, kidnapping, discrimination of minorities, torture, unlawful arrest and detention, and denial of due process by local authorities. ... The prolonged absence of a central government complicates efforts to address the human rights violations. While the de facto authorities are accountable for the human rights situation in the areas they control, many are either not aware of or choose to ignore international conventions, or do not have the capacity to enforce respect for human rights and justice." [6.1]

2.2.2 The human rights situation is significantly better in Somaliland and Puntland than in other parts of Somalia. Somaliland and Puntland have constitutions that provide for citizens' rights and have civic institutions that provide a degree of protection to individuals; the human rights situation reportedly continues to improve in these two regions. [5.3 - 5.4, 5.22 - 5.23, 5.29 - 5.30 & 6.3] [1a] (p 19) There are a number of local and international NGOs engaged in human rights activity currently operating in southern Somalia, though their presence is subject to change according to the prevailing security conditions and the will of de facto administrations. [6.13 - 6.19] The human rights groups located in Somaliland are able to operate freely while those based in Puntland however are shown little tolerance by the political authorities. [6.11] [6.12]

2.2.3 Somali society is characterised by membership of clan families (which are sub-divided into clans and sub-clans) or membership of minority groups. An individual's position in Somalia depends to a large extent on his/her clan origins. In general terms, a person should be safe in an area controlled by his/her clan, and any person, irrespective of clan or ethnic origin, will be safe from general clan-based persecution in Somaliland and Puntland, if he or she is able to relocate into those territories. [6.65 ? 6.67] [Annexes B & C]

2.2.4 Societal discrimination against women is widespread [6.94] and the practice of female genital mutilation almost universal. [6.99] Instances of gender-based violence are increasing, including rape and domestic violence. [6.96 ? 6.97] The cultural attitudes of traditional elders and law enforcement officials routinely result in restrictions on women's access to justice, denial of their right to due process and their inhumane treatment in detention [6.90] [6.95].

2.2.5 The overwhelming majority of Somalis are Sunni Muslims and Islam has been declared the 'official' religion by some local administrations. [6.29] The Sunni majority may view non-Sunni Muslims and people observing other faiths with suspicion. [6.32] There have been reports of non-Muslims experiencing societal harassment problems because of their religion, in particular where an attempt has been made to convert Muslims. This practice is illegal in Somaliland and Puntland and effectively blocked by informal social consensus elsewhere. [6.31]

2.2.6 There is no national judicial system or police force, however regional administrations have some functioning courts and civilian police forces. In most areas the locally organised judiciary is an inconsistent mixture of traditional and customary justice, Islamic Shari'a law and the pre-1991 penal code. [5.24] [5.37 - 5.38] In Somaliland and Puntland, where the pre-1991 penal code still generally applies, an accused person can be assisted by a lawyer and has some appeal rights, even in the Shari'a courts [5.29 - 5.30]; the Transitional Charter of the TNG contained a similar provision, but which was never implemented. [5.27] The right to representation by an attorney and the right to appeal does not exist in most southern/central regions that apply traditional and customary judicial practices or Shari'a law. [5.27 - 5.28] The death penalty is enforced. [5.33]

2.2.7 Since the collapse of central government in 1991 there has not been a national army in Somalia. The TNG attempted to re-establish a national army in November 2000 and maintain a police force in Mogadishu in March 2001, however their effectiveness was temporary and authority limited. [5.35] The Somaliland authorities have established an effective regional army, which numbered 7,000 in August 2002. [5.36] In the absence of a national army or police force, control of the majority of the country continues to be in the hands of factional warlords and their localised majority clan-based militias. [5.39]

2.2.8 Despite the absence of a central government based in the country, there is generally free movement, of both people and goods, within Somalia, although travel between regions may be dangerous at times as bandits operate and militias mount roadblocks to extort tolls. [6.53] Security conditions generally have however continued to improve enough in many parts of the country in recent years to allow many refugees to return to their homes during 2003 and 2004. [6.54] [6.120] [6.122] Scheduled international air services operate to airports in Somaliland, Puntland and Mogadishu from Djibouti, Ethiopia, Kenya and some Middle Eastern states. [6.59]

3. Main categories of claims

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

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

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

3.4 This guidance is not designed to cover issues of credibility. Caseworkers will need to consider credibility issues based on all the information available to them. (For guidance on credibility see paragraph 11 of the API on Assessing the Claim and paragraphs 5.1 to 5.4 below on particular issues relating to claims made by Somalis)

3.5 Also, this guidance does not generally provide information on whether or not a person should be excluded from the Refugee Convention or from Humanitarian Protection or Discretionary Leave. (See API on Humanitarian Protection and API on Exclusion under Article 1F or 33(2) and API on DL)

3.6 Majority Clans

3.6.1 Somali society is characterised by membership of clan families (which are sub-divided into clans and many sub-clans) or membership of minority groups. Clan members are classified as ethnic Somali and minority groups are usually classified as non-ethnic Somali. [6.65] The clan structure comprises four major "noble" clan-families; Darod, Hawiye, Isaaq and Dir. "Noble" in this sense refers to the widespread Somali belief that members of the major clans are descended from a common Somali ancestor, and that the minority clans/groups have a different, usually mixed, parentage. [6.66] Two further clans, the Digil and Mirifle (also collectively referred to as Rahanweyn), take, in many aspects, an intermediate position between the main Somali clans and the minority groups. [6.69]

3.6.2 Treatment The dominant clan in any particular area has generally excluded other clans and minorities from participation in power in that area. [6.67] As a result of this, there are many thousands of internally displaced persons living outside their traditional home area, particularly where rival clan factions have taken control of their home area. [6.119] However, most ethnic Somalis (i.e. those belonging to majority clans) are able to live safely within territories controlled by their clan. Though not usually targeted, civilians will very often know how to escape or avoid being involved in armed clan conflicts. [6.67]

3.6.3 Sufficiency of protection Most Somalis ensure their personal safety by residing in the 'home areas' of their clan, where they are assured full status and protection by their kinship group. [6.67] Generally, only those unable to reside in such areas will not be able to obtain sufficient protection from ill treatment on the basis of clan membership.

3.6.4 Internal relocation. Most majority clan members should be able to reside in an area in which their clan is present. [6.67] Large parts of northern Somalia, namely Somaliland and Puntland, are considered generally safe regardless of clan membership. However, the authorities controlling the Somaliland and Puntland regions have made it clear that they would only admit to the areas they control those who originate from that territory or those who have close affiliations to the territory through clan membership. In the case of majority clan affiliates, this means those associated with the Majerteen in Puntland and the Isaaq in Somaliland. [6.52]

3.6.5 Conclusion It is most unlikely than any Somali belonging to one of the majority clan-families, would be able to demonstrate that he/she has a well-founded fear of persecution within the terms of the 1951 Convention or Humanitarian Protection, on the basis of their clan affiliation alone. Many Somali clans are present in more than one area of Somalia, and also in areas beyond Somalia's borders, and people displaced from their home area may move to other areas populated by their clan. Somalis are increasingly able to both visit and live in cities outside their clan's traditional domain. Consequently, there will always be an area in Somalia in which they can live safely. Any claimant, who belongs to a clan that controls a particular territory, is unlikely to qualify for asylum or humanitarian protection, and such claims are likely to be clearly unfounded. Caseworkers should refer any potential certification cases to the Senior Caseworker.

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

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

3.7 Minority Groups

3.7.1 Minority groups within Somalia include the Bajuni, Bantu, Benadir, Bravanese, Eyle, Midgan, Tumul and Yibir. As with the majority clans several of these individual groups are divided into sub-groups. [6.70] Minority groups are not evenly distributed throughout Somalia; there is a higher concentration in the central and southern parts of the country. However, some groups, such as those with special occupational skills such as the Midgan, Tumul Yibir, and Galgala are more likely to be found in different parts of the country. [6.71]

3.7.2 Treatment The minority groups were the only people in Somalia who, when Siad Barre was overthrown in 1991, did not have their own armed militia to protect them. [6.70] Generally, minority groups remain unarmed and have limited access to whatever social services are available, including health and education. Female members of minority groups have been particularly at risk of rape by clan militias and are generally less able to relocate or obtain protection. [6.71] These groups comprised an estimated two million people, or about one third of the

Somali population. [6.73]

3.7.3 In order to understand the problems facing these groups, it is necessary to bear in mind the overall levels of vulnerability affecting nearly all Somalis. The deterioration of social, economic and political systems has placed most Somalis - save for the warlords, their cadres of lieutenants, and some Somali business leaders in a perpetual state of livelihood and social vulnerability. [6.64] Minority groups have suffered from greater levels of discrimination and exclusion, and thus are generally among the poorest of the poor. Cultural values that label them as inferior and not deserving of equal rights contribute to their low social, economic and political status. Insecurity, and sometimes forced displacement from valuable agricultural lands, has further impoverished these group. [6.73] The following is a synopsis of each group:

3.7.3.1 Bajuni. The small Bajuni population (traditionally fishermen and sailors from coastal settlements and islands south of Kismayo) [6.76] suffered considerably at the hands of Somali militia, have lost property and been prevented from pursuing their traditional livelihoods by occupying Somali clans, principally the Marehan. [6.77] Essentially the plight of the Bajuni is based on the denial of economic access by Somali clans, rather than outright abuse. [6.78] The Bajuni speak a dialect of Swahili (Kibajuni) in addition to Somali. [6.76] Applicants claiming to be Bajuni but who are not able to speak Somali are unlikely to be Somali nationals unless there is a plausible explanation as to why they cannot speak Somali [6.78]

3.7.3.2 Sufficiency of protection/Internal relocation. Those minority groups that are (politically and economically) the weakest, including the Bajuni, are least able to secure protection from extortion, rape and other human rights abuses by criminal elements of more powerful clans and are vulnerable to discrimination and exclusion wherever they reside. [6.73] Internal relocation would not be a reasonable option for those claiming to be a member of the Bajuni group. [6.52] [6.73]

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

KS (Somalia) [2004] UKIAT 00271. The background evidence on Somalia shows that members of certain clans or groups, such as the Bajuni, are likely to be able to demonstrate a risk of persecution on return. For such persons, clan membership will usually be determinative but may not be in cases where there are features and circumstances which indicate that the claimant is not in fact at the same risk as that faced generally by other clan members (for example where a female marries into a majority clan she may have protection from her husband's clan).

The decision contains (at paras 40 to 44) further guidance on assessing the credibility of claims of Bajuni ethnicity, looking in particular at the issue of the language(s) spoken by the claimant.

3.7.3.3 Bantu. The Bantu, the largest minority group in Somalia, are an agricultural group found in pockets, usually in the river valleys of southern Somalia. [6.79] The Bantu were displaced by the fighting during the civil war and often lost their land along the Juba River and in the Middle Shabelle region. Many now try to link themselves to the dominant Somali clans where they live in order to obtain their protection. Conditions vary according to the region in which they live, though they are usually able to remain in their home areas, to work mainly as labourers for the Somali clans (mainly the Marehan, Ogadeni and Habr Gedir) that have taken their traditional land. [6.80 - 6.81] Some Bantu groups have maintained their own Bantu dialect or language while others have completely lost their dialects.

3.7.3.4 Sufficiency of protection/Internal relocation. Minority groups will be safest in areas where they enjoy the protection of a dominant clan. This is generally the case with the Bantu group. [6.82] The authorities controlling Somaliland and Puntland regions have made it clear that they would only admit to the areas they control those who originate from that territory or those who have close affiliations to the territory through clan membership. [6.52] Internal relocation to these areas would therefore not be a reasonable option for those claiming to be affiliated to the Bantu group. Relocation within regions south of Puntland is appropriate only where protection from a dominant clan can be secured.

3.7.3.5 Benadiri (Rer Hamar)/Bravanese. The Benadiri are an urban people of East African Swahili origin. They all lost property during the war and the majority of Benadiri fled to Kenya. Those that remain live mainly in the coastal cities of Mogadishu, Merka and Brava. The situation of the Benadiri remaining in Somalia is difficult, as they cannot rebuild their businesses in the presence of clan militias. Rer Hamar (the original Benadiri group)

families still resident in Mogadishu cope with their situation by marrying off their daughters to men of a majority clan, which can provide the family with some degree of protection. [6.83 ? 6.84] The Benadiri speak a range of dialects depending on the area from which they originate: refer to the 2000 Fact-Finding Mission Report on Minority Groups for further information.

3.7.3.6 The Bravanese are long established in the city of Brava, believed to be of mixed Arab, Portuguese and other descent. These groups have been particularly disadvantaged and targeted by clan militia since the collapse of central authority in 1991. Bravanese have mostly fled from the coastal town of Brava, although some are still living in the town, which is controlled by the Habr Gedir. The Bravanese who remained face abuses such as forced labour, sexual slavery and general intimidation. [6.84] Although the Benadiri generally speak a dialect that is different to major Somali clans [Annex C], applicants claiming to be Bravanese or Benadiri but do not have a plausible explanation as to why they cannot understand or speak Somali, are unlikely to be Somali nationals.

3.7.3.7 Sufficiency of protection/Internal relocation. Those minority groups that are (politically and economically) the weakest, including the Bravanese/Benadiri, are least able to secure protection from extortion, rape and other human rights abuses by criminal elements of more powerful clans and are vulnerable to discrimination and exclusion wherever they reside. [6.73] Internal relocation would not be a reasonable option for those claiming to be affiliated to the Bravanese/Benadiri groups. [6.52] [6.73]

AJH (Somalia) [2003] UKIAT 00094. Persons of Bajuni or Bravanese ethnicity are likely to face persecution and cannot reasonably relocate, particularly if they are female. This case sets out the test for caseworkers assessing the credibility of claims of Bajuni ethnicity but can be applied to all minority group claims (see paragraph 5.1.5 below).

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

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

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

3.7.3.8 Midgan, Tumul, Yibir, Galgala. Members of these minority groups may be found in all parts of Somalia. These are so-called 'occupational caste' groups. They traditionally settle in areas where they obtain protection from a clan and build up an economic activity, [6.87] though may be subject to harassment where no such protection exists, mainly in rural areas, as opposed to Mogadishu [6.73]. They speak the Somali dialect of the clan to which they are attached. [Annex C] The Galgala must not be confused with the majority clan the Gaalgale group which is affiliated with the Hawiye clan family.

3.7.3.9 Sufficiency of protection/Internal relocation. Minority groups will be safest in areas where they enjoy the protection of a dominant clan. 'Occupational caste' groups such as the Midgan, Galgala, Tumul and Yibir are among minority groups that have also been able to secure such protection, though to a lesser extent in rural areas. [6.87] The authorities controlling Somaliland and Puntland regions have made it clear that they would only admit to the areas they control those who originate from that territory or those who have close affiliations to the territory through clan membership. [6.52] It would be inappropriate for members of these groups who do not originate from Somaliland or Puntland to be returned there. [6.87]

Ferdowsa Ismail Beldeq [2002] UKIAT 06753. Female member of Migdan group. Migdan are a vulnerable group in Somalia both in camps and elsewhere and it would be unduly harsh (as a female member of vulnerable underclass) for her to relocate.

3.7.4 Conclusion. For a member of most minority groups to establish a well-founded fear of persecution, the claimant would need to demonstrate that they are at risk of adverse treatment because of their ethnic origin over and above the risk to life and liberty which occurs to all individuals in collapsed states such as Somalia. [See 6.64] Group membership will normally be an important consideration but must be taken into account along with the applicant's own history and profile. The applicant will need to demonstrate that in his or her particular circumstances, they are at risk of persecution and internal relocation is not a reasonable alternative. [See 6.52]

3.7.5 Individual applicants who have demonstrated a reasonable likelihood that they are members of the Bajuni or Bravanese/Benadiri groups are likely to qualify for asylum as the UN has identified these groups as particularly vulnerable. [See 6.74] In most cases, members of minority groups other than the Bajuni, Bravanese/Benadiri are unlikely to qualify for asylum or Humanitarian Protection on the basis of their clan membership alone, unless they demonstrate individual circumstances to the contrary. There is no specific risk to members of minority groups who originate from or have been permitted to settle in Somaliland or Puntland.

As with all Somalia claims, caseworkers should refer to Section 5: Assessing the claim.

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

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

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

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

SH (Somalia) [2004] UKIAT 00164 The claimant belonged to the Darod clan, sub-clan Marehan, which is not a minority clan in Somalia, so that members of the clan do not face persecution by reason of clan membership alone. The Marehan clans dominate the Gedo region, and that area would have provided adequate safety for the claimant. However the Tribunal found that there were no practical means enabling the claimant (a woman with a young child) to complete her journey from Mogadishu to Gedo in adequate safety, and her asylum appeal was allowed.

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

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

E (Somalia) [2003] UKIAT 00115. Persons of Yemeni ethnicity do not face a real risk of persecution due to ethnicity. Such minorities may be disadvantaged in Somali society but can generally relocate.

3.8 The breakdown of Central Government and the Civil War

3.8.1 Treatment. Inter and intra-clan fighting continues to occur in a number of areas of Somalia. While fighting is generally between rival militia civilians are invariably involved and civilian casualties are frequently reported. Most commonly reported examples of war crimes include rape, looting and destruction of property, illegal occupation and child soldiering. [6.124]

3.8.2 Sufficiency of protection. The rule of law, guarantees of personal security, and protection from human rights abuses vary from location to location. [See 6.126 - 6.153] Much of the countryside, particularly Somaliland, Puntland and pockets of southern Somalia are considered safe while central regions immediately south of Puntland have become increasingly susceptible to more prolonged instances of fighting and violence. [6.124] Mogadishu remains unpredictable and dangerous [See 6.126 - 6.129]

3.8.3 Internal relocation. Internal relocation by civilians escaping immediate areas of conflict is generally possible though likely to be hazardous, particularly in a conflict situation. Those liable to be prevented from relocating to safety are members of some minority groups (see 3.7 above). The possibility of internal flight to Somaliland or Puntland is restricted; in these areas the authorities have made it clear that they would only admit to the territory they control those who are of the same clan and who were previously resident in that particular area. [6.52]

3.8.4 Conclusion. A collapsed state where law and order has broken down, as has happened in Somalia, does not of itself give rise to a well-founded fear of persecution for a Convention reason. A claimant can only demonstrate a well-founded claim where they can demonstrate they are at risk of adverse treatment on Convention grounds over and above the risk to life and liberty, which occurs in such a state. A general risk of violence will not in itself be sufficient to bring most applicants within the Humanitarian Protection or Discretionary Leave provisions; such conditions are not sufficient so that removal would amount to a breach of the ECHR. Therefore applicants who apply on the basis of inter-clan fighting or civil war are unlikely to qualify for asylum or humanitarian protection. However each claim must be considered on its individual facts.

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

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

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

3.9 Prison conditions

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

3.9.2 Prisons within Somalia are run by a combination of the TNG, the de facto administrations of Puntland, Somaliland and other regional administrations. Warlords also operate prisons in areas under their control. [5.40] Prison conditions vary from region to region but conditions are generally harsh and life threatening. Overcrowding, poor sanitary conditions, inadequate health care and the absence of educational and vocational training characterise prisons throughout Somalia. Abuse of prisoners by guards is reportedly common in many prisons. The detainees' clans generally paid the costs of detention. In many areas, prisoners were only able to receive food from family members or from relief agencies. [5.41] The practice of parents having their children incarcerated when they wanted them disciplined continued during 2003; these children were also reportedly held with adults. Members of minority groups make up a disproportionately large percentage of the prison population. [5.43]

3.9.3 Conclusion. Conditions in the majority of detention facilities are likely to reach the Article 3 threshold. However, the individual factors of each case should be considered, such as the seriousness or nature of the offence, the likely length of detention, the likely type of detention facility. Cases where the claimant demonstrates a real risk of incarceration upon return or when the claimant demonstrates a particular likelihood of ill-treatment are likely to justify a grant of Humanitarian Protection.

4. Discretionary Leave

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

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

4.3 Possible categories for Discretionary Leave

4.3.1 Unaccompanied minors

4.3.1.1 The policy on unaccompanied minors is set out in the API on Children. Unaccompanied minors who have not been granted asylum or HP can only be returned where there are adequate reception arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception arrangements in place.

4.3.1.2 Unaccompanied minors without a family to return to should if they do not qualify for leave on any more favorable grounds be granted Discretionary Leave for the period detailed in Asylum Policy Instruction on or until their 18th birthday, whichever is the shorter period.

4.3.2 Medical treatment

4.3.2.1 Applicants may claim they cannot return to Somalia due to a lack of specific medical treatment. See the IDI on Medical Treatment, which sets out in detail the requirements for Article 3 and/or Article 8 to be engaged.

4.3.2.2 According to Medecins Sans Frontiers (MSF) in January 2004, the overall level of healthcare and possibilities for treatment in central and southern Somalia were very poor. MSF refers to a lack of basic medical training amongst the personnel (doctors and particularly nurses) operating at the limited number of hospitals and clinics in the region. It was estimated that up to 90% of the doctors and health staff in hospitals is insufficiently trained. For those with sufficient funding to pay for treatment, primary healthcare was available in all regions. MSF indicated that women and children had a better chance of receiving treatment on the grounds that they are less likely to be the target of militias. [5.49] The actual situation does vary within different parts of the country although the few health workers who remain tend to be based in the more secure urban centres.

4.3.2.3 In Mogadishu there are two public hospitals with facilities to perform certain surgical procedures [5.51]. Public hospitals in Galkayo (Mudug) and Kismayo (Lower Juba) serve enormous areas. These hospitals were beset with insecurity, lack of funding, equipment, qualified staff and drugs. The only other hospitals in southern/central regions - in Belet Weyne (Hiran) and Baidoa (Bay and Bakool) - have been closed for some years. [5.52] Aid agencies have attempted to fill the gap in areas where health services and structures have all but collapsed. They struggle to provide health care in remote areas, where reaching the patients is a major problem. [5.54] The Somali private health sector has grown considerably in the absence of an effective public sector. Of the population who get any care at all, about two thirds of them get it from the private health sector. [5.53]

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

5. Assessing the claim

5.1 Other nationals posing as Somali nationals or Somalis posing as members of different clans or minority groups

5.1.1 There is evidence that other nationals have been posing as Somali nationals. Such applicants may be

ethnic Somalis from Kenya, Ethiopia and Djibouti, or Swahili speakers from neighbouring states such as Kenya and Tanzania, posing as members of Swahili-speaking Somali minority groups. There are also indications that applicants from Middle Eastern states, particularly Yemen, have also posed as Somali nationals.

5.1.2 It should be noted that Kenya, Ethiopia and Djibouti all have large ethnic Somali populations with close links to fellow clan members in Somalia itself. As such it may be difficult to distinguish between a Somali speaker from a neighbouring country and a Somali speaker from Somalia. Caseworkers should be aware that ethnic Somalis from neighbouring states could be familiar with Somali issues and may well have travelled inside Somalia and have a good knowledge of the country.

5.1.3 There is also evidence that Somali nationals who have been living in Somalia sometimes claim to be a member of a particularly vulnerable group in order to increase the likelihood of being granted refugee status or humanitarian protection.

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

5.1.5 Further guidance on disputed nationality can be found in the relevant section of the APIs and more detail on minority groups may be found in the CIPU Somalia Country Report October 2004 and the 2000 Fact-Finding Mission Report on Minority Groups.

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

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

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

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

5.2 Language

5.2.1 Where an applicant has requested that their interview be conducted in Swahili the Home Office interpreter must always be asked to confirm the dialect of Swahili being used. Caseworkers and Presenting Officers must also be satisfied that the interpreter is authorised to use the specific dialect concerned. It would be reasonable to expect a person claiming to be a Bajuni to request that they be interviewed in Kibajuni. In such circumstances, a Kibajuni (not simply a Swahili) interpreter should be arranged. Caseworkers should be aware that applicants claiming to be Bajuni, Benadiri or Bravanese, who claim that they cannot also speak some Somali may, in fact, be from neighbouring Swahili-speaking states.

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

5.2.2 Further information on languages spoken by minority groups may be found in Section 6.C and Annex C of the October 2004 Country Report and the 2000 Fact-Finding Mission Report on Minority Groups.

5.3 Documentation

5.3.1 It must be noted that it is not possible under any circumstances to verify the authenticity of claimed Somali documents that may be submitted in support of applications or appeals. There is no British diplomatic post in

Somalia to refer such documents to undertake verification enquiries, nor in the absence of any central government are there any central authorities maintaining a national record of the population or issuing passports or other identity documents. Furthermore, many official records maintained under the previous administration in Somalia were destroyed in civil war fighting. Some local administrations such as Somaliland and the TNG authorities issue documents (birth certificates, passports etc.) but these are not issued under any internationally recognised authority and are not verifiable.

5.3.2 A range of Somali documents, including passports, can be easily obtained both in Somalia and in many other countries in the region through unofficial channels; such documentation is often openly on sale in markets. [6.63] Little weight can therefore be attached to any claimed Somali document and they should not be accepted as sole proof of identity or nationality.

5.3.3 With effect from 3 July 2003 Somali passports, whether issued pre or post 1991, ceased to be accepted as valid national passports for travel to the UK. Most other EU countries already do not recognise Somali passports. Both 'Somaliland' and the 'Transitional National Government' issue their own passports, however these documents are also unacceptable for visa purposes as neither of these administrations has been officially recognised by the UK. A visa is needed for travel from Somalia to the UK.

5.4 Expert witnesses

5.4.1 There are a number of Somali experts who submit reports in support of applications (most commonly at the appeal stage). There is no specific criteria by which an individual may declare themselves to be a Somali expert; whilst some experts clearly do have considerable knowledge regarding many aspects of the country the expertise of others relates to specific issues.

5.4.2 It is important to note that there are several instances where experts themselves have contrasting views. The fact that an expert report has been filed does not necessarily mean that its contents contain the definitive view on the issues covered. There have also been instances where a single expert report prepared for one specific case is subsequently represented in respect of numerous other cases. If an expert report is received and the caseworker intends to refuse the claim, caseworkers should seek guidance from CIPU on how to address this in the refusal letter or in appeals.

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

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

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

AB (Somalia) [2004] UKIAT 00125. (Witness corroboration in asylum appeals). The growing practice of appellants and/or their representatives adducing letters granting refugee status to someone who is (or is said to be) a relative or colleague. All too often it is assumed such letters automatically prove that the person concerned was granted refugee status on the basis he says he was. All too rarely are such letters accompanied by documents confirming on what basis the person concerned actually claimed asylum or, if an appeal was involved, on what basis the Adjudicator allowed that person's appeal. Since such additional documentation should often be still available to the person concerned or to that person's solicitors, Adjudicators should consider what weight they

can attach to refugee grant letters when they are not accompanied by confirmatory documents of this kind. (Para 11)

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

6. Returns

6.1 Following the ending of all blanket country-specific "exceptional leave" policies in October 2002, all Somali asylum (and human rights) applications - as with those of other nationalities - are considered on their individual merits. There is no longer any policy that precludes the return to any region of Somalia of those not granted asylum, Humanitarian Protection or Discretionary Leave.

6.2 On 4 July 2003 Home Office officials signed a Memorandum of Understanding (MoU) with the authorities in Somaliland that provides for the return of those people from Somaliland who have no legal basis to remain in the United Kingdom. Practical arrangements for returns to southern Somalia are being reviewed: currently such returns are not possible. Operational staff should note that the practicality of returning an unsuccessful asylum seeker should not be taken into account when considering the merits of an asylum or human rights claim.

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

7. Additional References

[1] Swiss Refugee Council (via European COI network at <http://www.ecoi.net/>)

a. Somalia. Situation and Trend Analysis by Professor Kenneth Menkhaus, 20 September 2004. http://www.ecoi.net/pub/ts33_040920_SOM_update_e.pdf Accessed 22 October 2004.

[2] UN Security Council <http://www.un.org/Docs/sc/sgrep04.html>

a. Report of the Secretary-General on the situation in Somalia, 8 October 2004

[3] UN Integrated Regional Information Networks (IRIN) <http://www.irin.org/>

a. "President-elect vows to stabilise war-torn country" 11 October 2004 <http://www.irinnews.org/print.asp?ReportID=43587> Date accessed 15 October 2004.

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a. "Somaliland warns Somalia's leader" 12 October 2004 <http://news.bbc.co.uk/1/hi/world/africa/3736644.stm> Date accessed 15 October 2004.

b. "Somali hopes rest with new PM" 3 November 2004 <http://news.bbc.co.uk/1/hi/world/africa/3980219.stm> Date accessed 8 November 2004

