

UNHCR Position on the Return of Rejected Asylum-Seekers to Somalia

28/12/04

1. Political Situation

Twelve years after the dissolution of the central government, and more than a dozen failed peace initiatives later, the situation in Somalia remains extremely complex. On the political front, hopes were high in 2003 that the efforts by Somali leaders to turn the former Republic's fluid mix of political, economic and clan interest groups into a national state would bear fruit. But, despite some notable progress, uncertainty over the process continued during the last quarter of the year, with the commitment of several key leaders to the agreement still in question and many of the intractable issues yet to be resolved. It is important to note that to date, this peace process, like those before it, has not succeeded in attracting the participation of the secessionist northwest zone of *Somaliland*. The possible deployment of African Union (AU) military observers to oversee the much flouted 2002 ceasefire agreement also remains in question, in part due to indications that if deployed they would be met with aggression, especially in some areas of southern and central Somalia.

Meanwhile, according to the initial report by a panel of experts commissioned by the UN Security Council to investigate violations of the arms embargo, different Somali factions continue to be provided weapons, equipment, militia training and financial support by neighboring states and other actors, and the factions have also purchased weapons on the open market. While the panel has recommended an enhanced sanctions regime and the establishment of monitoring mechanisms, there are no clear indications yet of the level of international support for these plans.

On the other hand, at the same time the northern zones of Somalia have moved ever closer to political, economic and social reconstruction. In the self-declared but internationally unrecognized *Republic of Somaliland*, the holding of peaceful multi-party presidential elections on 14 April 2003 marked a milestone in the republic's process of democratization. The level of peace and stability achieved in the area, as well as the presence of viable governmental counterparts, allow a large number of UN agencies and NGOs to work in an increasingly coordinated manner on both humanitarian and development programmes. In the *Puntland State of Somalia*, a two-year long political crisis was solved through a peace and power-sharing agreement between Puntland Administration and Puntland Salvation Council in May 2003. This allows aid activities to take place with comparatively few interruptions and for the UN system and its partners to expand its operations there in support of peace building. While tensions have been rising between *Somaliland* and *Puntland* in the last few weeks over the disputed regions of Sool and Sanaag, it is hoped that the two parties will settle the dispute peacefully, without engaging the troops reportedly dispatched to the area.

2. Human Rights and Humanitarian Situation

2.1 Human Rights Situation

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. In 2003 a local human rights organization, the Isma'il Jimale Human Rights Centre, documented 530 civilian deaths in armed conflicts between July 2002 and June 2003. A pastoralist conflict in south Mudug in July 2003 claimed an unusually high number of lives for a dispute over rangeland – 43 dead and 90 injured - most of whom were civilians. In July 2003, the targeting of young girls for rape and killing was prominent in clan disputes in Baidoa, and kidnappings in Mogadishu reached such alarming proportions that the public took to the streets to protest. Gender-based violence is prevalent, including rape, female genital mutilation and domestic violence. The cultural attitudes of traditional elders and law enforcement officials routinely result in restrictions on women's access to justice, denial of their right to due process and their inhumane treatment in detention.

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. As a result, an environment of impunity reigns in many areas, which presents a major challenge for UN agencies and NGOs seeking to strengthen measures to ensure the protection of civilians.

2.2 Humanitarian Situation

The 2001 Human Development Report found that Somalia ranked amongst the five least developed countries in the world. Although there have been some slight positive economic and social developments in the past few years, Somalia remains an extremely poor and under-developed country with the average life expectancy of 47 years. Out of every 1,000 infants born, 225 die before reaching the age of five. Only 19 % of the adults population (aged 15 and above) can read and write, and the primary school enrolment ratio is only 16.4%. It is estimated that nearly half the population live without access to sanitation, and nearly 80 % without access to safe water. Nearly 3 million or 43.2% of the population live in extreme poverty on less than US\$1 a day.

Further to the above, levels of development vary widely between the urban and rural areas, between males and females, and geographically across the country. Although few data are available on variations in development levels across Somalia's regions, it is clear that development remains vulnerable to fighting and instability, which continue to cause localized crises of food security and health, as well as population displacement.

In 2003, most of the southern and central regions of Somalia continued to exhibit chronic symptoms of complex emergencies: little to no authoritative government, high levels of criminality, sporadic armed conflicts, lack of economic recovery, endemic humanitarian needs, minimal health care and education, and population displacement. By mid-year, the prolonged absence of key leaders at the peace talks, combined with the efforts by the leaders to consolidate their areas of influence during power-sharing negotiations, meant that violence and armed conflict continued throughout much of the south, in particular in Mogadishu, Baidoa and the Middle Shabelle and Gedo regions. While pockets of stability exist in the south, they remain susceptible to sudden setbacks due to armed clashes and threats, making them a difficult and largely inhospitable environment for sustainable aid interventions.

In late 2003, aid agencies could safely operate in only a handful of places in southern and central Somalia. Relatively good rains in this country exceptionally prone to flood and drought allowed for overall improved food security, but conflict and lack of access in key areas of southern and central Somalia – including parts of central Mudug and Galgaduud regions, Baidoa and Burhakaba town in Bay region, Buale and Jilib towns in the Lower and Middle Juba regions, and Luuq and Gabarharey towns in Gedo region – prevent many farmers from harvesting their crops, resulting in high malnutrition rates in many areas (71% of the population are undernourished).

A combination of other factors also threatens Somalis' traditional livelihoods. The prolonged and continuing ban - in place since September 2000 - on the import of Somali livestock by the Gulf states in response to outbreaks of Rift Valley fever in Saudi Arabia and Yemen has badly hurt nomadic pastoralists, who comprise roughly 44% or 2.7 million of the population, and depend on the livestock trade as a vital source of income. While livestock continue to be exported today to alternative markets, terms of trade for livestock have continued to drop against the value of dry food rations, placing greater stress on poorer pastoral households. The number of animals has increased within Somalia since the ban and this overpopulation has left some rangelands in the north and central portions of the country overgrazed and fragile, adding still more pressure on pastoralist livelihoods.

Riverine farmers, who at 400,000 comprise about 6% of the population, have also suffered. Only a fraction of riverine land devoted to irrigated agriculture is under production, and rainfed farming has been hurt by insecurity and the displacement of many of Somalia's small farmers. Post war grain harvests have generally totaled less than 40% of pre-war levels.

This deterioration of traditional livelihoods has forced thousands of Somalis to migrate to urban areas - such as Mogadishu, Bosasso, Galkayo and Hargeisa - as they can no longer meet the minimal requirements for life in their home communities. Attracted in part by the promise of employment generated by the rapid growth of commercial enterprises, light industry and private sector services, many find the conditions they face in urban areas only marginally better than those they left. Despite the growth of these business sectors, unemployment remains rampant. More than 60% of the urban population aged 15

to 64 are unemployed. Unemployment among the youth up to 30 years of age, who have grown up in a time of complete state collapse, is a particularly disturbing problem. This generation has little to no formal education, few marketable skills, and in many cases has been drawn into militia activities and/or criminality. As such, they pose a serious challenge to peace and security as well as the economic and social development of Somalia.

Also crowded primarily in urban areas are more than 350,000 internally displaced persons (IDPs), the majority of whom have been displaced for ten years or more as a result of the violent upheavals and massive human rights violations of the early 1990s. In addition, each year a number of Somalis are displaced by localized conflicts, usually temporarily and primarily in southern and central Somalia. Against this backdrop, it is often difficult to distinguish IDPs in the traditional sense of the term from their resident urban poor neighbors and economic migrants.

Remittances from the more than one million Somalis living abroad have been crucial in mitigating the effects of poverty. While estimated annual flows of remittances into Somalia (including Somaliland) vary, it is estimated that between US\$ 750 million to 1 billion is sent each year, far more than the country receives in foreign aid (US\$ 115 million in 2000). This income forms not only the backbone of the commercial and service sectors, but of individual and household purchasing power. It is estimated that of the total amount remitted each year, \$360 million directly contributes to household incomes. Keeping this lifeline of Somali remittances from the diaspora open is critical to ensuring that some of the most vulnerable populations receive an income. But the downside of this survival strategy is that it has fostered a gap between the relatively privileged and the destitute, who often lack access to remittances.

The challenges faced by both *Somaliland* and *Puntland* in integrating Somali refugees back home remain a critical humanitarian, recovery and development concern. In both areas, tens of thousands of returnees from exile continue to live in slums on the outskirts of towns where they are often indistinguishable from other vulnerable groups, and as such face many of the same problems accessing basic social services and becoming self-reliant. Combined with the fragility of *Puntland's* economy and the downturn of *Somaliland's*, their presence has increased competition over scarce resources. More sustained assistance is needed if they are to successfully integrate into these local economies. Without it, they could become a potential threat to the hard won peace and stability in both areas.

3. Voluntary Repatriation of Somali Refugees and their Reintegration

Over a decade ago, at the height of the crisis in Somalia, it was estimated that close to two million persons, i.e. just under one third of the Somali population of 6.38 million, were displaced either internally or in exile. Since then, voluntary repatriation has reduced the number of internally displaced to 350,000 and that of Somali refugees still in exile to 400,000. With 450,000 Somali refugees having returned home with some form of

international assistance and many others having done so spontaneously, it can be assumed that over 10% of Somalia's population are returnees from exile. In *Somaliland* the population, which was almost entirely in exile before peace, has been nearly restored, with repatriations from refugee camps in Ethiopia and Djibouti expected to be completed in 2004. Presently in *Puntland*, at least 100,000 have spontaneously returned and over 6,000 have come back with UNHCR assistance.

For purposes of voluntary repatriation, UNHCR policy divides the country into north and south, i.e. areas recognized as being stable (north) and areas recognized as not yet stable because of the absence of civil administrative structures to guarantee security (south). The areas administered by the *Somaliland* and *Puntland* authorities fall into the northern sector of the country, and the rest into the southern sector. Accordingly, UNHCR considers the part of the country from the city of Galkayo to the north as the northern sector. Areas south of Galkayo, constitute the southern sector of the country.

In view of the improvements in peace, security, stability and governance in northern Somalia (*Somaliland* and *Puntland*), UNHCR is promoting the voluntary repatriation of Somali refugees originating from there. The reintegration of returnees is assisted primarily through community-based activities. Voluntary repatriation of refugees who wish to return to pockets of peace in southern Somalia has been facilitated by UNHCR on an individual basis.

When UNHCR promotes repatriation to any area, the understanding is that the factors that drove refugees out of that area have broadly ceased to exist.

In the case of Somalia, UNHCR has assessed that the majority of refugees who fled areas which are now in the northern sector can safely return to their habitual areas of former abode, although their right to return is seriously challenged by the over-stretched absorption capacity. Also, importantly, it cannot be ruled out that some individuals originating from *Somaliland* and *Puntland* may have a well-founded fear of persecution. Claims to this effect should therefore be dealt with in line with global standards of refugee status determination.

A similar positive assessment cannot be made for the southern sector of the country, where conflict, insecurity and lawlessness still dominate the situation in large areas. This is why UNHCR continues to encourage the granting of refugee status, or other forms of complementary protection, to those being forced to leave the southern sector. UNHCR also insists on an in-depth briefing and advice on the objective security conditions in those areas whenever refugees wish to repatriate there.

Prior to arranging repatriation movements, UNHCR Somalia requests clearance from the local authorities for all refugees wishing to repatriate to Somalia. This is to ensure that repatriants are welcome in their area of return, and to avoid any negative consequences arising from their being possibly considered to belong to an area different than their chosen destination. This is of particular relevance in *Somaliland*, which, because it considers itself an independent state, considers non-*Somalilanders* as foreigners. In the

case of the *Puntland State of Somalia*, its Charter and Constitution stipulate that any Somali who respects the provisions of the Charter/Constitution is allowed to reside in, travel through and conduct business in *Puntland*. However, due to the over-stretched absorption capacity, the authorities, while respecting the provisions of their basic law, have grown wary of non-*Puntlanders* settling there in large numbers. Clan considerations play an important role. Generally, the lack of local clan and other support-systems forces most Somalis who do not originate from the area to join the misery of the 31,000 IDPs, who live in squalid conditions below the poverty line with very limited access to basic services and physical and legal protection.

It is essential to be aware of the overall impact of more than half a million voluntary returns (organized and spontaneous) on the already over-stretched services and resources of *Somaliland and Puntland*. As a result, in many cases the returnee population remains marginalized, often forced to live in squalid conditions and in a disturbing state of poverty. The most common forms of ensuring survival are small scale trade, casual employment, market activities and sale of livestock. Furthermore, it should be borne in mind that the Somalis in general, including returnees, rely heavily on regular or occasional remittances from relatives in the diaspora. However, income generated from these activities does in the majority of cases not meet the basic needs of the family - an overwhelming 95% of returnees have insufficient income to meet basic needs, despite some claiming to have skills in business, farming and other professions. Only 5% of returnees are able to afford three meals per day, with 64% living on one meal per day or less. The main sources of food, besides purchasing, are begging and food aid. This daily struggle for survival renders girls and women more vulnerable to abuse unable to take advantage of education, as their days are spent trying to feed the family, whatever it takes.

Regarding access to basic services, major concerns prevail among the returnee population. 46% of returnees share their water source with animals, and 75% describe the water as dirty. 47% of returnees are living between 30-60 minutes away from a water source, 22% are living between 0-30 minutes away, and a small minority of 8% are living above 60 minutes away from a water source. 82% of returnees interviewed by UNHCR have access to a toilet, in most cases shared. 64% of returnees have no access to a health facility. 68% of returnees dispose of their rubbish by burning it. Many returnees cannot afford to send children to school due to lack of money and admit that this leads to girls being severely disadvantaged in access to education.

Given the above challenges to effective reintegration, the 2003 and 2004 Consolidated Inter-Agency Appeals for Somalia single out returnees from exile as one of the three most vulnerable groups in Somalia, together with IDPs and minorities.

In partnership with local communities, Somali authorities, other UN agencies, national and international NGOs, UNHCR Somalia is carrying out community-based projects to foster reintegration of returnees and increase the absorption capacity of receiving communities. IDPs and other vulnerable groups living in the same areas as returnees also benefit from these interventions. Despite the considerable number of projects carried out

by UNHCR and its partners over the years, in particular in *Somaliland* and to some extent in *Puntland*, important survival-needs remain unmet, and in the absence of recovery and development aid of a meaningful scale UNHCR's programme remains a drop in the ocean of such vast needs. There is thus a real danger that massive voluntary return of exiled populations, if not assisted comprehensively, may result in competition over scarce resources and threats to security and stability in *Somaliland* and *Puntland*.

4. Asylum Policy

4.1. General

For purposes of refugee status determination, as with regard to voluntary repatriation, UNHCR policy divides the country into north and south, i.e. areas recognized as being stable (north) and areas recognized as not yet stable because of the absence of civil administrative structures to guarantee security (south). The areas administered by the *Somaliland* and *Puntland* authorities fall into the northern sector of the country, and the rest into the southern sector. The two sectors are roughly separated by a line that goes through the town of Galkayo.

While UNHCR has assessed that the majority of refugees who fled areas which are now in the northern sector can return to their habitual areas of former residence, it is evident that some persons originating from that region may have a well-founded fear of persecution in the meaning of Article 1 of the 1951 Convention relating to the Status of Refugees and Article I (1) of the 1969 OAU Convention governing the Specific Aspects of Refugee Problems in Africa. Therefore, claims of asylum seekers from the northern sector should be assessed carefully on an individual basis to determine their needs for international protection.

Given the conflicts, insecurity and lawlessness that still dominate the situation in southern Somalia, UNHCR considers that asylum seekers originating from this area are eligible for refugee status due to events seriously disturbing public order under Article I (2) of the 1969 OAU Convention, and may be recognized on a group basis, if applicable. In addition, many of the asylum seekers from southern Somalia may have a well-founded fear of persecution under Article 1 of the 1951 Convention and Article I (1) of the 1969 OAU Convention. In countries not covered by the OAU Convention, UNHCR recommends that claims of persons originating from southern Somalia be assessed carefully to determine if they qualify for refugee status. Those who do not meet the applicable criteria should be considered favorably for complementary forms of protection.

4.2. Internal Flight Alternative

The general pattern of human settlements prevailing in many parts of Africa, including Somalia, is often characterized by common ethnic, tribal, religious and or/cultural factors, which enable access to land, resources and protection from members of the community. Consequently, this commonality appears to be the necessary condition to live in safety. 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 ethnic, tribal, religious and/or cultural background are settled, or where they would otherwise be considered as aliens.

The only conceivable alternative could be to move to the slums of a big city, where internal migrants from the countryside lead a precarious existence, often in appalling living conditions. Persons with a rural background may be rendered destitute there and thus be subjected to undue hardship. Therefore, it would be unreasonable to expect a person to move to an areas in his or her own country other than one where he or she has ethnic, tribal, religious and or/cultural ties.

This is true also in *Somaliland* and *Puntland*. They already host some 60,000 and 31,000 IDPs respectively, which by far exceeds their absorption capacity. In the absence of clan protection and support, which means weak or negligible social networks, a Somali originating from another area would be likely to join the many other underprivileged IDPs who suffer from lack of protection, limited access to education and health services, vulnerability to sexual exploitation and abuse and labour exploitation, eviction, destruction and confiscation of assets. Depending on the goodwill of the local community and what meager humanitarian assistance may be available, persons perceived as "outsiders" may be forced to live in a state of chronic humanitarian need and lack of respect for their rights. Specifically, in *Somaliland*, a self-proclaimed independent state, those not originating from this area (non-*Somalilanders*) would be considered as foreigners, and face significant acceptance and integration problems, particularly taking into account the extremely difficult socio-economic situation of those native to the territory.

In the Somali context, the concept of *guri* (local) versus *gelti* (outsider) is ever-present, and a profoundly important undercurrent in human relations and allocation of resources. It cannot be expected that "outsiders", meaning those not originating from a local clan, are accorded the respect, protection and resources that the "locals" consider rightfully theirs, unless this is brought about by the force of arms.

In this regard, it should be noted that "place of origin" should not necessarily be equated with "place of birth". Over the past decades, many Somalis from other parts of the country moved to Mogadishu and other areas in the south, in particular to the Lower Juba, and their children were born there. A significant theme has been the migration of Somali clans from the more arid central, northeastern and Ogadeni plains southward in search of better pastures and water. In the 1970s and 1980s, large-scale state farms and agro-industrial projects attracted settlers from other regions of Somalia, who consequently moved to Lower Juba. However, as things stand now, such persons cannot return to these areas, and most will wish to settle in areas where they have strong clan and family ties. A case to illustrate this point is the voluntary repatriation by air to *Puntland* of Somali refugees from the Dadaab camps in Kenya. While most of them fled to Kenya from the south of Somalia, they returned to their clan-bases in *Puntland*. Therefore, the determining factor in defining where a person originates from is where the person has effective clan and family ties, and where clan protection is thus available.

In light of the above, especially given the prevailing clan system, UNHCR is of the view that the internal flight alternative is not applicable in the context of Somalia.

5. Return of Rejected Asylum-Seekers

5.1 Southern Somalia

Although the levels of faction and large-scale inter-clan conflicts may have reduced in southern Somalia, insecurity continues to be a significant problem. Lives continue to be threatened by violence, crime, clan feuds, lack of justice as well as poverty. Furthermore, humanitarian agencies have real problems gaining access to many areas. Militia loyal to different strongmen succeed one another in a perpetual move to establish a sustainable control on certain areas. There is a constant fear of abrupt change in clan balance shaking up fragile territorial power bases. This often leads to conflicts between clans and factions. Mines have been laid in many areas as part of current conflicts to either mark territorial control or prevent the movement of people. Moreover, the lack of any effective governing administration may render it impossible for countries with rejected Somali asylum seekers to embark on any comprehensive and coordinated dialogue aiming at removing such cases. Consequently, UNHCR considers that persons originating from southern Somalia are in need of international protection and objects to any involuntary return of rejected asylum-seekers to the area south of the town of Galkayo.

5.2 Somaliland and Puntland

Despite the fact that security, stability and governance prevail in *Somaliland* and to an increasing extent in *Puntland*, the conditions are not generally favourable for the forced return of large numbers of rejected asylum-seekers. While the restoration of national protection, in line with protection standards applicable to all other citizens, is not likely to be a problem for persons originating from these areas, the weak economy, which offers few employment opportunities, and the lack of sufficient basic services, result to an environment which is not conducive to maintaining harmonious relations among the population. Therefore, UNHCR advises against indiscriminate involuntary returns. It is recommended that cases be reviewed individually, and that States take into consideration the particular circumstances of each case (age, gender, health, ethnic/clan background, family situation, availability of socio-economic support), in order to determine whether possible return of the individuals/families in question can be sustainable, or whether they should be allowed to remain on their territory on humanitarian grounds.

In this regard, it should also be noted that women, children and adolescents face particular challenges upon return to Somalia after a long stay in exile, which may have changed some of their habits and affected their ability to speak Somali without an unfamiliar accent. While it is not a policy of the authorities in *Somaliland* and *Puntland*, returnees and deportees from further afar than the immediate region, or even from urban

areas within the region, often face severe discrimination by their community on account of not being sufficiently Somali. A 2003 UN-OCHA report entitled "A gap in their Hearts: the experience of separated Somali children" concludes: "Bi-cultural separated Somali minors who are returned to their homeland under duress or through deception are in danger of harassment, extortion, rape and murder." Perceived unacceptable and culturally insensitive behaviour by girls results in harsher discrimination and punishment than for boys. While this study focuses on child smuggling and its consequences, the findings related to the treatment of returning youths to Somalia are relevant also for other young Somalis who are involuntarily returned to their homeland, after having been exposed and to a certain extent adapted to another culture. As some of the rejected asylum-seekers considered by host countries for deportation may in fact be victims of child smuggling (up to 250 children are sent out of the Somali capital alone every month), the detailed findings of this study are highly relevant to decision makers on involuntary return of Somalis .

Somali women who unsuccessfully but credibly based their asylum claims on issues related to gender-based persecution should not be subject to involuntary return to any part of Somalia. While authorities in *Somaliland* and *Puntland* are to varying degrees prepared to work towards reducing harmful traditional practices and enhancing respect for the rights of women, they have as yet no real means to enforce such slowly emerging policies for the tangible benefit of women.

Persons suffering from HIV/AIDS are stigmatized in their communities to the extent that they are outcasts and abandoned by their clans and families. They cannot count on the support by those usually expected to ease the period of reintegration upon their return. Medical facilities in all parts of Somalia are not equipped to render the necessary assistance. Except for those few who can afford to import the drugs, anti-retroviral treatment is not available in Somalia. The involuntary removal of persons with HIV/AIDS should thus be strictly avoided. Furthermore, even if HIV-negative, AIDS orphans or relatives of persons who suffer from HIV/AIDS will face the same stigmatization and discrimination, if returned to Somalia. Accordingly, the deportation of AIDS orphans or relatives of persons known to be living with HIV/AIDS is highly inadvisable.

Considering the risk that deportees would end up living below the poverty line, the situation of children is of particular concern. A UNICEF/SCF-led inter-agency Child Rights Situation Analysis in *Somaliland* shows that poverty-related exploitation and rights-abuses of children and adolescents pose a serious threat to their well-being, despite the fact that six years of uninterrupted peace have improved respect for children's rights. While some may say that the situation of deported children is similar to that of all other children in the area, this argument does not hold. After many years of absence from Somalia, deported children and their families find themselves in a more vulnerable position than their surrounding communities. It is thus likely that they would suffer even more severe poverty-related infringements on their rights than others. If deported children and adolescents furthermore belong to a minority clan, the danger of violations of their rights will be even more pronounced.

States considering the involuntary return of rejected asylum-seekers to *Somaliland* and *Puntland* should take careful account of the potential impact of their actions in relation to the already over-stretched community coping mechanisms and basic services, coupled with a weak economy. Forced returns, particularly if implemented in large numbers, could jeopardize the on-going peace, reconciliation and recovery efforts of the administrations and people, which are only modestly being supported by the international community.

5.3 Return of Rejected Asylum-Seekers to Areas other than Places of Origin

With reference to what is said on the non-applicability of the internal flight alternative in Somalia (see paragraph 4.2 above), it is UNHCR's position that no Somali should be returned against his/her will to an area of the country, from where he/she does not originate. In this regard, considerations based on the prevailing clan system are of crucial importance.

UNHCR Geneva
January 2004

