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The Netherlands: Halt Plan to Deport Somalis

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The Dutch government should not deport Somalis to any part of south-central [Somalia](#), including Mogadishu, until security improves substantially, and the UN refugee agency has issued new guidelines. In mid-February 2013, Dutch authorities said they planned to deport two rejected Somali asylum seekers, originally from Mogadishu, back to Somalia on February 20 and 23.

The returns would end a 22-month suspension of returns to the city which has been engulfed by deplorable levels of violence. On February 19, a Dutch court ordered the authorities to suspend the first deportation pending an appeal. United Nations High Commissioner for Refugee (UNHCR) guidelines advise countries against returns to south-central Somaliabecause people returned there "face a real risk of serious harm." The refugee agency is preparing new guidance.

"The Dutch government should not decide to resume deportations to south-central Somalia until the UN has issued an up-to-date objective assessment of security conditions there," said [Gerry Simpson](#), senior refugee researcher and advocate at Human Rights Watch. "While security has improved in parts of Mogadishu, the city is by no means safe, and the rest of south-central Somalia is still plagued by conflict, attacks on civilians, and serious rights abuses."

In April 2011, the [Netherlands](#) suspended all returns of people originally from Mogadishu, Somalia's capital, and in June the European Court of Human Rights ruled that indiscriminate violence in Mogadishu put anyone returned there at risk of serious harm. The court stressed that insecurity in Mogadishu meant that Somalis from other parts of south-central Somalia could not safely transit through the city to reach their homes. As a result, the Netherlands also suspended all returns of Somalis originating from south-central areas outside Mogadishu.

The Netherlands granted "subsidiary protection" to rejected asylum seekers from Mogadishu simply because they were from Mogadishu. Although it refrained from deporting Somalis from areas in south-central Somalia outside Mogadishu, the Netherlands did not give them a protected status.

On December 14, 2012, the Dutch Justice Ministryinformed Parliament by letter that the ministry considered that the security situation in Mogadishu had improved. Citing EU legal language, the

Ministry said there was no longer a situation there that "serious[ly] and individual[ly] threatened a civilian's life" because of "indiscriminate violence" in the context of an "armed conflict." The letter said that while Mogadishu could not be considered safe for everyone, some people were not at risk there.

As a result, the letter announced that "asylum seekers from Mogadishu no longer qualify [for subsidiary protection status] merely because of the state of their city" and that all cases of people from Mogadishu would be reviewed on an individual basis. The letter said that Somalis who already hold subsidiary status in the Netherlands will continue to benefit from that status for the time being.

The letter concluded by saying that "forced return to all parts of Somalia" were now possible for failed asylum seekers because "return[ed] asylum seekers no longer have to travel through territory [i.e. Mogadishu] where there is" indiscriminate violence.

A February 11 Decision published in the Law Gazette announced a change to part of the "Aliens Circular" relating to "Asylum Policy regarding Somalia," thereby giving legal effect to the government's policy changes as announced in the December 14 letter to Parliament.

Human Rights Watch said the new policy meant the people most likely to be deported first under the new policy are Somalis from areas outside Mogadishu in south-central Somalia, who have neither refugee nor subsidiary protection status in Holland.

In the December 14 letter, the Justice Ministry said its new policy was based on a November 30, 2012 report by the Dutch Ministry of Foreign Affairs on the security situation in south-central Somalia. But Human Rights Watch said that despite improvements in security in Mogadishu over the past year, the ongoing conflict and limited access to many parts of south-central Somalia mean that conducting a thorough assessment of conditions remains difficult.

The Netherlands and all other countries should refrain from deporting Somalis until UNHCR has issued its planned new guidelines on returns to Somalia, Human Rights Watch said.

In particular, Human Rights Watch called on the Netherlands to take into account the December 2011 European Union "Qualification Directive" which requires States to "obtain ... precise and up-to-date information from ... the United Nations High Commissioner for Refugees and the European Asylum Office" before making a decision to return anyone to a situation where they might face serious harm. Article 8(2)(b) of the EU's 2005 Procedures Directive relating to asylum claims also requires states to "obtain ... precise and up-to-date information from ... sources such as UNHCR."

The current UNHCR guidance dates from May 2010. At that time UNHCR concluded that the situation in south-central Somalia, including Mogadishu, involved "reported high frequency of significant casualties among the civilian population" and represented "a situation of indiscriminate violence in a situation of internal armed conflict in the meaning of Article 15(c) of the EU Qualification Directive."

UNHCR's guidance also said that there are "no reliable safety zones exist in southern and central Somalia given the unpredictable evolution of the conflict, characterized by constant struggle for territorial control by parties to the conflict and outbreaks of violence in previously unaffected areas" and that therefore "any individual present on the territory would be at risk of serious harm."

While there have been significant developments in Somalia's political landscape over the past six months, including the formation of a new government, the situation in much of south-central Somalia remains volatile, with civilians under continued threat of targeted or indiscriminate violence by all of the warring parties, Human Rights Watch said. Human Rights Watch research in

December also indicated that civilians travelling in south-central Somalia are often at serious risk of attacks, looting and sexual violence by armed groups.

"While the level of violence has decreased in Mogadishu, that doesn't mean the situation in the city – or in the rest of south-central Somalia – is stable enough to send people back," Simpson said. "Civilians still risk getting caught up in indiscriminate violence involving all of Somalia's warring parties, and face targeted attacks, including sexual violence and politically motivated killings, as well as arbitrary arrests and other abuses."

Although the Somali government, the African Union Mission in Somalia (AMISOM) and allied forces have made military gains in Somalia over the past year, there is continuing armed conflict.

While the main armed insurgent group, al-Shabaab, has vacated many key towns in south-central Somalia, it maintains a significant presence throughout the rural areas and has the capacity to carry out attacks, including in Mogadishu. al-Shabaab continues to target civilians indiscriminately and specifically targets civilians perceived to be spies or collaborators. In areas under its control, the group administers arbitrary justice and imposes harsh restrictions on basic rights.

Human Rights Watch said civilians in Mogadishu are at risk of grenade attacks, improvised explosive devices (IEDs), targeted killings and even suicide bombings, possibly by al-Shabaab supporters.

International agencies have yet to set up operations in many areas, making it extremely difficult to provide essential services to civilians in areas that have been wracked by years of conflict, and almost impossible to monitor systematically the well-being of returning refugees. Basic assistance and monitoring of returned people would be minimum prerequisites before countries could forcibly return Somalis to south-central Somalia.

Government forces, including foreign forces, have also committed serious abuses against civilians. Somali transitional government forces and allied militia have arbitrarily arrested scores of civilians, particularly men, during security operations in towns newly vacated by al-Shabaab, including Baidoa and Kismayo in 2012.

While the Netherlands is the first European Union state to announce that it will begin forced returns to Somalia, Denmark's immigration authorities have announced their intention to start returning Somalis. Human Rights Watch received credible reports that Sweden and the UK may also be considering a resumption of deportations.

"Instead of rushing to return Somalis to such a dangerous, volatile, and unpredictable situation, the Dutch and other European governments should take the necessary time to do thorough assessments on the ground," Simpson said.

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