



# OPERATIONAL GUIDANCE NOTE

## SOMALIA

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## 1 **Introduction**

- 1.1.** This document provides UKBA case owners with guidance on the nature and handling of the most common types of claims received from nationals/residents of Somalia, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Case owners must refer to the relevant Asylum Instructions for further details of the policy on these areas.
- 1.2.** Case owners *must not* base decisions on the country of origin information in this guidance; it is included to provide context only and does not purport to be comprehensive. The conclusions in this guidance are based on the totality of the available evidence, not just the brief extracts contained herein, and case owners must likewise take into account all available evidence. It is therefore essential that this guidance is read in conjunction with the relevant COI service country of origin information and any other relevant information.

COI Service information is published on Horizon and on the internet at:

[http://www.homeoffice.gov.uk/rds/country\\_reports.html](http://www.homeoffice.gov.uk/rds/country_reports.html)

- 1.3.** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the Asylum Instructions on Article 8 ECHR. If, following consideration, a claim is to be refused, case owners should consider whether it 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.

## 2. **Country assessment**

**2.1** Case owners should refer to the relevant COI Service country of origin information material. An overview of the country situation including headline facts and figures about the populations, capital city, currency as well as geography, recent history and current politics can also be found in the relevant FCO country profile at:

<http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/>

**2.2** An overview of the human rights situation in certain countries can also be found in the FCO Annual Report on Human Rights which examines developments in countries where human rights issues are of greatest concern:

<http://fcohreport.readandcomment.com/>

**2.3** **Actors of protection** Case owners must refer to the Asylum Policy Instruction on Considering the protection (asylum) claim and assessing credibility. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Case owners should also take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.

**2.3.1** Since 1991, Somalia has lacked a central government with effective nationwide police and security forces as the TFG continues to battle an Islamist insurgency campaign. In January 2009 an expanded Transitional Federal Parliament (TFP), established under the internationally backed Djibouti Peace Process (DPP), extended the Transitional Federal Government's (TFG) mandate until August 2011. On 27 March 2011, the Council of Ministers of the Transitional Federal Government announced its intention to effectively extend itself by one year, until August 2012.<sup>1</sup>

**2.3.2** The TFG has its own armed forces, police force and intelligence agency and is supported by various militia groups, some of which operate nominally under the authority of TFG forces. The TFG controls several thousand trained army soldiers. Other various TFG-allied groups throughout Somalia are estimated to control militias ranging in strength from hundreds to thousands. The TFG and some groups possess limited inventories of older armoured vehicles and other heavy weapons, and small arms are prevalent throughout Somalia.<sup>2</sup>

**2.3.3** The TFG has been building up the strength of the Somali Police Force (SPF) based in Mogadishu with international assistance. It is proposed that the force will have a strength of 10,000. A police training team arrived in Mogadishu in 2009 under the auspices of the African Union's peace support body AMISOM (African Union Mission in Somalia) to help with training the police force. A police school has been operating in Mogadishu and senior officers have also been trained in Uganda. In June 2010, AMISOM announced plans to train 500 Somali officers in Djibouti. During 2010, more than 900 Somali police personnel completed training in Ethiopia, under a programme financed by the German government - although German media reports claimed they subsequently deserted.<sup>3</sup>

<sup>1</sup> COI Service Somalia Country Report May 2011 (para 9.01–9.07)  
[www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)

<sup>2</sup> COI Service Somalia Country Report May 2011 (para 9.01–9.07)  
[www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)

<sup>3</sup> COI Service Somalia Country Report May 2011 (para 9.01–9.07)  
[www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)

- 2.3.4** The United Nations continues to support the development of a professional and accountable police force for Mogadishu. In September 2010, jointly with the African Policing Civilian Oversight Forum, UNDP conducted training for the Mogadishu based Police Advisory Committee in Johannesburg, South Africa, to increase their understanding of police oversight, human rights and policing standards. UNDP stated that the Police Advisory Committee (PAC) continued to monitor police performance at eight police stations under TFG control in Mogadishu. The PAC had made regular visits to the Mogadishu Central Prison.”<sup>4</sup>
- 2.3.5** The USSD 2010 report noted that: “The police were generally ineffective, underpaid, and corrupt. With the possible exception of a few UN-trained police known as the Somali Police Unit, members of the TFG titular police forces in Mogadishu often directly participated in politically based conflict and owed their positions largely to clan and familial links rather than to government authorities.”<sup>5</sup>
- 2.3.6** In January 2007, the African Union Peace and Security Council authorised a peacekeeping mission in Somalia, known as AMISOM. It was ‘mandated to support transitional governmental structures, implement a national security plan, train the Somali security forces and assist in creating a secure environment for the delivery of humanitarian aid.’ AMISOM consists of a civilian component, essentially a political affairs unit which has the role of assisting the TFG in the re-establishment of functioning state institutions; a police component which has the role of training, mentoring and advising the Somali Police Force (SPF); and a main element, the military component.<sup>6</sup>
- 2.3.7** Of the 8,000 troops planned, about 4,300 were deployed in early 2009, split between the two contributor nations, Burundi and Uganda. AMISOM reached its Security Council mandated strength of 8,000 troops late December 2010. The AMISOM police strength stands at 40 officers. In March 2011 Burundi and Uganda announced they had committed the additional 4,000 troops mandated by the U.N. in December and that they anticipated deployment around the middle of the year. In mid March Burundi had already deployed 1,000 of the 4,000 extra troops, bringing the current strength to 9,000.<sup>7</sup> According to a United Nations’ report in August 2011, Al-Shabaab’s withdrawal from Mogadishu has left AMISOM and Transitional Federal Government troops overextended. The TFG has imposed martial law on the newly vacated areas and created a “Mogadishu Security Plan”, which calls for the Somali Police Force to occupy the vacated areas.<sup>8</sup>
- 2.4 Internal relocation.** Case owners must refer to the Asylum Policy Instructions on both Internal Relocation and Gender Issues in the asylum claim and apply the test set out in paragraph 339O of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.

<sup>4</sup> COI Service Somalia Country Report May 2011 (para 9.01–9.07)

[www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)

<sup>5</sup> COI Service Somalia Country Report May 2011 (para 9.08–9.11 & 4.02)

[www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)

<sup>6</sup> COI Service Somalia Country Report May 2011 (para 9.08–9.11 & 4.02)

[www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)

<sup>7</sup> COI Service Somalia Country Report May 2011 (para 9.08–9.11 & 4.02)

[www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)

<sup>8</sup> United Nations Security Council, Report of the Secretary-General on Somalia, 30/08/2011

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/481/76/PDF/N1148176.pdf?OpenElement>

- 2.4.1** The UNHCR Eligibility Guidelines (May 2010) conclude that where the examination of an Internal Flight Argument/Internal Relocation Argument is a requirement under domestic law, it should be examined on a case-by-case basis, taking into consideration the specific circumstances of the asylum-seeker within the UNHCR guidelines.<sup>9</sup> In accordance with those guidelines, the UK very carefully considers the appropriateness of internal relocation on a case by case basis taking full account of the individual circumstances of the particular claimant.
- 2.4.2** There are many parts of central and southern Somalia where there is no or little ongoing fighting including, even before the recent withdrawal of Al-Shabaab, parts of Mogadishu. IDPs who have left Mogadishu have gone predominantly to Afgooye and the area has become increasingly urbanised, many IDPs having shifted from temporary shelters to permanent accommodation.<sup>10</sup> In October 2010, it was reported that many who left Mogadishu as IDPs return regularly “to engage in petty trade, load trucks, drive taxis or do whatever they can to bring in some income in order to survive.”<sup>11</sup> Outside Mogadishu the top 10 districts receiving IDPs since February 2011 have been in regions that in February 2011 were under Al-Shabaab control, and include areas in the south west where fighting has been occurring: Shabelle Hoose, Juba Hoose, Gedo, Banadir and Bay.<sup>12</sup>
- 2.4.3** While travel within Al-Shabaab controlled areas of southern and central Somalia is possible, the existence of frequent Al-Shabaab checkpoints means that those who do not comply with the social norms established by Al-Shabaab or who are considered to be un-Islamic or suspected of opposing Al-Shabaab are at risk of suffering serious harm. In this context, the Upper Tribunal concluded in the recent country guidance case of *AMM and others* (see section 2.5), that travel by land across southern and central Somalia to a home area or proposed place of relocation may well, in general, pose real risks of serious harm, not only from Al-Shabab checkpoints but also as a result of the present famine conditions. Women travelling without male friends or relatives are in general likely to face a real risk of sexual violence. The Tribunal also found that for someone at real risk in a home area in southern or central Somalia, an internal relocation alternative to Mogadishu is in general unlikely to be available, given the risk of indiscriminate violence in the city, together with the present humanitarian situation.
- 2.4.5** Somaliland and Puntland, are in general relatively safe. A long-standing dispute exists over the territories of Cayn, Sool and Sanag, with both Somaliland and Puntland claiming them and the Sool-Sanag-Cayn alliances fighting to remain part of the original state of Somalia. General insecurity resulting from armed violence continues to be the main protection concern in the North-West regions of Somaliland<sup>13</sup> and there has also been an increase in violence and assassinations in Puntland, since the beginning of 2011, mostly in Galkayo, Bossaso and areas around Galgala.<sup>14</sup>
- 2.4.6** There are major protection concerns around IDP settlements both in Puntland and Somaliland, which include overcrowding, severe levels of malnourishment, economic exploitation of children and a lack of physical security, rapes, gang rapes and other instances of sexual and gender-based violence.<sup>15</sup>
- 2.4.7** The authorities in Somaliland will only admit failed asylum seekers returning from European countries who originate from their territory or those who have close affiliations to the

<sup>9</sup> UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Somalia 5 May 2010 <http://www.unhcr.org/refworld/docid/4be3b9142.html>

<sup>10</sup> [http://reliefweb.int/sites/reliefweb.int/files/resources/map\\_222.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/map_222.pdf) and UNHCR Briefing Notes “Afgooye corridor fast becoming the capital of Somali’s displaced” 1 October 2010 <http://www.unhcr.org/4ca5d91f9.html>

<sup>11</sup> International Federation of Red Cross and Red Crescent Societies (IFRC) (21/10/10)

<http://www.cicr.org/eng/resources/documents/update/2010/somalia-update-211010.htm>

<sup>12</sup> British High Commission letter 22 September 2011 (hard copy available)

<sup>13</sup> IRIN, Somaliland clashes displace thousands, 10/02/2011 <http://www.irinnews.org/report.aspx?ReportID=91887>

<sup>14</sup> United Nations Human Rights Council, Report of the independent expert on the situation of human rights in Somalia, Shamsul Bari\* 29/08/2011 [http://reliefweb.int/sites/reliefweb.int/files/resources/A.HRC\\_.18.48\\_en.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/A.HRC_.18.48_en.pdf)

<sup>15</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kalin on his mission to Somalia, 21/01/2010 <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/103/96/PDF/G1010396.pdf?OpenElement>

territory through clan membership. In the case of majority clan affiliates, this means those associated with the Isaaq in Somaliland. In Somaliland taxis and 4x4 vehicles can easily travel from Hargeisa, Burao, Lasanod and Garowe. The main transportation between Somaliland and South Central is by lorry. People travel by air between Mogadishu and Hargeisa.<sup>16</sup> The Tribunal in *AMM and others* (see section 2.5) also found that a person from Somaliland will not, in general, be able without real risk of serious harm to travel overland from Mogadishu International Airport to a place where he or she might be able to obtain an unofficial travel document for the purposes of gaining entry to Somaliland, and then by land to Somaliland. This is particularly the case if the person is female. A proposed return by air to Hargeisa, Somaliland (whether or not via Mogadishu International Airport) will in general involve no such risks.

**2.4.8** Mogadishu airport continues to function normally.<sup>17</sup> There are scheduled air services to a number of destinations in Somalia – Mogadishu, Bosasso, Hargeisa, Berbera, Burao and Galcaayo.<sup>18</sup>

## 2.5 Caselaw.

**AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia CG [2011] UKUT 00445 (IAC).** In its determination of 25 November 2011, the Upper Tribunal took full account of the European Court of Human Rights judgment in the case *Sufi & Elmi v UK* (see below) and gave the following country guidance:

### 1. Mogadishu

1.1 Despite the withdrawal in early August 2011 of Al-Shabab conventional forces from at least most of Mogadishu, there remains in general a real risk of Article 15(c) harm for the majority of those returning to that city after a significant period of time abroad. Such a risk does not arise in the case of a person connected with powerful actors or belonging to a category of middle class or professional persons, who can live to a reasonable standard in circumstances where the Article 15(c) risk, which exists for the great majority of the population, does not apply.

1.2 The armed conflict in Mogadishu does not, however, pose a real risk of severe Article 3-level harm in respect of any person in that city, regardless of circumstances. The humanitarian crisis in southern and central Somalia has led to a declaration of famine in IDP camps in Mogadishu; but a returnee from the United Kingdom who is fit for work or has family connections may be able to avoid having to live in such a camp. A returnee may, nevertheless, face a real risk of Article 3 harm, by reason of his or her individual vulnerability.

1.3 Except as regards the issue of female genital mutilation (FGM), it is unlikely that a proposed return to Mogadishu at the present time will raise Refugee Convention issues.

### 2. Southern and central Somalia, outside Mogadishu

2.1. Outside Mogadishu, the fighting in southern and central Somalia is both sporadic and localised and is not such as to place every civilian in that part of the country at real risk of Article 15(c) harm. In individual cases, it will be necessary to establish where a person comes from and what the background information says is the present position in that place. If fighting is going on, that will have to be taken into account in deciding whether Article 15(c) is applicable. There is, likewise, no generalised current risk of Article 3 harm as a result of armed conflict.

2.2. In general, a returnee with no recent experience of living in Somalia will be at real risk of being subjected to treatment proscribed by Article 3 in an Al-Shabab controlled area. "No recent experience" means that the person concerned left Somalia before the rise of Al-Shabab in 2008. Even if a person has such experience, however, he or she will still be returning from the United Kingdom, with all the adverse assumptions likely to be made, so far as Al-Shabab perceptions are concerned, but he or she will be less likely to be readily identifiable as a returnee. Even if he or she were to be so identified, the evidence may point to the person having struck up some

<sup>16</sup> FCO letter 5 May 2010 (hard copy available)

<sup>17</sup> Voice of America. Mogadishu Airport Deemed Relatively Safe, Despite Terror Concerns 1 March 2010. <http://www1.voanews.com/english/news/africa/Aden-Adde-International-Airport-in-Mogadishu-Relatively-Safe-85827947.html>

<sup>18</sup> Maps of the World. <http://www.mapsofworld.com/international-airports/africa/somalia.html>

form of accommodation with Al-Shabab, whilst living under their rule. On the other hand, although having family in the Al-Shabab area of return may alleviate the risk, the rotating nature of Al-Shabab leadership and the fact that punishments are meted out in apparent disregard of local sensibilities mean that, in general, it cannot be said that the presence of family is likely to mean the risk ceases to be a real one.

- 2.3. Al-Shabab's reasons for imposing its requirements and restrictions, such as regarding manner of dress and spending of leisure time, are religious and those who transgress are regarded as demonstrating that they remain in a state of kufr (apostasy). The same is true of those returnees who are identified as returning from the West. Accordingly, those at real risk of such Article 3 ill-treatment from Al-Shabab will in general be refugees, since the persecutory harm is likely to be inflicted on the basis of imputed religious opinion.
- 2.4. Although those with recent experience of living under Al-Shabab may be able to "play the game", in the sense of conforming with Al-Shabab's requirements and avoiding suspicion of apostasy, the extreme nature of the consequences facing anyone who might wish to refuse to conform (despite an ability to do so) is such as to attract the principle in RT (Zimbabwe). The result is that such people will also in general be at real risk of persecution by Al-Shabab for a Refugee Convention reason.
- 2.5. The same considerations apply to those who are reasonably likely to have to pass through Al-Shabab areas.
- 2.6. For someone at real risk in a home area in southern or central Somalia, an internal relocation alternative to Mogadishu is in general unlikely to be available, given the risk of indiscriminate violence in the city, together with the present humanitarian situation. Relocation to an IDP camp in the Afgoye Corridor will, as a general matter, likewise be unreasonable, unless there is evidence that the person concerned would be able to achieve the lifestyle of those better-off inhabitants of the Afgoye Corridor settlements.
- 2.7. Internal relocation to an area controlled by Al-Shabab is not feasible for a person who has had no history of living under Al-Shabab in that area (and is in general unlikely to be a reasonable proposition for someone who has had such a history). Internal relocation to an area not controlled by Al-Shabab is in general unlikely to be an option, if the place of proposed relocation is stricken by famine or near famine.
- 2.8. Within the context of these findings, family and/or clan connections may have an important part to play in determining the reasonableness of a proposed place of relocation. The importance of these connections is likely to grow, if the nature of the present humanitarian crisis diminishes and if Al-Shabab continues to lose territory.
- 2.9. Travel by land across southern and central Somalia to a home area or proposed place of relocation is an issue that falls to be addressed in the course of determining claims to international protection. Such travel may well, in general, pose real risks of serious harm, not only from Al-Shabab checkpoints but also as a result of the present famine conditions. Women travelling without male friends or relatives are in general likely to face a real risk of sexual violence.
- 2.10. An issue that may have implications for future Somali appeals is the availability of air travel within Somalia (including to Somaliland). Flying into Mogadishu International Airport is sufficiently safe. There is no evidence to indicate a real risk to commercial aircraft flying to other airports in Somalia.

### 3. Somaliland and Puntland

- 3.1. The present appeals were not designed to be vehicles for giving country guidance on the position within Somaliland or Puntland. There is no evidential basis for departing from the conclusion in NM and others, that Somaliland and Puntland in general only accept back persons who were former residents of those regions and were members of locally based clans or sub clans. In the context of Somali immigration to the United Kingdom, there is a close connection with Somaliland.
- 3.2. A person from Somaliland will not, in general, be able without real risk of serious harm to travel overland from Mogadishu International Airport to a place where he or she might be able to obtain an unofficial travel document for the purposes of gaining entry to Somaliland, and then by land to Somaliland. This is particularly the case if the person is female. A proposed return by air to

Hargeisa, Somaliland (whether or not via Mogadishu International Airport) will in general involve no such risks.

4. Female genital mutilation

4.1. The incidence of FGM in Somalia is universally agreed to be over 90%. The predominant type of FGM is the “pharaonic”, categorised by the World Health Organisation as Type III. The societal requirement for any girl or woman to undergo FGM is strong. In general, an uncircumcised, unmarried Somali woman, up to the age of 39, will be at real risk of suffering FGM.

4.2. The risk will be greatest in cases where both parents are in favour of FGM. Where both are opposed, the question of whether the risk will reach the requisite level will need to be determined by reference to the extent to which the parents are likely to be able to withstand the strong societal pressures. Unless the parents are from a socio-economic background that is likely to distance them from mainstream social attitudes, or there is some other particular feature of their case, the fact of parental opposition may well as a general matter be incapable of eliminating the real risk to the daughter that others (particularly relatives) will at some point inflict FGM on her.

**Sufi & Elmi v United Kingdom (ECtHR) 28 June 2011. Applications 8319/07 and 11449/07.** In summary the Court concluded (para 293 - 296):

- In conclusion, the Court considers that the situation of general violence in Mogadishu is sufficiently intense to enable it to conclude that any returnee would be at real risk of Article 3 ill-treatment solely on account of his presence there, unless it could be demonstrated that he was sufficiently well connected to powerful actors in the city to enable him to obtain protection (see paragraph 249).
- Nevertheless, Article 3 does not preclude the Contracting States from placing reliance on the internal flight alternative provided that the returnee could travel to, gain admittance to and settle in the area in question without being exposed to a real risk of Article 3 ill-treatment. In this regard, the Court accepts that there may be parts of southern and central Somalia where a returnee would not necessarily be at real risk of Article 3 ill-treatment solely on account of the situation of general violence (see paragraph 270, above). However, in the context of Somalia, the Court considers that this could only apply if the applicant had close family connections in the area concerned, where he could effectively seek refuge. If he has no such connections, or if those connections are in an area which he could not safely reach, the Court considers that there is a likelihood that he would have to have recourse to either an IDP or refugee camp (see paragraph 266).
- If the returnee’s family connections are in a region which is under the control of Al-Shabaab, or if it could not be accessed except through an Al-Shabaab controlled area, the Court does not consider that he could relocate to this region without being exposed to a risk of ill-treatment unless it could be demonstrated that he had recent experience of living in Somalia and could therefore avoid coming to the attention of Al-Shabaab (see paragraph 276).
- Where it is reasonably likely that a returnee would find himself in an IDP camp, such as those in the Afgooye Corridor, or in a refugee camp, such as the Dadaab camps in Kenya, the Court considers that there would be a real risk that he would be exposed to treatment in breach of Article 3 on account of the humanitarian conditions there (see paragraph 295).

*M.S.S. v Belgium and Greece – 30696/09 [2011] ECHR (21 January 2011*

- In assessing the article 3 risk, the Court concluded that the humanitarian conditions in Somalia were not solely attributable to poverty or the State’s lack of resources in dealing with a naturally occurring phenomenon such as a drought; the crisis is predominantly due to the direct and indirect action of the parties to the conflict.
- The Court considered that its approach should be that adopted in *M.S.S v Belgium and Greece* and not the previously articulated approach in *N v UK* that humanitarian conditions would only breach Article 3 in very exceptional cases where the grounds were compelling. Rather, it took the MSS approach, which requires it to have regard to an applicant’s ability to cater for his most basic needs, his vulnerability to ill-treatment and the prospect of his situation improving within a reasonable time-frame.

**Please note –** this judgment became final on 28 November 2011 following refusal of the UK’s application for the case to be referred to the Grand Chamber of the European Court and must now be read in light of *AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia CG [2011] UKUT 00445 (IAC)* .

**HH (Somalia) & Others [2010] EWCA Civ 426** The Court of Appeal considered the cases of HH, AM, J and MA concerning return to Somalia and made the following findings:

- **HH** - The AIT had made errors in its application of Article 15c Qualification Directive but these errors were not material and accordingly the appeal of *HH* was rejected. The decision that it is safe to return *HH* is now obsolete in light of the later conditions described in *AM* and *AM* and should not be relied on.
- **MA** - This appeal was upheld but turned on its individual facts and does not have wider application.
- **AM** and **J** - These individuals' arguments were that the AIT failed to consider the safety of the route and return to the areas of Somalia where they were considered to be safe. They argued not only that (1) where the route and manner of return are known or can be implied, the First Tier Tribunal must consider whether the applicant would be put at risk if returned by that route (as in their cases), but further argued that (2) the Qualification and Procedures Directives read together require that issues of safety during return should always be considered as part of the decision on entitlement to protection made by the SSHD.
- The Court agreed with submission (1). Its finding of general application which is now binding in UK law is that **in any case in which it can be shown either directly or by implication what route and method of return is envisaged, the First Tier Tribunal is required by law to consider and determine any challenge to the safety of that route or method.** In the present cases, the route and method of return was known, and so should have been considered. The appeals were therefore allowed.
- The Court did not consider it necessary to make a definitive ruling on submission (2), but did express the view that *AM* and *J* were right that the Directives read together required that the issues of safety during return (as opposed to technical obstacles to return such as documentation issues/availability of flights) should be considered as part of the decision on entitlement to protection. In the Court's view, the Tribunal must always consider that question whenever the applicant puts it in issue. However this is not a binding statement and the possibility of future argument on this point (including to the ECJ) is left open.
- *AM* was remitted to the Tribunal (see above) for it to be re-evaluated in light of the law as it now stands. This will mean taking into account safety issues arising from the implicit method of return, and also the current interpretation of Article 15c set out by the European Court of Justice and Court of Appeal in *Elgafaji* and *QD* respectively.

**AM & AM (armed conflict: risk categories) Somalia CG [2008] UKAIT 00091.** This case considered safety of return to Somalia, in particular, routes of return to and via Mogadishu and whether an internal armed conflict existed in Somalia with reference to Article 15 (c) of the Qualification Directive. The AIT found that:

- An internal armed conflict existed in Central and Southern Somalia. The AIT reiterated that its approach to considering Article 15 (c) was the same as in *KH* Iraq and (with one exception) *HH* & others (Mogadishu: armed conflict: risk) Somalia CG [2008] UKAIT 00022.
- The situation in central and southern Somalia did not generally reach the threshold where civilians per se or Somali civilian IDPs per se could be said to face a real risk of persecution or serious harm or treatment proscribed by Article 3 ECHR.
- Return to Mogadishu for most persons would amount to a breach of Article 3 ECHR/ Article 15 (b) of the Qualification Directive (para 179). Such persons would soon be forced to leave Mogadishu but, in order for any Article 3/ Article 15 (b) or Article 15(c) claim to succeed, would need to show that they had no viable relocation alternative.
- An individual will not generally be able to show that the situation in their home area is unsafe if they do not live in Mogadishu. Evidence that an area outside of Mogadishu was unsafe would need to show that there was a consistent pattern of indiscriminate violence giving rise to a serious and individual threat. Only then could an international/ Article 3 protection need be established (para 184).
- The evidence does not show that a person having to relocate from their home area including from Mogadishu will necessarily become an IDP or that there is a reasonable likelihood of them becoming one. A sizeable number of people from Mogadishu have made their way to areas of Southern Somalia where they have traditional clan connections (para 188). Risk and reasonableness of relocation will depend on a variety of circumstances (para 189). If a person was required to live in an IDP camp for a substantial amount of time, it is likely that internal relocation would be unreasonable. However this must be looked at on a case by case basis (para 190).
- Consideration of travel en route from Mogadishu airport was not an implicit part of any immigration decision. Whilst there has been an increase in the number of roadblocks/

checkpoints, onward travel from Mogadishu airport does not put someone at risk of Article 3 mistreatment (para 195).

- Whilst consideration as to whether a returnees' ability to pre arrange an armed militia escort is outside of the remit of the AIT, pre arrangement of an armed militia escort is not contrary to Orders in Council or UN law (para 66).
- Because of recent events, clan or sub clan dynamics/ structures had altered but had not ceased to exist as the primary entity to which individuals turn for protection. Clan protection had devolved down to sub-units; clan based or sub-clan based armed militias continued to operate and in certain areas of Somalia, in particular, Kismayo, conflicts were described as inter-clan. In addition, the situation for minority clans in Mogadishu was more precarious than for the great majority of residents.
- Whilst there was a worsening of the humanitarian situation in Somalia, civilians did not appear to face a real risk of denial of basic food and shelter and other bare necessities of life. Though aid agencies could meet with obstructions and dangers in delivering aid to IDPs a significant percentage of those in need were reached.

**Please see also Court of Appeal findings in HH (Somalia) & Others [1-3 March 2010] EWCA Civ 426 above.**

**HY (Somalia) [2006] UKAIT 00002.** Yibir – *YS and HA* applied. The finding of the IAT in *YS and HA* that a Midgan who had lost the protection of a local patron or patrons, and who had not found alternative protection in the city would be vulnerable to persecution is good law and applies to Yibir as well (para 17). Where the only 'protection' available takes the form of forced labour, if not servitude, the appellant is at risk of inhuman or degrading treatment (para 18). Internal relocation is not an option (para 17).

**MA (Somalia) CG [2006] UKAIT 00073.** Galgala – Sab clan. The Tribunal found a distinction between the access to protection for the Midgan, Tumul and Yibir on one hand and the Galgala on the other. Unlike for the other groups, the evidence does not indicate that the Galgala can avail themselves of the protection of patron clan groups or return to a safe 'home' area. The appeal was allowed on 1951 Convention and Article 3 ECHR grounds.

**NM and Others (Somalia) CG [2005] UKIAT 00076.** Lone women – Ashraf. The Tribunal found that where the claimant, male or female, from Southern Somalia, is not found to be a minority clan member, there is a likely to be a location in southern Somalia in which the majority clan is able to afford protection sufficiently for neither Convention to apply. Although lone females will be at greater risk than males, they will not be able to show that, simply as lone females from the UK, they have no place of clan safety. ... A majority clan is characterised as one which has its own militia. The strongly clan and family nature of Somali society makes it reasonably likely that a militia escort could sufficiently protect a returnee from Mogadishu through the road blocks and en route banditry to the clan home area. This is enabled by pre-arranged transportation from the airport. Unwillingness on the part of the claimant to make such an arrangement is irrelevant. ... Being a single woman returnee is not of itself a sufficient differentiator.

**YS and HA (Somalia) CG [2005] 00088.** Midgan not generally at risk. The Tribunal found that while being a woman or lone woman increases the level of risk under the Refugee Convention or the ECHR... the question of real risk comes down to whether a Midgan would be able to access protection from a majority clan patron. There is nothing to show that such protection would be denied to a female Midgan where it would be afforded to a male Midgan. The Tribunal also found that Internal relocation would rarely, if ever, be a viable option for a Midgan and that any available majority clan patron protection will normally exist in his or her home area only: there are no Midgan communities in Somalia. Thus, if it has been found that a Midgan would be at risk in his or her home area, then it is difficult to see how he or she could move elsewhere with any real prospect of securing an alternative source of majority clan protection.

**KS (Somalia) CG [2004] UKIAT 00271.** The background evidence on Somalia shows that members of certain clans or groups, such as the Bajuni, are likely to be able to demonstrate a risk of persecution on return. For such persons, clan membership will usually be determinative but may 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.

**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.

**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 (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 ethnicity, is assessment of two separate issues (firstly the claimant's ethnicity and secondly their nationality). This assessment will include examination of at least 3 different factors:

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

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

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

### **3. Main categories of claims**

- 3.1** This Section sets out the main type of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in Somalia. It also contains any common claims that may raise issues covered by the Asylum Instruction 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 relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the guidance below.
- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the claimant 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 Asylum Instruction on Considering the Asylum 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 claimant 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** All Asylum Instructions can be accessed on the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:  
<http://www.ukba.homeoffice.gov.uk/documents/asylumpolicyinstructions/>
- 3.5 Credibility**
  - 3.5.1** This guidance is **not** designed to cover issues of credibility. Case owners will need to consider credibility issues based on all the information available to them. For guidance on credibility see Establishing the facts of the claim (material and non-material facts) in the Asylum Instruction Considering the protection (asylum) claim' and assessing credibility.

Case owners must also ensure that each asylum application has been checked against previous UK visa applications. Where an asylum application has been biometrically matched to a previous visa application, details should already be in the Home Office file. In all other cases, the case owner should satisfy themselves through CRS database checks that there is no match to anon-biometric visa. Asylum applications matches to visas should be investigated prior to the asylum interview, including obtaining the Visa Application Form (VAF) from the visa post that processed the application.

### 3.6 General country situation in southern and central regions

**3.6.1** Some claimants will make an asylum and/or human rights claim based on the security and/or humanitarian situation in southern and central Somalia.

**3.6.2 *Treatment.*** By late 2010, Al-Shabaab and other Islamist rebel groups had gained control over most of southern Somalia. Fighting between militant Islamist groups and the Transitional Federal Government (TFG) continued in Mogadishu. The TFG is supported by troops from the African Union Mission in Somalia (AMISOM) which currently numbers around 9,000 and has been pledged further support from Burundi and Uganda. South Sudan also pledged support in August.<sup>19</sup> Besides Al-Shabaab, other significant armed groups are Hizbul Islam, Ahlu Sunna Wal Jama'a (ASWJ), and Ras Kamboni. ASWJ, which receives military support from Ethiopia, and Ras Kamboni, are allied to the TFG. Hizbul Islam has on several occasions fought alongside Al-Shabaab against the TFG and officially merged with Al-Shabaab in December 2010. Both Al-Shabaab and Hizbul Islam have received military, financial, and political support from Eritrea.<sup>20</sup>

**3.6.3** Figures and estimates vary considerably between sources on the number and type of casualties resulting from the conflict, reflecting difficulties in monitoring and documenting incidents in a conflict situation and also differences in methodological approach.<sup>21</sup> Some sources do not distinguish, for example, between combatant casualties and civilian casualties.<sup>22</sup> COI Service Somalia Country Report May 2011 sets out numbers, types and location of violence.<sup>23</sup>

**3.6.4** In September 2010 the TFG began a military offensive aimed at reclaiming more of Mogadishu from Al-Shabaab. In early 2011, the TFG renewed its offensive, this time with more coordinated support from AMISOM. ASWJ, and other militias trained by Kenya and Ethiopia and deployed in southern Somalia across the Kenyan and Ethiopian borders, joined the operation, which was aimed at retaking parts of the country back from Al-Shabaab control. Fighting took place across different parts of the country, notably in the Bay, Bakool, Hiran, and Gedo provinces, with serious clashes reported near the towns of Bula Hawo, Bulaweyne, Dolo, Dhobley, and Garbaharey. Most of those areas are near the borders with Kenya and Ethiopia and the fighting was linked to the Kenyan government strategy of creating a strip or buffer zone inside Somalia.<sup>24</sup> According to an April 2011 United Nations Security Council (UNSC) report, sporadic fighting has continued to be reported in the towns of Doolow, Bulo Hawo, Luuq, Elwaaq, Dhobley, Diif and Taabdo.<sup>25</sup>

**3.6.5** One of the main arenas of the offensive was the border area of Kenya and Ethiopia,

<sup>19</sup> Reliefweb <http://reliefweb.int/node/443513>

<sup>20</sup> Human Rights Watch 15 August 2011 <http://www.hrw.org/reports/2011/08/15/you-don-t-know-who-blame>

<sup>21</sup> COI Service Somalia Country Report May 2011 (para 8.08 – 8.12)

[www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)

<sup>22</sup> OCHA Humanitarian Overview Sept 2010 ("It remains a challenge to classify victims as combatants or non-combatants (civilians)") <http://ochaonline.un.org/Default.aspx?alias=ochaonline.un.org/somalia> Somalia: Security and Conflict in the South (Landinfo – 23 August 2010) ("It is difficult to know just how many are civilians and the number of civilians will also vary").(hard copy available)

<sup>23</sup> COI Service Somalia Country Report May 2011 (para 8.08 -8.50)

[www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)

<sup>24</sup> HRW "You don't know who to blame" 15 August 2011 <http://www.hrw.org/reports/2011/08/15/you-don-t-know-who-blame>

<sup>25</sup> COI Service Somalia Country Report May 2011 (para 27.14) [www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)

an area called “Jubaland.” Jubaland is the newest of the semi-autonomous regions in the country that have been formed due to the lack of central state authority - 10 have been formed to date. Also known as Azania, Jubaland was conceived principally by Kenya as a buffer zone against Al-Shabaab and to potentially serve as a temporary home for the large number of people fleeing conflict elsewhere in the country. Jubaland notionally comprises the present Somali provinces of Lower Juba, Middle Juba, and Gedo. Even after the recent offensives, however, in May 2011 only a very small part of Gedo and Lower Juba was under the control of the Somali militias. At present it amounts to one relatively small parcel of land near Dolo on the Ethiopian border and a strip of land along the Kenyan border, approximately 60 to 80 kilometers wide.<sup>26</sup>

- 3.6.6** Further north, it has been reported that forces supporting the TFG in Galguduud are adopting a “defensive position” in Dusamareb, the regional capital. In April 2011, Al-Shabaab captured the town but withdrew on the same night.<sup>27</sup> There is little evidence of armed conflict in Kismayo, which has been described as “in general safe”.<sup>28</sup> There is little evidence of armed conflict in Lower Shabelle, including Merka/Marka, where Al-Shabaab is in control but enjoys little public support and in relation to which it has been said that “the security situation is relatively stable, although there are local pockets where the situation can be more volatile.”<sup>29</sup>
- 3.6.7** In Mogadishu itself much of the fighting in 2010 was reported in and around the Bakara market, as well as in the Yaaqshid, Wardhiigley, Hodan and Bondheere districts. Many of the civilian dead were caught in the crossfire at Bakara market. Al-Shabaab, which had controlled the market since 2008, often used it for cover when firing mortars towards AMISOM peacekeepers.<sup>30</sup> In May 2011, AMISOM announced it had designated Bakara market a ‘no-fire zone’ and would not fire artillery or mortars into the market.<sup>31</sup>
- 3.6.8** renewed offensive at the beginning of 2011 resulted in significant territorial gains in Mogadishu.<sup>32</sup> By the end of April this year, it was estimated that TFG/AMISOM controlled 60% of Mogadishu, containing 80% of the population. The British High Commission in Nairobi reports that by the end of April, the situation was follows: AMISOM/TFG controlled Dharkeynley, Wadajir, WaberiHamarJajab and Shangaani. TFG controlled Hamarweyn. AMISOM/TFG controlled 10% of Deynille, 90% of Hodan, 40% of Hawalwadag, 50% of Wardhigley, 30% of Bondheere, 10% of Shibis and 10% of Abdiazia. Al Shabaab controlled Yaqahid, Karan and Huriwa.<sup>33</sup> Since the beginning of this year, the fighting has mostly revolved around three districts, Hodan, Hawl Wadaag and Wardhigley.<sup>34</sup>
- 3.6.9** On 6 August, Al-Shabaab began moving out of Mogadishu following a series of defeats by government troops. Most of their positions have since been taken over by TFG/AMISOM troops and up to half a million people have returned to their homes in Mogadishu in subsequent weeks. Al-Shabaab claim the withdrawal was tactical but some analysts believe the movement is disintegrating. It has experienced a sharp drop in public support over the last two years and cannot match the military strength of pro-government forces. Al-Shabaab has not totally vacated the capital – there have been isolated reports of fighting between AMISOM and vestiges of Al-Shabaab. AMISOM now has a much larger area to

<sup>26</sup> HRW “You don’t know who to blame” 15 August 2011 [www.hrw.org/reports/2011/08/15/you-don-t-know-who-blame](http://www.hrw.org/reports/2011/08/15/you-don-t-know-who-blame)

<sup>27</sup> COI Service Somalia Country Report May 2011 (para 8.45-8.46)

[www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)

<sup>28</sup> UKBA/FCO Fact Finding Mission (FFM) October 2010 (para 3.19)

[http://webarchive.nationalarchives.gov.uk/20101208171359/http://rds.homeoffice.gov.uk/rds/country\\_reports.html](http://webarchive.nationalarchives.gov.uk/20101208171359/http://rds.homeoffice.gov.uk/rds/country_reports.html)

<sup>29</sup> Southern Somalia: The Security situation (Landinfo – June 2009), p 17, para 3.4.6

[http://www.landinfo.no/asset/1061/1/1061\\_1.pdf](http://www.landinfo.no/asset/1061/1/1061_1.pdf) Somalia: Security and Conflict in the South (Landinfo – 23 August 2010), section 8.5 (hard copy available); UNSCs S/2010/234 May 2010, para 72 <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/343/91/PDF/N1034391.pdf?OpenElement>

<sup>30</sup> COI News Bulletin: “Al-Shabaab’s Withdrawal from Mogadishu” September 2011 (para 1.05, source: The Institute for Strategic Studies Armed Conflict Database, Human Security section, updated April 2011)

<sup>31</sup> <http://reliefweb.int/node/403031>

<sup>32</sup> UN Security Council’s (UNSC) Report of the Secretary General, 28 April 2011

[http://www.amun.org/uploads/Handbooks/2011/06\\_Chapter\\_Two\\_The\\_Security\\_Council.pdf](http://www.amun.org/uploads/Handbooks/2011/06_Chapter_Two_The_Security_Council.pdf)

<sup>33</sup> BHC letter (hard copy available)

<sup>34</sup> OCHA Humanitarian Overview (Feb 2011) <http://ochaonline.un.org/Default.aspx?alias=ochaonline.un.org/somalia>

cover with the same resources and risks being overstretched. There are concerns that Al-Shabaab may now focus on guerrilla rather than conventional warfare or redeploy to other regions. They still control most of the Afgoye corridor. There are also concerns that Somali warlords may be looking to move into the power vacuum left by Al-Shabaab.<sup>35</sup>

**3.6.10** The government says it intends to step up efforts to eradicate Al-Shabaab from the rest of the country and has started clearing some of the main roads which had been closed during the four year insurgency.<sup>36</sup> Following Al-Shabaab's withdrawal, the UN Joint Security Committee, which was created in 2008 under the Djibouti Agreement, met in Mogadishu for the first time since its establishment. All eight of its previous meetings were held outside Somalia. As a further indication of the improved security situation in Mogadishu, there were also several high-level visits by foreign officials, including the UK's secretary of state for international development and Turkey's prime minister. Turkey announced it would establish an embassy in Somalia.<sup>37</sup> Prior to Al-Shabaab's withdrawal, the UN had already increased the numbers of its personnel operation on the ground, due to increased security in Mogadishu.<sup>38</sup> AMISOM had also decided to relocate its civilian staff from Nairobi back to Mogadishu due to improved security.<sup>39</sup> Since withdrawal AMISOM and TFG forces now control about 95% of the capital and are fully deployed in all the districts of Mogadishu, except those of Daynille and Huriwa. Plans are underway to deploy to those districts as soon as additional forces are inserted into the mission area.<sup>40</sup>

**3.6.11** Although AU-force commanders say their 9,000-strong force control 95 per cent of Mogadishu, it remains overstretched and unable to ensure effective security for the city.<sup>41</sup> Al-Shabaab continues to have the capacity to wreak havoc inside the city and armed conflict and acts of violence targeted at civilians or specific individuals are regular occurrences in the capital. In November 2011, Islamist rebels attacked government and African Union troops positions, killing four civilians and wounding 12 others.<sup>42</sup> In the same month gunmen also shot dead a Somali MP.<sup>43</sup> In October, at least 10 African Union troops were killed in fighting in Mogadishu and Al Shabaab claimed to have killed many more AU soldiers. A Reuters photographer counted 76 bodies, some of whom had helmets and flak jackets.<sup>44</sup> These incidents followed the worst ever suicide attack in the Somali capital which killed more than 80 people.

<sup>35</sup> COI News Bulletin: "Al-Shabaab's Withdrawal from Mogadishu" September 2011. For example: Australian Broadcasting Corporation News "Al Qaeda-inspired rebels abandon Somalia's capital" 8 August 2011

<http://www.abc.net.au/news/2011-08-06/al-qaeda-inspired-rebels-abandon-somalia27s-capital/2827484>

Integrated Regional Information Networks (IRIN) "Somalia: Al-Shabaab pullout, the beginning of the end?", 9 August 2011

<http://www.unhcr.org/refworld/docid/4e4a651e2.html> Voice of America, "Analyst warns Al-Shabaab retreat is not victory", 8 August 2011

<http://www.voanews.com/english/news/africa/Analyst-Warns-al-Shabab-Retreat-is-Not-Victory-127240753.html> Bloomberg, "Al-Shabaab's Mogadishu retreat may bring some respite to starving Somalis", 7 August 2011

<http://www.bloomberg.com/news/2011-08-07/somali-insurgents-exit-may-bring-respite-for-starving-citizens.html>

Jamestown Foundation, Terrorism Monitor Volume: 9 Issue: 33 "Internal disputes plague Al-Shabaab leaderships after Mogadishu withdrawal", 19 August 2011

<http://www.unhcr.org/refworld/country,...SOM,,4e5218e79,0.html> AEI Critical Threats "Al-Shabaab's withdrawal from Mogadishu", 7 August 2011

<http://www.criticalthreats.org/somalia/zimmerman-shabaab-retreat-mogadishu-august-7-2011>

<sup>36</sup> <http://www.bloomberg.com/news/2011-08-07/somali-insurgents-exit-may-bring-respite-for-starving-citizens.html> and

<http://allafrica.com/stories/201108220039.html>

<sup>37</sup> UNSC Report September 2011

[http://www.securitycouncilreport.org/site/c.gkWLLeMTIsG/b.7717305/k.1F0D/September\\_2011brSomalia.htm](http://www.securitycouncilreport.org/site/c.gkWLLeMTIsG/b.7717305/k.1F0D/September_2011brSomalia.htm)

<sup>38</sup> UNSC Report 28 April 2011, paras 50 and 51.

<http://www.un.org/wcm/webdav/site/undpa/shared/undpa/pdf/N1130412.pdf>

<sup>39</sup> Public Information Unit, African Union 19 May 2011 <http://reliefweb.int/node/402730>. Somalia

<sup>40</sup> Report of the chairperson of the committee on the situation in Somalia (African Union – 13.09.11)

[http://www.au.int/en/sites/default/files/Final\\_-\\_293rd\\_PSC\\_Report\\_on\\_Somalia\\_Eng\\_\[1\].pdf](http://www.au.int/en/sites/default/files/Final_-_293rd_PSC_Report_on_Somalia_Eng_[1].pdf)

<sup>41</sup> Agence France Presse, Somalis flee Mogadishu district ahead of feared assault, 12/10/2011

<http://reliefweb.int/node/452414>

<sup>42</sup> Agence France-Presse, Somali Islamist rebels battle AU troops in Mogadishu, 18/11/2011

<http://reliefweb.int/node/460035>

<sup>43</sup> Alert Net, Grenades kill two in Somali capital, MP slain, 09/11/2011 <http://reliefweb.int/node/458183>

<sup>44</sup> Alert Net, At least 10 peacekeepers killed in Somalia battle, 21/10/2011 <http://www.trust.org/alertnet/news/at-least-10-peacekeepers-killed-in-somalia-battle/>

<http://www.trust.org/alertnet/news/at-least-10-peacekeepers-killed-in-somalia-battle/>

*Human rights violations*

- 3.6.12** In 2010, international human rights observers accused all parties to the conflict of indiscriminate attacks, deployment of forces in densely populated areas, and a failure to take steps to minimize civilian harm. There were no allegations of TFG security officials engaging in extrajudicial killings; however there were reports of several isolated incidents where rogue TFG troops and allied militia opened fire on public transport vehicles, extorted money at checkpoints, and looted private businesses. In most of these cases, other TFG security forces intervened.<sup>45</sup> In March 2011, three Ugandan soldiers from AMISOM were sentenced to two years in prison for injuring civilians in two shooting incidents in the capital, Mogadishu. AMISOM commander Major General Nathan Mugisha said the jail terms illustrated that ‘any acts of carelessness and irresponsibility will not be condoned or tolerated’.<sup>46</sup> In August 2011 it was reported that two soldiers had been executed by the TFG for killing a civilian and a soldier.<sup>47</sup>
- 3.6.13** In August 2011, the UN’s independent expert also noted that AMISOM has taken some preventive measures to limit civilian casualties, such as a policy of no-indirect fire and the identification of no-fire zones, although specialized equipment and other measures are still needed. Some AMISOM personnel received training on international humanitarian law and protection of civilians and further training is envisaged. AMISOM also carried out investigations into two separate incidents where its troops apparently carelessly opened fire against passers-by. As a result, three soldiers are serving prison sentences in Uganda. The independent expert encouraged the African Union and the United Nations to strengthen their cooperation on issues of protection of civilians and recommends that the effectiveness of the African Union/United Nations working group to serve as a mechanism for coordination in this key area be reinforced.<sup>48</sup>
- 3.6.14** Despite security and capacity problems, the TFG continued to focus on human rights. It has designated a human rights official in the Ministry of Justice and a Focal Point for Human Rights and Child Protection in the Office of the Prime Minister and participated in international efforts to encourage better human rights practices.<sup>49</sup> The Chairperson of the committee on the situation in Somalia in a reported dated 13 September 2011 noted a significant improvement in the security situation. AMISOM has continued to make sustained efforts to ensure strict compliance with international humanitarian law and to minimise civilian casualties. The Mission has observed the highest level of restraint in the face of flagrant violation by Al-Shabaab, sustaining significant casualties to protect civilians.<sup>50</sup>
- 3.6.15** The United Nations noted in August 2011, that Al-Shabaab continues to perpetrate serious violations of humanitarian and human rights law, including summary executions of civilians associated with the Government, unlawful arrest and detention and acts amounting to torture and other inhumane, cruel and degrading practices, such as flogging, amputation and stoning.<sup>51</sup> Human Rights Watch reported in January 2011 that in many areas Al-Shabaab rule brought relative stability and order which contrasts dramatically with the chaos in Mogadishu. Residents from some of these areas credit Al-Shabaab with ending a constant menace of extortion, robbery, and murder from bandits and freelance militias. But even where this holds true, security has come at a steep price, especially for women. Many local administrations have sought to implement harsh and intolerant measures in the name

<sup>45</sup> US State Department Human Rights Report 2010: Somalia [www.state.gov/g/drl/rls/hrrpt/2010/af/154369.htm](http://www.state.gov/g/drl/rls/hrrpt/2010/af/154369.htm)

<sup>46</sup> COI Service Somalia Country Report May 2011 (para ???) [www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)

<sup>47</sup> <http://www.reuters.com/article/2011/08/22/us-somalia-execution-forces-idUSTRE77L4EZ20110822?feedType=RSS&sp=true>

<sup>48</sup> Report of the UN’s independent expert. [A/HRC/18/48 \(Shamsul Bari\) \(29/08/11\)](http://www.a-hrc.org/Doc/2011/02/A.HRC.18.48.En.pdf)  
<http://reliefweb.int/sites/reliefweb.int/files/resources/A.HRC.18.48.en.pdf>

<sup>49</sup> US State Department Human Rights Report 2010: Somalia [www.state.gov/g/drl/rls/hrrpt/2010/af/154369.htm](http://www.state.gov/g/drl/rls/hrrpt/2010/af/154369.htm)

<sup>50</sup> Report of the chairperson of the committee on the situation in Somalia (African Union – 13.09.11)

[http://www.au.int/en/sites/default/files/Final\\_-\\_293rd\\_PSC\\_Report\\_on\\_Somalia\\_Eng\\_\[1\].pdf](http://www.au.int/en/sites/default/files/Final_-_293rd_PSC_Report_on_Somalia_Eng_[1].pdf)

<sup>51</sup> United Nations, Report of the independent expert on the situation of human rights in Somalia, Shamsul Bari, 29/08/2011 [http://www.ecoi.net/file\\_upload/1930\\_1319732285\\_a-hrc-18-48-en.pdf](http://www.ecoi.net/file_upload/1930_1319732285_a-hrc-18-48-en.pdf)

of Sharia law including the way people dress and work. The punishments for even minor offences are often summary, arbitrary and cruel. A climate of fear prevents most people from speaking out against abuses of power. In many areas women have been barred from engaging in any activity that leads them to mix with men, even small-scale commercial enterprises on which many of them depend for a living. Al-Shabaab and other opposition forces often threaten to kill people they suspect of harbouring sympathies for their opponents or who resist recruitment. These are not empty threats; opposition groups have murdered civilians regularly and with complete impunity<sup>52</sup>

- 3.6.16** In its August 2011 report, Human Rights Watch stated that Somalis fleeing from Al-Shabaab-controlled areas continued to report widespread human rights abuses including public beheadings and floggings; forcible recruitment of both adults and children into its forces; the imposition of onerous regulations on nearly every aspect of human behaviour and social life and deprivation of badly needed humanitarian assistance, including food and water. Al-Shabaab's strict interpretation of Sharia is the basis for much mistreatment. Women are caned or arbitrarily detained for greeting men, including relatives, in public. Al-Shabaab bans most recreational activities, including watching and playing football, and singing. Those who violate these prohibitions also risk beatings. Both women and men are subjected to conservative dress codes (such as covering of female heads and limbs, wearing black) and are punished if they do not comply.<sup>53</sup> In the areas it controlled, Al-Shabaab systematically enforced bans on cinemas and forbade watching the World Cup on television. It also prohibited the sale of khat (a narcotic) in towns, smoking, music, and any behavior it deemed un-Islamic such as shaving beards and inappropriate haircuts.<sup>54</sup>
- 3.6.17** Amnesty International noted that persons linked with the TFG are at high risk of being killed, abducted, tortured, but the perception of being linked or sympathizing with the TFG, is sometimes considered enough reason to be targeted: women selling tea to TFG soldiers have been flogged or otherwise punished by Al-Shabaab members, and persons coming from TFG areas in Mogadishu are sometimes suspected by the armed groups of being spies. Testimonies gathered by Amnesty International show that many such abuses target persons suspected of opposing Al-Shabaab or who refuse to comply with an al-Shabab order.<sup>55</sup> Recently arrived asylum seekers in Kenya told Human Rights Watch that Al-Shabaab attempted to prevent some Somalis from fleeing the country, including by blocking roads primarily around Dhobley, stopping buses, arresting and detaining some individuals—although generally temporarily. In July, the UN Office for the Coordination of Humanitarian Affairs (OCHA) was still reporting Al-Shabaab prohibitions on people leaving areas under their control. Al-Shabaab has set up predatory “taxing” structures claimed to be on the basis of the Quran. The group demands *zakah*—a Muslim religious duty to purify the soul through giving alms—from families. Many asylum seekers told Human Rights Watch that in the name of *zakah*, Al-Shabaab confiscated so much money and livestock that they were no longer able to survive. Those who expressly support political groups other than Al-Shabaab do so at grave risk. Both TFG and opposition forces have harassed the dwindling number of journalists still struggling to operate in Somalia.<sup>56</sup>
- 3.6.18** Hundreds of civilians were killed in inter- or intra-clan militia clashes throughout the country in 2010. The killings resulted from clan militias fighting for political power and control of territory and resources; revenge attacks; banditry and other criminal activity; private disputes over property and marriage; and vendettas after incidents such as rape, family disagreements, killings, and abductions. Authorities investigated very few of these cases,

<sup>52</sup> Human Rights Watch World Report 2011 <http://www.hrw.org/world-report-2011/somalia>

<sup>53</sup> Human Rights Watch “You don’t know who to blame”, 15 August 2011 <http://www.hrw.org/node/100958/section/10>

<sup>54</sup> U.S. Department of State, July-December, 2010 International Religious Freedom Report, 13/09/2011 [http://www.state.gov/g/drl/rls/irf/2010\\_5/168430.htm](http://www.state.gov/g/drl/rls/irf/2010_5/168430.htm)

<sup>55</sup> [Amnesty International, Human rights concerns in southern and central Somalia, 18/10/2011](http://www.amnesty.org/en/library/asset/AFR52/013/2010/en/1d8a0187-b1d9-4005-a0b7-68138a3cba14/afr520132010en.pdf)

<sup>56</sup> Human Rights Watch “You don’t know who to blame”, 15 August 2011 <http://www.hrw.org/node/100958/section/10>

and there were few reports that any of the cases resulted in formal action by the local justice system.<sup>57</sup>

- 3.6.19** Despite local efforts to mitigate inter-clan conflicts, Galkayo and surrounding nomadic villages experienced the most severe and frequent armed clashes in the country. An estimated 100 civilians were killed and hundreds others displaced from their homesteads in water and land resource-related reprisal attacks during the year. Intermittent intra-clan armed clashes over resource sharing were also reported in other parts of the Mudug Region, as well as in remote villages between Burao and Buuhoodle towns, in Bari Region, and in parts of Bay, Lower and Middle Shabelle, Hiraan, and Galgaduud regions, resulting in several civilian deaths.<sup>58</sup>
- 3.6.20** Abduction as a tactic in clan disputes was reported but less frequently than in previous years. Clan militia groups and criminal gangs made ransom demands on abductees or demanded property or hostage exchanges as preconditions to the release of abductees. Unlike the previous years where the majority of reported kidnappings were in the southern regions of Somalia, especially in areas surrounding Mogadishu, most kidnappings were reported in the Sool and Sanaag and Mudug regions.<sup>59</sup>

#### *The humanitarian situation*

- 3.6.21** Human Rights Watch reported that tens of thousands of people had fled an upsurge in conflict and the severe drought in Somalia during the first half of 2011. Al-Shabaab severely restricted aid agencies from delivering urgently needed humanitarian assistance in areas under its control. Displaced persons continued to cross to Kenya at a rate of 1,500 people per day and to Ethiopia at a rate of 300 people per day. The refugee camps at Dadaab in Kenya were holding nearly 400,000 people, more than four times their original capacity after 20 years of war in Somalia; 60,000 recent arrivals were camping on the outskirts.<sup>60</sup>
- 3.6.22** The International Crisis Group (ICG) reported in February 2011 that “Contrary to what is often assumed, there is little anarchy in the country. Local authorities administer most areas and maintain a modicum of law and order. Somalis and humanitarian agencies and NGOs on the ground know who is in charge and what the rules are and get on with their work.”<sup>61</sup> The UN Office for the Co-ordination of Humanitarian Affairs noted in an update, published on 3 March 2011 that “Drought – not insecurity – is now the main reason for new displacement in Somalia. More than 52,000 people have been displaced due to drought since 1 December 2010, many of them moving to urban areas in search of assistance.” The World Food Programme’s overview of Somalia stated that: “In the first quarter of the year [2011], WFP delivered life-saving assistance to about 1 million people in Mogadishu, central and northern Somalia.”<sup>62</sup>
- 3.6.23** In August 2011, the United Nations Office for the Co-ordination of Humanitarian Affairs (UNOCHA) reported that approximately 1.46 million people are displaced within Somalia, with Mogadishu hosting 370,000 old IDPs and 100,000 IDPs who have moved into the city within the last two months. “Somalia faces the most severe humanitarian crisis in the world today and the worst food security crisis in Africa since the country’s 1990/91 famine. At least 3.7 million people are in acute food and livelihood crisis - about 50 per cent of the country’s population. Some 3.2 million people are in extreme need of immediate, lifesaving assistance as a result of cumulative droughts, loss of livelihoods and insecurity. While all of

<sup>57</sup> COI Service Somalia Country Report May 2011 (para 10.32-10.34)

[www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)

<sup>58</sup> COI Service Somalia Country Report May 2011 (para 10.32-10.34)

[www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)

<sup>59</sup> COI Service Somalia Country Report May 2011 (para 10.32-10.34)

[www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)

<sup>60</sup> Human Rights Watch “You don’t know who to blame”, 15 August 2011 <http://www.hrw.org/node/100958/section/10>

<sup>61</sup> ICG “Somalia: The Transitional Government on Life Support” 21 February 2011

<http://www.crisisgroup.org/en/regions/africa/horn-of-africa/somalia/170-somalia-the-transitional-government-on-life-support.aspx>

<sup>62</sup> COI Service Somalia Country Report May 2011 (para 24.04-20.08)

[www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)

southern Somalia is under acute humanitarian crisis, Lower Shabelle, Middle Shabelle, Bakool, the Afgooye corridor IDP settlement and the areas with IDP camps in Mogadishu are under famine conditions. Already, the crisis has claimed the lives of tens of thousands of people”.<sup>63</sup> Bay was declared the sixth famine area in September.<sup>64</sup>

- 3.6.24** Following Al-Shabaab’s withdrawal from Mogadishu in August, there has been significantly increased aid. According to OCHA, the last month has seen considerable effort by the humanitarian community in stepping up response, and donors have responded positively to the consolidated appeal. However, response remains inadequate due to funding gaps and access constraints in most parts of southern Somalia. Concerted efforts are needed to implement large scale life-saving humanitarian activities to mitigate the current crisis. In this regard, the ERC is visiting Kenya and Somalia in support of the considerable effort involved in addressing the massive humanitarian crisis. Several agencies have started airlifting the much needed aid into the country.<sup>65</sup>
- 3.6.25** Médecine Sans Frontières (MSF) has begun reinforcing its operations in Mogadishu. It was reported on 14 August that areas which were under the control of Al-Shabaab in Mogadishu can now be reached by aid workers and there is hope that this access will be expanded in the coming weeks. More food is being delivered to rural areas where Al-Shabaab has been pushed back in recent fighting. The regional director East and Central Africa for the UN’s World Food Programme said “There are areas where a month ago we did not have access that we are already beginning distributions....we are expanding our activities in Mogadishu and we are looking to dramatically increase those activities over the coming days and weeks as the security situation in the city permits.”<sup>66</sup> OCHA reports an outpouring of assistance from donors. Food assistance cluster agencies reached 1.2 million people with food assistance throughout Somalia in August and are scaling up to try to reach 4 million in September. Assistance has been directed to urban and rural populations who have remained in their communities, but also to a growing number of IDPs and those on the move towards countries of asylum. Organisations have worked hard to scale up operations in Mogadishu to respond to the IDP crisis.<sup>67</sup> In November 2011, the Council of Europe noted that the famine has expanded to six regions of southern Somalia, including Mogadishu, and threatens to further expand across the south affecting nearly half of the population.<sup>68</sup> In the same month, the head of the UNOCHA in Mogadishu noted that the frequent looting of aid was “a major problem” and some sources indicated that local or state security agents were involved in the looting.
- 3.6.26** In Mogadishu, media and other sources report that a considerable number of internally displaced persons (IDPs) are starting to return from IDP camps in the Afgooye corridor and other parts of Mogadishu to districts recently abandoned by Al-Shabaab, specifically Boondheere, Abdulaziz, Hodan and Karaan. The exact number of those returning is

<sup>63</sup> Office for the Co-ordination of Humanitarian Affairs “ Weekly Humanitarian Bulletin” 5-12 August 2011; [http://reliefweb.int/sites/reliefweb.int/files/resources/110812\\_Weekly%20Humanitarian%20Bulletin%20%2332%2C%205-12%20August%202011\\_0.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/110812_Weekly%20Humanitarian%20Bulletin%20%2332%2C%205-12%20August%202011_0.pdf)

PMT Monthly Dashboard [http://reliefweb.int/sites/reliefweb.int/files/resources/map\\_776.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/map_776.pdf)

<sup>64</sup> BBC News <http://www.bbc.co.uk/news/world-africa-14785304>

<sup>65</sup> Office for the Co-ordination of Humanitarian Affairs “ Weekly Humanitarian Bulletin” 5-12 August 2011; [http://reliefweb.int/sites/reliefweb.int/files/resources/110812\\_Weekly%20Humanitarian%20Bulletin%20%2332%2C%205-12%20August%202011\\_0.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/110812_Weekly%20Humanitarian%20Bulletin%20%2332%2C%205-12%20August%202011_0.pdf)

<sup>66</sup> COI News Bulletin: “Al-Shabaab’s Withdrawal from Mogadishu” September 2011: The Telegraph, Africa famine: Food aid reaching Somalis after Al-Shabaab leave Mogadishu”, 14 August 2011 <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/somalia/8700855/Africa-famine-food-aid-reaching-Somalis-after-al-Shabaab-leave-Mogadishu.html> Medecins Sans Frontiers “MSF rapidly scaling up its activities in Mogadishu”, 12 August 2011 <http://allafrica.com/stories/201108140126.html> Voice of America “A glimmer of hope in Somalia” 12 August 2011 <http://www.voanews.com/policy/editorials/africa/A-Glimmer-Of-Hope-In-Somalia-127615233.html> UN High Commissioner for Refugees, East & Horn of Africa Update: Somali Displacement Crisis at a glance 17 August 2011 <http://www.unhcr.org/4e4bc5529.html> Medecins Sans Frontiers, Somalia “Expanding activities despite significant obstacles” 23 August 2011 <http://allafrica.com/stories/201108240815.html> Islamic Relief UK, Somalia Blog, updated 18 August 2011 [http://www.islamic-relief.org.uk/Somalia\\_Blog.aspx](http://www.islamic-relief.org.uk/Somalia_Blog.aspx)

<sup>67</sup> OCHA: Fact Sheet – Food Somalia <http://ochaonline.un.org/Default.aspx?alias=ochaonline.un.org/somalia>

<sup>68</sup> Council of the European Union, Council conclusions on Somalia, 14/11/2011

[http://reliefweb.int/sites/reliefweb.int/files/resources/Full\\_Report\\_2881.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/Full_Report_2881.pdf)

unknown. This movement is expected to continue as long as the capital continues to be the major distribution point for humanitarian aid. Displacement from other parts of Somalia to Mogadishu is also continuing. On 13 August, the TFG declared a state of emergency in parts of the capital formerly controlled by Al-Shabaab, as well as in the city's IDP camps, aimed at ensuring the security of the displaced people. This will be effective for three months starting from the date of issuance.<sup>69</sup> Information from the UNHCR on population movements between 1 September and 04 November 2011, reveal that displacements were mainly recorded in South Central 26,000 displaced people reported drought as the major cause of displacement in South Central followed by insecurity (25,000), forced return (10,000), lack of livelihood (2,900) and clan conflict (200). The displacements originated mainly from Mogadishu (17,000), Shabelle Hoose (17,000), Bay (13,000) and Gedo (9,200) regions. The IDPs moved to Mogadishu (23,000), Gedo (15,000), Shabelle Hoose (5,700) among other regions. This indicates that people are being both displaced from and to Mogadishu, primarily because of draught and insecurity.<sup>70</sup>

**3.6.27** On 30 August OCHA reported that, according to UNHCR, the number of people fleeing their homes is decreasing. There had been a significant drop in the number of people arriving in Mogadishu.<sup>71</sup> On 6 September OCHA reported that the Food Security and Nutrition Analysis Unit (FSNAU) has warned that unless current levels of response are increased, famine could spread further over the coming months. Current health challenges are exacerbating the situation: Somalia is currently contending with malaria, measles, cholera/AWD and pneumonia. Waterborne diseases are expected to increase with the onset of the October to December rains. The Health Cluster aims to assist 2.6 million people with access to primary and/or basic secondary health care services. An emergency measles vaccination campaign targeting 2.3 million children in ten regions of south and central Somalia, including 745,000 children in Mogadishu was underway. The Nutrition Cluster is targeting all malnourished children and 70,000 people have benefited from the blanket supplementary feeding programme in Afgooye, Bakool, Banadir, Bay, Gedo, Lower and Middle Juba, Lower and Middle Shabelle regions. By the end of August, the WASH Cluster had supported 1,700,581 people with temporary provision of safe water, 86% in south Somalia. The Agriculture and Livelihoods Cluster continued to respond to the emergency through various interventions, including distribution of food vouchers, cash-for-work and cash relief programmes.<sup>72</sup>

**3.6.28** In November 2011 it was reported that famine would persist through to December 2011 in areas of Middle Shabelle and among Afgoye and Mogadishu IDP populations. In areas of Bay, Bakool, and Lower Shabelle (formerly classified as IPC Phase 5 – Famine), substantial humanitarian assistance has mitigated the most extreme food deficits and reduced mortality levels. Therefore, these areas have been downgraded to IPC Phase 4 – Emergency for the November/December 2011 period. However, nearly 250,000 people continue to face imminent starvation; Global Acute Malnutrition (GAM) remains near or above Famine levels (>30 percent) in many regions; and death rates, especially for young children, remain extremely high, in part due to continued outbreaks of measles, cholera, and malaria.<sup>73</sup>

**See also:** [Actors of protection](#) (section 2.3 above)

[Internal relocation](#) (section 2.4 above)

[Caselaw](#) (section 2.5 above)

<sup>69</sup> OCHA: "Somalia, Famine and Drought Situation Report No. 10" 17 August 2011,

<sup>70</sup> [UNHCR Population Movement Tracking Mogadishu Dashboard Since 1 Sep 2011, Updated 04/11/2011](http://reliefweb.int/sites/reliefweb.int/files/resources/map_1253.pdf)

<sup>71</sup> OCHA: "Somalia, Famine and Drought Situation Report No. 11" 30 August 2011

<sup>72</sup> OCHA: "Somalia Famine and Drought Situation Report No. 12" 6 September 2011

<sup>73</sup> Food Security and Nutrition Analysis Unit – Somalia. 18 Nov 2011 <http://www.fsnau.org/in-focus/famine-continues-observed-improvements-contingent-continued-response>

**3.6.29 Conclusion.** A state of civil instability and/or where law and order has sometimes broken down does not of itself give rise to a well-founded fear of persecution for a Convention reason.

**3.6.30** In the recent country guidance case of *AMM and others* (see section 2.5 above), the Upper Tribunal concluded that:

*Mogadishu*

- (a) Despite the withdrawal in early August 2011 of Al-Shabab conventional forces from at least most of Mogadishu, there remains in general a real risk of Article 15(c) harm for the majority of those returning to that city after a significant period of time abroad. Such a risk does not arise in the case of a person connected with powerful actors or belonging to a category of middle class or professional persons, who can live to a reasonable standard in circumstances where the Article 15(c) risk, which exists for the great majority of the population, does not apply.

Caseowners should note that although the Upper Tribunal found that there has not yet been a durable change as to Article 15(c) situation in Mogadishu, it noted in para 363 of the determination that in the coming weeks and months it may very well be the case that the situation shows a durable change. It is therefore important that case owners ensure that they obtain the latest country information about the situation in Mogadishu and take that into full account in reaching decisions on asylum claims.

- (b) The Upper Tribunal went on to conclude that the armed conflict in Mogadishu does not, however, pose a real risk of Article 3 harm in respect of any person in that city, regardless of circumstances. The humanitarian crisis in southern and central Somalia has led to a declaration of famine in IDP camps in Mogadishu; but a returnee from the United Kingdom who is fit for work or has family connections may be able to avoid having to live in such a camp. A returnee may, nevertheless, face a real risk of Article 3 harm, by reason of his or her individual vulnerability.

*Outside Mogadishu*

- (c) Fighting in southern and central Somalia is both sporadic and localised and is not such as to place every civilian in that part of the country at real risk of Article 15(c) harm. In individual cases, it will be necessary to establish where a person comes from and what the background information says is the present position in that place. If fighting is going on, that will have to be taken into account in deciding whether Article 15(c) is applicable. There is, likewise, no generalised current risk of Article 3 harm as a result of armed conflict.
- (d) In general, a returnee with no recent experience of living in Somalia will be at real risk of being subjected to treatment proscribed by Article 3 in an Al-Shabab controlled area. "No recent experience" means that the person concerned left Somalia before the rise of Al-Shabab in 2008. Even if a person has such experience, however, he or she will still be returning from the United Kingdom, with all the adverse assumptions likely to be made, so far as Al-Shabab perceptions are concerned, but he or she will be less likely to be readily identifiable as a returnee. Even if he or she were to be so identified, the evidence may point to the person having struck up some form of accommodation with Al-Shabab, whilst living under their rule. On the other hand, although having family in the Al-Shabab area of return may alleviate the risk, the rotating nature of Al-Shabab leadership and the fact that punishments are meted out in apparent disregard of local sensibilities mean that, in general, it cannot be said that the presence of family is likely to mean the risk ceases to be a real one.
- (e) Al-Shabab's reasons for imposing its requirements and restrictions, such as regarding manner of dress and spending of leisure time, are religious and those who transgress are regarded as demonstrating that they remain in a state of kufr (apostasy). The same is true of those returnees who are identified as returning from the West. Accordingly, those at real risk of such Article 3 ill-treatment from Al-Shabab will in general be

refugees, since the persecutory harm is likely to be inflicted on the basis of imputed religious opinion.

- (f) Although those with recent experience of living under Al-Shabab may be able to “play the game”, in the sense of conforming with Al-Shabab’s requirements and avoiding suspicion of apostasy, the extreme nature of the consequences facing anyone who might wish to refuse to conform (despite an ability to do so) is such as to attract the principle in RT (Zimbabwe). The result is that such people will also in general be at real risk of persecution by Al-Shabab for a Refugee Convention reason.
- (g) The same considerations apply to those who are reasonably likely to have to pass through Al-Shabab areas.
- (h) For someone at real risk in a home area in southern or central Somalia, an internal relocation alternative to Mogadishu is in general unlikely to be available, given the risk of indiscriminate violence in the city, together with the present humanitarian situation. Relocation to an IDP camp in the Afgoye Corridor will, as a general matter, likewise be unreasonable, unless there is evidence that the person concerned would be able to achieve the lifestyle of those better-off inhabitants of the Afgoye Corridor settlements.
- (i) Internal relocation to an area controlled by Al-Shabab is not feasible for a person who has had no history of living under Al-Shabab in that area (and is in general unlikely to be a reasonable proposition for someone who has had such a history). Internal relocation to an area not controlled by Al-Shabab is in general unlikely to be an option, if the place of proposed relocation is stricken by famine or near famine.

With regard internal relocation caseowners should keep in mind that as set out in para 255 of the determination in *AMM and others*, the legal burden does not rest with the caseowner to prove that there is a part of the country of nationality of an appellant, who has established a well-founded fear in one area thereof, to which the claimant could reasonably be expected to go and live. The person who claims international protection bears the legal burden of proving that he or she is entitled to it. What that burden entails will, however, very much depend upon the circumstances of the particular case. In practice, the issue of an internal relocation alternative needs to be raised by the caseowner, either in the letter of refusal or (subject to issues of procedural fairness) during any appeal proceedings. In many cases, the caseowner will point to evidence regarding the general conditions in the proposed place of relocation. It will then be for the claimant to make good an assertion that, notwithstanding those conditions, it would not be reasonable to relocate there. Those reasons may often be ones about which only the claimant could know; for example, whether there are people living in the area of proposed relocation who might identify the appellant to those in his home area whom he fears. The Secretary of State clearly cannot be expected to lead evidence on such an issue.

- (j) Within the context of these findings, family and/or clan connections may have an important part to play in determining the reasonableness of a proposed place of relocation. The importance of these connections is likely to grow, if the present humanitarian crisis diminishes and if Al-Shabab continues to lose territory.
- (k) Travel by land across southern and central Somalia to a home area or proposed place of relocation is an issue that falls to be addressed in the course of determining claims to international protection. Such travel may well, in general, pose real risks of serious harm, not only from Al-Shabab checkpoints but also as a result of the present famine conditions. Women travelling without male friends or relatives are in general likely to face a real risk of sexual violence.
- (l) An issue that may have implications for future Somali appeals is the availability of air travel within Somalia (including to Somaliland). Flying into Mogadishu International Airport is sufficiently safe. There is no evidence to indicate a real risk to commercial aircraft flying to other airports in Somalia.

*Somaliland and Puntland*

- (m) The present appeals were not designed to be vehicles for giving country guidance on the position within Somaliland or Puntland. There is no evidential basis for departing from the conclusion in NM and others, that Somaliland and Puntland in general only accept back persons who were former residents of those regions and were members of locally based clans or sub clans. In the context of Somali immigration to the United Kingdom, there is a close connection with Somaliland.
- (n) A person from Somaliland will not, in general, be able without real risk of serious harm to travel overland from Mogadishu International Airport to a place where he or she might be able to obtain an unofficial travel document for the purposes of gaining entry to Somaliland, and then by land to Somaliland. This is particularly the case if the person is female. A proposed return by air to Hargeisa, Somaliland (whether or not via Mogadishu International Airport) will in general involve no such risks.

**3.6.31** Caseowners should note that the Upper Tribunal in the country guidance case of *AMM and others* (see section 2.5 above), took full account of the European Court of Human Rights (ECtHR) judgment in the case *Sufi & Elmi v UK*. The Upper Tribunal found that they were not bound by the ECtHR's assessment and made some important findings which differed from those in *Sufi & Elmi* such as (a) the categories of persons who would be able to return to Mogadishu without being subject to a breach of 15(c) of the Qualification Directive; (b) that there is no general Article 3 risk in Mogadishu; (c) the ECtHR was wrong to find that the warring parties in Somalia had caused the breakdown of economic, social, political infrastructure; and (d) the Upper Tribunal also rejected ECtHR's criticism of the UKBA Fact Finding Missions' use of anonymised sources.

### **3.7 Members of major clans or their sub-clans**

**3.7.1** Some claimants will make an asylum and/or human rights claim based on their fear of mistreatment at the hands of an individual and/or sub-group of a rival clan family due to their membership of a particular clan or sub-clan.

**3.7.2 *Treatment.*** The clan is the single most important element that has defined the identity and social relations of Somalis for centuries. Most Somalis identify themselves in terms of their lineage or clan. Historically, it was the basis that structured law and order and social activities within and between the various clans. While in the past, clan politics and rivalry between various warlords fuelled and entrenched the conflict, in recent times the conflict has increasingly taken the shape of a conflict between those that allegedly advance different forms of Islam.<sup>74</sup> A 2008 International Crisis Group report stated that the classical clan system was fraying. Clan elders were being targeted in the violence then sweeping the country.<sup>75</sup> However, large swathes of the country had reverted back to a style of clan government that predates colonialism. Observers have pointed out that traditional leaders are losing their hold on power but that the system still worked, albeit to varying degrees.<sup>76</sup>

**3.7.3** Clan families are sub-divided into clans and many sub-clans. Clan members are classified as ethnic Somali and minority groups are usually classified as non-ethnic Somali. The clan structure comprises four major "noble" clan-families; Darod, Hawiye, Isaaq and Dir. "Noble" refers to the widespread Somali belief that members of the major clans are descended from a common Somali ancestor, and that the minority groups have a different, usually mixed, parentage. Two further clans, the Digil and Mirifle (also collectively referred to as Rahanweyn), take, in many aspects, an intermediate position between the main Somali clans and the minority groups.<sup>77</sup>

<sup>74</sup> Institute for Security Studies 01 Sep 2009: ISS Paper 198: <http://www.issafrica.org/pgcontent.php?UID=8647>

<sup>75</sup> IGC 'To move beyond the failed state' [http://www.unhcr.no/Pdf/protect/Somalia\\_nov\\_2005.pdf](http://www.unhcr.no/Pdf/protect/Somalia_nov_2005.pdf)

<sup>76</sup> COI Service Somalia Country Report May 2011 (para 19.05 & 19.07)

[www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)

<sup>77</sup> ACCORD 'Clans in Somalia' December 2009 [http://www.unhcr.no/Pdf/protect/Somalia\\_nov\\_2005.pdf](http://www.unhcr.no/Pdf/protect/Somalia_nov_2005.pdf)

- 3.7.4** More than 85% of the population share a common ethnic heritage, religion and nomad-influenced culture. The UN's Independent Expert estimates that minority groups constitute approximately 22% of the population. In most areas members of groups other than the predominant clan were excluded from effective participation in governing institutions and were subject to discrimination in employment, judicial proceedings and access to public services.<sup>78</sup>
- 3.7.5** Minority groups and low-caste clans include the Bantu (the largest minority), the Benadiri, rer Hamar, Brawenese, Swahili, Tumul, Yibir, Yazxar, Madhiban, Hawrarsame, Muse Dheryo and Faqayaqub. Inter-marriage between minority groups and mainstream clans was restricted. Minority groups have no armed militias and continue to be disproportionately subject to killings, torture, rape, kidnapping for ransom and looting of land and property with impunity by faction militias and majority clan members. Many minority communities live in deep poverty and suffer from numerous forms of discrimination and exclusion.<sup>79</sup>
- 3.7.6** Individual security has traditionally been dependent on the clan. This situation has not changed significantly in modern times and the clan remains the safety net of the Somali population. Vulnerability and protection are closely linked to a clan's strength. However weak clans or groups have traditionally been able to seek protection from and affiliation with the dominant clans in a specific area. Although clans are still important, affiliation to a dominant clan does not necessarily provide protection. Clan loyalty is superseded by political, ideological and international conditions. A clan's ability to provide protection is contingent on the clan's military strength. In the current situation, in which Al-Shabaab and other groups control large parts of southern Somalia, protection from one's own clan in, for example, an Al-Shabaab controlled area is not realistic. Al-Shabaab has the support of various clans and minority groups in the areas it controls. Numerous dominant clans in many districts are therefore currently subordinate to Al-Shabaab and must, among other things, abide by Al-Shabaab's enforcement of Sharia law.<sup>80</sup>
- 3.7.7** In the recent country guidance case of *AMM and others* (see section 2.5 above) the Upper Tribunal noted (paras 504) that "...the importance of clan connections remains, notwithstanding the enormous strains placed on the clan system. Landinfo (June 2009) suggested that clan protection "is still relevant, albeit primarily in relation to ordinary crime" and that clans continue to be important in relation to where a person flees. The evidence of Tony Burns suggested this was true even in Al-Shabab-controlled areas. The Landinfo report quoted one source as follows:-

"Scarce resources and natural disasters such as floods and droughts limit the possibility for and willingness to support new arrivals in an area, even where they belong to the same clan. However, great efforts are still made to help relatives and neighbours. ...it is common to find families consisting of six to eight members, opening their homes to a further six to eight relatives. They share the little they have, but without the money transfers from abroad, the already difficult living conditions would be significantly worse for the large majority of the population."

And went on to note at para 505 that "Population movement tracking reports from UNOCHA estimate the numbers of journeys carried out on the basis of seeking clan/social support. Monthly figures range between 11,000 and 22,000 but with 69,000 in January 2010 and 48,000 in March 2010. Albeit looking at a slightly earlier time, the Danish Immigration Service in 2007 recorded an international organisation as saying that "any Somali has the opportunity to attain security within his or her clan. This is even applicable if a person does not have any close relatives in the country. As long as a person is living inside the traditional area of the clan he or she enjoys the protection of that clan."

<sup>78</sup> US State Department Human Rights Report 2010: Somalia [www.state.gov/g/drl/rls/hrrpt/2010/af/154369.htm](http://www.state.gov/g/drl/rls/hrrpt/2010/af/154369.htm) and [http://www.landinfo.no/asset/1059/1/1059\\_1.pdf](http://www.landinfo.no/asset/1059/1/1059_1.pdf)

<sup>79</sup> US State Department Human Rights Report 2010: Somalia [www.state.gov/g/drl/rls/hrrpt/2010/af/154369.htm](http://www.state.gov/g/drl/rls/hrrpt/2010/af/154369.htm)

<sup>80</sup> COI Service Somalia Country Report May 2011 (para 19.11) [www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)

See also: [Actors of protection](#) (section 2.3 above)

[Internal relocation](#) (section 2.4 above)

[Caselaw](#) (section 2.5 above)

**3.7.8 Conclusion.** Large parts of northern Somalia are in general relatively safe regardless of clan membership. Somaliland and Puntland remain generally safe despite some armed violence and targeted assassinations. In other parts of Somalia it is unlikely than any Somali belonging to one of the major clan-families – their immediate clan groups or associated sub clans - would be able to demonstrate that they have a well-founded fear of ill-treatment on return on the basis of their clan affiliation alone.

**3.7.9** With regard to southern Somalia, the Tribunal found in *AMM and others* that “family and/or clan connections may have an important part to play in determining the reasonableness of a proposed place of relocation”. However, this should be considered alongside the other findings in *AMM and others* and the fact that the influence of Al-Shabaab has impacted on the ability of majority clans to provide effective support and protection to minority clan members.

### 3.8 Bajunis

**3.8.1** Some Somalis will make an asylum and/or human rights claim based on mistreatment at the hands of major clan and sub-clan militias or other clan-based controlling groups in southern/central Somalia on account of their underclass status as members of the Bajuni minority group.

**3.8.2 Treatment.** More than 85% of the population share a common ethnic heritage, religion and nomad-influenced culture. The UN’s Independent Expert estimates that minority groups constitute approximately 22% of the population, which include the Bajuni. In most areas members of groups other than the predominant clan were excluded from effective participation in governing institutions and were subject to discrimination in employment, judicial proceedings and access to public services. Minority groups are disproportionately subject to killings, torture, rape, kidnapping for ransom and looting of land and property with impunity by faction militias and majority clan members. Many minority communities live in deep poverty and suffer from numerous forms of discrimination and exclusion.<sup>81</sup>

**3.8.3** The Bajuni are a small independent ethnic community of perhaps 3,000 or 4,000 who are predominantly sailors and fishermen. They live in small communities along the Indian Ocean coastline (including Somalia and Kenya) and on some of the larger offshore islands between Kismayo and Mombasa, Kenya. They live in Kismayo and the islands of Jula, Madoga, Satarani, Raskamboni, Bungabo, Dudey, Koyoma and Jovay (Bajuni Islands).<sup>82</sup>

**3.8.4** The small Bajuni population in Somalia suffered considerably at the hands of Somali militia, principally Marehan militia who tried to force them off the islands. Though Marehan settlers still have effective control of the islands, Bajuni can work for the Marehan as paid labourers. This is an improvement on the period during the 1990s when General Morgan’s forces controlled Kismayo and the islands, when the Bajuni were treated by the occupying Somali clans as little more than slave labour. Essentially the plight of the Bajuni is based on the denial of economic access by Somali clans, rather than outright abuse.<sup>83</sup> Approximately 2,000 Bajuni voluntarily repatriated to Kismayo and islands from Jomvu refugee camp in Kenya in 1997 following Kenya’s decision to close all 3 refugee camps. They have no patron clans.<sup>84</sup>

<sup>81</sup> US State Department Human Rights Report 2010: Somalia [www.state.gov/g/drl/rls/hrrpt/2010/af/154369.htm](http://www.state.gov/g/drl/rls/hrrpt/2010/af/154369.htm) and [http://www.landinfo.no/asset/1059/1/1059\\_1.pdf](http://www.landinfo.no/asset/1059/1/1059_1.pdf)

<sup>82</sup> <http://www.madhibaan.org/in-depth/in-depth-a-study.htm>

<sup>83</sup> <http://www.madhibaan.org/faq/report-2003-4.htm>

<sup>84</sup> <http://www.madhibaan.org/in-depth/in-depth-a-study.htm>

- 3.8.5** Weak clans or groups have traditionally been able to seek protection from and affiliation with the dominant clans in a specific area. Although clans are still important, affiliation to a dominant clan does not necessarily provide protection. A clan's ability to provide protection is contingent on the clan's military strength. In the current situation, in which Al-Shabaab and other groups control large parts of southern Somalia (including Kismayo), protection from one's own clan in, for example, an Al-Shabaab controlled area is not realistic. Al-Shabaab has the support of various clans and minority groups in the areas it controls. Numerous dominant clans in many districts are therefore currently subordinate to Al-Shabaab and must, among other things, abide by Al-Shabaab's enforcement of Sharia law.<sup>85</sup>
- 3.8.6** The UN's Independent Expert has stated that conditions for minorities are difficult. However, since clan affiliation is not a criterion for social status and protection in the view of the Islamist groups, Al-Shabaab in particular represents something positive to minorities. Strict law enforcement in areas controlled by this group also prevents the crime that for years has affected these groups in particular. Consequently in some regions the minorities support Al-Shabaab.<sup>86</sup> However, Al-Shabaab's strict law enforcement does not necessarily afford protection to minority groups, as they may also be the subject of arbitrary, summary and cruel punishments by Al-Shabaab for minor transgressions of imposed social norms. UNHCR considers the Bajuni to be at risk of persecution on the ground of their ethnicity/race as they lack the military capabilities to defend themselves and do generally not benefit from the protection of war-lords and militias of the large clans.<sup>87</sup>

**See also:** [Actors of protection](#) (section 2.3 above)

[Internal relocation](#) (section 2.4 above)

[Caselaw](#) (section 2.5 above)

- 3.8.7 Conclusion.** The Bajuni do not only originate from Somalia but also other countries along the Indian Ocean coast, notably Kenya.<sup>88</sup> Case owners should therefore pay particular attention to establish both the claimant's nationality as well as ethnicity.
- 3.8.8** Members of minority groups are able in some circumstances to secure protection from major or sub related clans in some areas. The Bajuni have historically been vulnerable to discrimination and social exclusion and In *AJH* (see section 2.5 above) it was found that "Persons of Bajuni or Bravanese ethnicity are likely to face persecution and cannot reasonably relocate, particularly if they are female." Each case should be given careful and detailed consideration on its individual circumstances. For those Bajuni claimants who have demonstrated a reasonable likelihood that they have encountered or will encounter on return ill treatment amounting to persecution a grant of asylum will be appropriate.

### **3.9 Benadiri (Rer Hamar) or Bravanese**

- 3.9.1** Some claimants will make an asylum and/or human rights claim based on mistreatment at the hands of dominant clan and sub-clan militias or other clan-based controlling groups in southern/central Somalia on account of their underclass status as member of one of the Benadiri (Rer Hamar) or Bravanese minority groups.
- 3.9.2 Treatment.** More than 85% of the population share a common ethnic heritage, religion and nomad-influenced culture. The UN's Independent Expert estimates that minority groups constitute approximately 22% of the population, which include the Benadir. In most areas members of groups other than the predominant clan were excluded from effective

<sup>85</sup> COI Service Somalia Country Report May 2011 (para 19.11) [www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/http://www.landinfo.no/asset/1059/1/1059\\_1.pdf](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/http://www.landinfo.no/asset/1059/1/1059_1.pdf)

<sup>87</sup> United Nations High Commissioner for Refugees (UNHCR), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Somalia, 05/05/2010, [http://reliefweb.int/sites/reliefweb.int/files/resources/map\\_1253.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/map_1253.pdf)

<sup>88</sup> Landinfo Topical Note 'Somalia: The Bajuni Islands 16 February 2010 <http://www.landinfo.no/id/168.0>

participation in governing institutions and were subject to discrimination in employment, judicial proceedings and access to public services. Minority groups are disproportionately subject to killings, torture, rape, kidnapping for ransom and looting of land and property with impunity by faction militias and majority clan members. Many minority communities live in deep poverty and suffer from numerous forms of discrimination and exclusion.<sup>89</sup> Benadiri and other minority groups are diminishing in size, as thousands move to camps for internally displaced people's (IDPs) camps in Somaliland and Puntland and refugee camps in Kenya, where they face renewed discrimination.<sup>90</sup>

- 3.9.3** The Benadiri is an umbrella term for a number of minority groups from the coastal area roughly between Mogadishu and Kismayo who share an urban culture and are of mixed origin. They are also known as Reer Hamar or Reer Brava and there are many sub-groups including the Ashraf. Before the war, they lived in the Hamar Weyne, Shingani and Bondere districts of Mogadishu but now live in all districts. Benadiri intermarry but 'light-skinned' Benadiri do not marry 'black-skinned' Benadiri. They are an urban and educated people who work almost exclusively in commercial occupations. Some are medical doctors, businessmen, bankers, engineers or economists. They were among the wealthiest which caused resentment and they suffered particularly badly during the war as they were targeted by looters who considered them rich. Many Benadiri women were raped or forced into marriage.<sup>91</sup>
- 3.9.4** A December 2009 report states that the Rer Hamar are 'not without power' and manage to play a part in the political game with the major clans. They are no longer subject to the kind of targeted violence committed with impunity by the major warring clans that was the case during the early civil war years when they were targeted partly due to their influence and positions in the past Somali government and because they lost any protection with the collapse of rule of law in 1990. This does not mean that they are no longer subject to discrimination but rather that there are now mitigating factors to their benefit. For example, they now hold political positions within the transitional government and a number of key positions with the regional administration of Benadir and local government of Mogadishu.<sup>92</sup>
- 3.9.5** Some have established relations with 'noble' clans such as the Hawiye Abgal and Habr Gedir through marriage. The Benadiri in Merka have learned to compromise and negotiate with the stronger clans through which they have received a level of protection. The Rer Hamar do live in Hamarweyne and Shangani, where they do own property. But, they may not find it easy to move elsewhere in Somalia, buy property or achieve clan protection there.<sup>93</sup> Rer Hamar business people in Mogadishu may be employing armed protection as do all other Somali business people.<sup>94</sup>
- 3.9.6** The Asharaf are frequently categorised as a minority who most often live integrated with the people they have settled with, the Digil-Mirifle or Benadiri, and are usually protected by the group they live with. They are not targeted as a minority as such but may suffer the same problems as their 'host' clans – thus Benadiri Asharaf were targeted with the Benadiri people during the early civil war (1990-1992). At present the Digil-Mirifle/Asharaf may be targeted by Al-Shabaab partly because Al-Shabaab does not recognise their religious status and partly because they oppose the Shariff Hassan who was the driving force in the 2008 Djibouti agreement with President Sheikh Shariff.<sup>95</sup>
- 3.9.7** Weak clans or groups have traditionally been able to seek protection from and affiliation with the dominant clans in a specific area. Although clans are still important, affiliation to a dominant clan does not necessarily provide protection. A clan's ability to provide protection is contingent on the clan's military strength. In the current situation, in which Al-Shabaab

<sup>89</sup> US State Department Human Rights Report 2010: Somalia [www.state.gov/g/drl/rls/hrrpt/2010/af/154369.htm](http://www.state.gov/g/drl/rls/hrrpt/2010/af/154369.htm)

<sup>90</sup> [Minority Rights Group, Annual report on current situation of minorities, 06/07/2011](http://www.minorityrights.org/download.php?id=1018)

<sup>91</sup> COI Service Somalia Country Report May 2011 (para 19.58) [www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/) and [http://www.madhibaan.org/in-depth/Fact-finding+mission+to+Kenya+\(Somalia\)+2000.pdf](http://www.madhibaan.org/in-depth/Fact-finding+mission+to+Kenya+(Somalia)+2000.pdf)

<sup>92</sup> ACCORD 'Clans in Somalia' December 2009 [http://www.unhcr.no/Pdf/protect/Somalia\\_nov\\_2005.pdf](http://www.unhcr.no/Pdf/protect/Somalia_nov_2005.pdf)

<sup>93</sup> ACCORD 'Clans in Somalia' December 2009 [http://www.unhcr.no/Pdf/protect/Somalia\\_nov\\_2005.pdf](http://www.unhcr.no/Pdf/protect/Somalia_nov_2005.pdf)

<sup>94</sup> ACCORD 'Clans in Somalia' December 2009 [http://www.unhcr.no/Pdf/protect/Somalia\\_nov\\_2005.pdf](http://www.unhcr.no/Pdf/protect/Somalia_nov_2005.pdf)

<sup>95</sup> ACCORD 'Clans in Somalia' December 2009 [http://www.unhcr.no/Pdf/protect/Somalia\\_nov\\_2005.pdf](http://www.unhcr.no/Pdf/protect/Somalia_nov_2005.pdf)

and other groups control large parts of southern Somalia, protection from one's own clan in, for example, an Al-Shabaab controlled area is not realistic. Al-Shabaab has the support of various clans and minority groups in the areas it controls. Numerous dominant clans in many districts are therefore currently subordinate to Al-Shabaab and must, among other things, abide by Al-Shabaab's enforcement of Sharia law.<sup>96</sup>

- 3.9.8** The UN's Independent Expert has stated that conditions for minorities are difficult. However, since clan affiliation is not a criterion for social status and protection in the view of the Islamist groups, Al-Shabaab in particular represents something positive to minorities. Strict law enforcement in areas controlled by this group also prevents the crime that for years has affected these groups in particular. Consequently in some regions the minorities support Al-Shabaab.<sup>97</sup>

**See also:** [Actors of protection](#) (section 2.3 above)

[Internal relocation](#) (section 2.4 above)

[Caselaw](#) (section 2.5 above)

- 3.9.9 Conclusion.** For the vast majority of Somalis clan status should not in itself give rise to a risk of mistreatment, and some members of minority groups including the Benadiri are able to secure protection from major or sub related clans in some areas. The Benadiri are no longer subject to the targeted violence they suffered previously. Although some discrimination may remain, they nevertheless play a role in politics, have established relationships with dominant clans, have inter-married and established businesses. Internal relocation is unlikely to be possible for members of the Benadiri. However, that is likely to vary from place to place and may also depend on what the individual can contribute.

- 3.9.10** Case owners should consider each case carefully on its individual merits. Some Benadiri will be entitled to refugee status based on their personal circumstances and experiences.

### **3.10 Midgan, Tumul, Yibir or Galgala**

- 3.10.1** Some applicants will make an asylum and/or human rights claim based on mistreatment at the hands of major clan and sub-clan militias or other clan-based controlling groups on account of their lowly status as members of one of the occupational castes: the Midgan, Tumul, Yibir or Galgala.

- 3.10.2 Treatment.** The Gaboye, Tumul, Yibir and Galgala are ethnically associated with the Samale, which forms a dominant clan in Somalia. However, cultural stigma and traditions have excluded them as outcastes from the Samale clan. They engage in the activities of blacksmithing and shoemaking, as well as being hunters/gatherers. They live mainly in central and northern Somalia<sup>98</sup> although they are also found scattered in southern Somalia.<sup>99</sup> Discrimination and abuses against minorities and vulnerable groups continued unabated and Somali minorities such as the Benadir/Rer Hamar, Midgan (Gadoye) and Tomal continued to face abuses and human rights violations.<sup>100</sup> UNHCR found that members of certain minority clans, such as the Midgan, Tumul and Yibir may be able to call upon the protection of majority clans, if a historical relationship exists. However, given the breakdown in clan protection mechanisms due to the ongoing conflict, as a result of which

<sup>96</sup> COI Service Somalia Country Report May 2011 (para ????) [www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)  
<sup>97</sup> [http://www.landinfo.no/asset/1059/1/1059\\_1.pdf](http://www.landinfo.no/asset/1059/1/1059_1.pdf)

<sup>98</sup> <http://www.madhibaan.org/in-depth/in-depth-a-study.htm>

<sup>99</sup> ACCORD 'Clans in Somalia' December 2009 [http://www.unhcr.no/Pdf/protect/Somalia\\_nov\\_2005.pdf](http://www.unhcr.no/Pdf/protect/Somalia_nov_2005.pdf)

<sup>100</sup> UN Human Rights Council, Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1, 21/02/2011  
[http://www.ecoi.net/file\\_upload/1930\\_1314297449\\_g1110950.pdf](http://www.ecoi.net/file_upload/1930_1314297449_g1110950.pdf)

members of majority clans may no longer be able to rely on such protection, the situation of members of minority clans living together with majority clans will be precarious too.<sup>101</sup>

- 3.10.3** Most of the minority groups have assimilated into other Somalia clans with whom they live. For example, the Galgala have assimilated into the Abgal in Jowhar and Mogadishu. However, they identify themselves as Nuh Mohamud, a sub clan of the Majerten clan. Some Gaboye, Tumul and Yibir assimilated into the Isak in Somaliland, while others yet have assimilated into the Darod in Puntland and central regions. There are also other Gaboye, Tumul and Yibir who assimilated with Hawadle, Murasade and Marehan clans in Galgadud region.<sup>102</sup>
- 3.10.4** With the exception of the Bantu, Rerhamar, Bravanese, Bajuni and Eyle who have distinct "non-Somali" physical appearance, all other minorities have physical appearances similar to that of the dominant clans, as well as having ethnic and cultural similarities. What distinguish the assimilated minorities are their distinct economic livelihoods.<sup>103</sup>
- 3.10.5** The Yibr live along the coast in Mogadishu. They are often claimed to be descendants of early Hebrews who settled in the Horn of Africa. With the presence of radical Islamic groups like al-Shabaab with strong anti-Jewish attitudes, the Yibr have been increasingly suspected by Somalis with a radical Islamic orientation. Therefore members of the Yibr may be targeted in south central Somalia despite the fact that they are Muslims today.<sup>104</sup>

**See also:** [Actors of protection](#) (section 2.3 above)

[Internal relocation](#) (section 2.4 above)

[Caselaw](#) (section 2.5 above)

- 3.10.6 Conclusion.** Members of the Midgan, Tumul Yibir or Galgala groups traditionally settle in areas where they can obtain a degree of protection from the dominant clan and engage in economic activity. Most have assimilated into major clan or sub-clan groups. While they may from time to time encounter discrimination and abuse from other clan groups due to their lowly social status, they may be able to avail themselves of the protection of their patron clan. The grant of asylum in such cases is therefore not likely to be appropriate unless the claimant is unable to access the protection of a majority clan.

### 3.11 Women

- 3.11.1** The USSD reported in 2010 that in the country's overwhelmingly patriarchal culture, women did not have the same rights as men and were systematically subordinated. Polygamy was permitted and, according to Sharia, anyone found guilty of the death of a woman must pay half the amount that would be payable to the aggrieved family if the victim was male. The Independent Expert reported that domestic violence against women remained a serious problem. Because of the destruction of formerly functioning clan structures, in many places women had no access to any formal or traditional protection. Women's groups in Mogadishu, Hargeisa, Bosssaso and other major towns in south central Somalia, Somaliland and Puntland actively promoted equal rights for women and advocated the inclusion of women in responsible government positions. Observers reported some improvement in the profile and political participation of women.<sup>105</sup>
- 3.11.2** Human Rights Watch reported that while all Somalis living under local Al-Shabaab administrations cope with onerous and repressive edicts, women bear the brunt of the

<sup>101</sup> United Nations High Commissioner for Refugees (UNHCR), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Somalia, 05/05/2010, <http://www.unhcr.org/refworld/docid/4be3b9142.html>

<sup>102</sup> <http://www.madhibaan.org/in-depth/in-depth-a-study.htm>

<sup>103</sup> <http://www.madhibaan.org/in-depth/in-depth-a-study.htm>

<sup>104</sup> ACCORD 'Clans in Somalia' December 2009 [http://www.unhcr.no/Pdf/protect/Somalia\\_nov\\_2005.pdf](http://www.unhcr.no/Pdf/protect/Somalia_nov_2005.pdf)

<sup>105</sup> COI Service Somalia Country Report May 2011 (para 21.06 & 21.37)

[www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)

group's repression and abuse. Al-Shabaab's rules have reinforced traditional and cultural prejudices while introducing an array of new ones.<sup>106</sup> Many local administrations have sought to implement harsh and intolerant measures in the name of Sharia law including the way people dress and work. The punishments for even minor offences are often summary, arbitrary and cruel. A climate of fear prevents most people from speaking out against abuses of power. In many areas women have been barred from engaging in any activity that leads them to mix with men, even small-scale commercial enterprises on which many of them depend for a living.<sup>107</sup>

- 3.11.3** Women refugee leaders complained of high illiteracy among women and girls which made it difficult to compete equally with men for jobs. High divorce rates and family breakdown among refugees led to loss of socio-economic support from husbands and fathers. Widows and orphans faced problems carrying responsibilities as heads of families, often leading to sexual and economic exploitation and early marriages. Marital rape and sexual violence was described as rampant. Laws prohibiting rape exist in Somaliland, Puntland and TFG-controlled areas but were not enforced. There were no laws against spousal rape. While there were prosecutions of rape cases in Puntland and Somaliland, there were no reports of the TFG prosecuting rape cases during 2010.<sup>108</sup>
- 3.11.4** The USSD noted that at the end of 2010, news reports highlighted the ongoing issue of sexual and gender-based violence against IDP women living in Somalia, primarily around Galkayco. The UNHCR documented patterns of rape perpetrated with impunity, particularly of women displaced from their homes due to civil conflict or who were members of minority clans. Women and girls in IDP camps were especially vulnerable to sexual violence, contributing to the spread of HIV/AIDS. KARMA, a national human rights institution stated that rape continued to be used as a tool of war in Somalia. The number of rapes inflicted by police had decreased but the use of rape by armed groups to punish and intimidate rivals persisted. Women who have been sexually abused or raped are stigmatised and married women risk being divorced by their husbands.<sup>109</sup>
- 3.11.5** Many Somali women have assumed a greater burden by becoming the sole bread winners for their families. Women form a negligible part of those employed in both the formal public and private sectors because of disparities in education. Women experience economic discrimination in areas under Al-Shabaab control because of Al-Shabaab's extremist position which regards women's participation in economic activities as anti-Islamic. Despite difficult economic conditions generally in Somalia, women were not discriminated against in terms of owning or managing businesses. Somali women have traditionally engaged in a wide array of small-scale businesses such as selling tea, qat and fruit in kiosks, small shops and markets. But Al-Shabaab has ordered women to close their shops. In a country with a vast number of war widows and female-headed households, scarce employment options have left many families without crucial sources of income.<sup>110</sup> Protection risks are rife among the population on the move. The ongoing conflict has increased the risk of sexual violence for women and children and there are reports of Al-Shabaab recruiting girls for forced marriage to fighters, and allegations of rape by militias allied to the Government in southern central Somalia.<sup>111</sup>

<sup>106</sup> Human Rights Watch "Harsh war, harsh peace" 19 April 2010

<sup>107</sup> Human Rights Watch World Report 2011 <http://www.hrw.org/world-report-2011/somalia>

<sup>108</sup> COI Service Somalia Country Report May 2011 (para 21.13)

[www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)

and US State Department Human Rights Report 2010: Somalia [www.state.gov/g/drl/rls/hrrpt/2010/af/154369.htm](http://www.state.gov/g/drl/rls/hrrpt/2010/af/154369.htm)

<sup>109</sup> COI Service Somalia Country Report May 2011 (para 21.13 & 21.27-21.31)

[www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/) and and US State Department Human Rights Report 2010: Somalia [www.state.gov/g/drl/rls/hrrpt/2010/af/154369.htm](http://www.state.gov/g/drl/rls/hrrpt/2010/af/154369.htm)

<sup>110</sup> COI Service Somalia Country Report May 2011 (para 21.20-21.21)

[www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)

<sup>111</sup> [United Nations, Report of the Secretary-General on Somalia, 30/08/2011](http://www.unmissions.org/Portals/UNPOS/Repository%20UNPOS/S-2011-549%20(30Aug).pdf)

[http://unpos.unmissions.org/Portals/UNPOS/Repository%20UNPOS/S-2011-549%20\(30Aug\).pdf](http://unpos.unmissions.org/Portals/UNPOS/Repository%20UNPOS/S-2011-549%20(30Aug).pdf)

- 3.11.6** However women are still important breadwinners in families in Somalia.<sup>112</sup> A BBC Opinion Research Business (ORBS) poll in November 2010 indicated that of women in Mogadishu, just under half were housewives, and of the other half: 2% business owners, 9% informal employment, 9% working part-time, 6% working full time, 13% students, 13% unemployed.<sup>113</sup> Women are employed by the UN and ICRC.<sup>114</sup> For example, in Galgadud, Mogadishu and Mudug, 652 families (3,912 people) headed by women, who had lost their breadwinners as a result of armed conflict began earning an income again, setting up small businesses with basic items provided by the ICRC.<sup>115</sup> Minority women face greater problems but are also in employment to a degree.<sup>116</sup>
- 3.11.7** Human Rights Watch reported in April 2010 that when women travel, they are often required to have a male escort. Male escorts must sit in a different seat if the woman is travelling in the vehicle however as Al-Shabaab bars men and women from sitting together.<sup>117</sup> In August 2011, the UN Special Representative of the Secretary-General on Sexual Violence in Conflict voiced concern over reports that women and girls fleeing famine in Somalia were being raped or abducted and forced into marriage by bandits and other armed groups as they tried to reach refugee camps in Kenya.<sup>118</sup>

See also: [Actors of protection](#) (section 2.3 above)

[Internal relocation](#) (section 2.4 above)

[Caselaw](#) (section 2.5 above)

- 3.11.8 Conclusion.** Given the generalised discrimination towards women in Somalia and the inability of the State to provide protection in many areas of south central Somalia, some applicants are likely to be able to demonstrate a need for international protection. Factors to be taken into account include the age, health, economic status, family responsibilities and other individual circumstances of the applicant.
- 3.11.9** In *AMM and others* the Tribunal found that not only do female returnees in particular face threats against the person in IDP camps, but that women travelling by land “without male friends or relatives are in general likely to face a real risk of sexual violence”. A “real risk of serious harm” would also occur for women returned to Mogadishu International Airport and travelling by land to Somaliland.
- 3.11.10** A woman returning to an area where she has clan or family support and/or other resources such as remittances from abroad or ability to work would clearly be in a different situation to a lone woman in some IDP camps with no protectors or resources. There is evidence that women from minority clans are likely to face greater problems but the situation for minority clans is not clear cut. Some are able to enlist the support and protection of other clans, and the risk to the particular individual should be assessed carefully on a case by case basis.
- 3.11.11** Case owners should consider whether internal flight may be a relevant option for the individual applicant. Independent travel will be difficult given the specific risks facing women in Somalia, but the evidence does not suggest a complete prohibition on women travelling unaccompanied. Taking into account the general position of women in Somalia, who may not be able to survive economically or not able to depend on clan or family for

<sup>112</sup> “Somalia: Women eke out a living among the shells”, 10 January 2011 <http://www.irinnews.org/report.aspx?reportid=91588> SAACID “Market sellers in Hamar-Weyne District, Mogadishu”, [https://saacid.org/uploads/market\\_traders\\_in\\_Hamar-weyne\\_District\\_-\\_March\\_2010.pdf](https://saacid.org/uploads/market_traders_in_Hamar-weyne_District_-_March_2010.pdf)

<sup>113</sup> ORB poll Mogadishu, November 2010

<http://www.opinion.co.uk/Documents/ORB%20Mogadishu%20BBC%20Poll%20Data%20Tables.pdf>

<sup>114</sup> S/2011/277 UNSC April 2011, p10 <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/304/12/PDF/N1130412.pdf?OpenElement>

<sup>115</sup> ICRC annual report 2010, P66 <http://www.icrc.org/eng/resources/annual-report/index.jsp>

<sup>116</sup> Minority Rights Group International “No redress: Somalia’s forgotten minorities”, 2010, p22

[http://www.operationspaix.net/IMG/pdf/MRG\\_NoRedress\\_SomaliasForgottenMinorities\\_2010-11-23\\_.pdf](http://www.operationspaix.net/IMG/pdf/MRG_NoRedress_SomaliasForgottenMinorities_2010-11-23_.pdf)

<sup>117</sup> Human Rights Watch “Harsh war, harsh peace”

<sup>118</sup> <http://www.un.org/app/s/news/story.asp?NewsID=39282>

economic support, internal relocation may be unduly harsh for some women. However, given the latest position regarding Al-Shabaab withdrawal from Mogadishu, case owners should contact Country of Origin Service to ascertain the most up-to-date country situation and consider the security or other risk on return on a case by case basis in light of the latest information at the date of decision.

**3.11.12** Women who have a well founded fear of persecution as a result of their gender should be treated as being members of a particular social group as they are discriminated against in matters of fundamental human rights and may not be protected by the state. Women applicants who can demonstrate that they have a well founded fear of persecution as a result of their gender and that they have no recourse to state protection or internal relocation should be granted asylum.

### **3.12 Female Genital Mutilation (FGM)**

**3.12.1** Some claimants may make asylum and/or human rights claims on the basis that they would be forcibly required by family/ clan members to undergo Female Genital Mutilation (FGM) and/ or that FGM will be forced upon their children if they were to return to Somalia.

**3.12.2 Treatment:** The practice of FGM is widespread throughout Somalia. The US State Department records that as many as 98% of women have undergone FGM; the majority were subjected to infibulations, the most severe form of FGM. In Somaliland and Puntland, FGM is illegal, but the law is not enforced. UN agencies and NGOs have tried to educate the population about the dangers of FGM but there were no reliable statistics to measure the success of their programmes. Some sources claim to have observed a transition from infibulations to *sunna* (excising of part of the female genitals) in recent years but it is difficult to ascertain with any degree of certainty how extensively patterns might have changed. It was emphasised that it is extremely difficult to change the attitude towards FGM and providing education and information to young girls might be the only way to make any impact on this issue.<sup>119</sup>

**3.12.3** The age when FGM is performed is in later childhood; usually between the ages of five and eight. There is societal pressure on families to perform FGM. In Somalia, genital mutilation is not a rite of passage that marks the transition from child to adult. The practice is linked to tradition and notions about purity, virginity and control of unwanted sexuality.<sup>120</sup> Although many women understand that the practice is harmful, they still believe that the custom should be preserved. There is pressure on mothers (and other female family members) in societies where religion, tradition, ideals of purity, fear of stigmatisation and absence of networks beyond the family or clan, plays a pervasive role. Whereas pressure is administered primarily by women, overall attitude towards FGM is strongly influenced by the requirements and ideals held by men and wider society towards virginity. Fear of exclusion from marriage and family contributes to the pressure.<sup>121</sup>

**3.12.4** The avoidance of FGM is dependent on the clan and whether a girl is from the town or the countryside. If a family lives in a major city it may be possible to avoid FGM so long as the parents agree (even if the rest of the family and/ or clan do not support the idea). However, for a majority of the population, circumcision is a prerequisite for marriage. Prospective husbands pay a dowry and demand a circumcised wife. Fathers also play a key role – a daughter's chance to get married is poor unless she is circumcised and thus the father risks

<sup>119</sup> US State Department Human Rights Report 2010: Somalia [www.state.gov/g/drl/rls/hrrpt/2010/af/154369.htm](http://www.state.gov/g/drl/rls/hrrpt/2010/af/154369.htm) and Landinfo - FGM in Sudan and Somalia, 10 December 2008

<http://www.unhcr.org/refworld/country,,LANDINFO,,SDN,456d621e2,498085871c,0.html>

<sup>120</sup> Landinfo – Female genital mutilation in Sudan and Somalia December 2008

<http://www.unhcr.org/refworld/country,,LANDINFO,,SDN,456d621e2,498085871c,0.html>

<sup>121</sup> Landinfo – Female genital mutilation in Sudan and Somalia December 2008

<http://www.unhcr.org/refworld/country,,LANDINFO,,SDN,456d621e2,498085871c,0.html>

not getting a dowry. Families have limited means of preventing or impeding the genital mutilation of their daughters.<sup>122</sup>

**3.12.5** Despite the fact that the practice of FGM is entrenched in Somali culture and custom, NGOs have made intensive efforts to educate the population about the dangers of the practice particularly those NGOs working with women's or health issues. For example, the United Nations Development Fund for Women (UNIFEM) has worked together with local NGOs in Jilib and Mogadishu<sup>123</sup> and the National Committee Against FGM and Save Somali Women and Children have also taken forward activities in various parts of the country.<sup>124 125</sup> However, there are no reliable statistics to measure the success of their programs.

**3.12.6** UNIFEM has also indicated that a mother can only protect her daughter from FGM if she has her husband's support and he has some standing in the community to counter any opposition from the rest of the family. If the husband does not support his wife's decision, then her only option is to leave the community with the child, thereby foregoing her access to support and protection. In 2011 UNICEF reported about a programme to educate women in Somaliland about alternatives to FGM. The NGO, Tostan, reported that 28 communities had declared collective abandonment of FGM.<sup>126</sup>

**See also:** [Actors of protection](#) (section 2.3 above)

[Internal relocation](#) (section 2.4 above)

[Caselaw](#) (section 2.5 above)

**3.12.7 Conclusion:** Though illegal in Somaliland and Puntland, the law on FGM in these areas is not enforced. The procedure is widely practised in the rest of Somalia where it is legal. FGM is generally considered a cultural issue in which the authorities do not interfere and therefore individuals are unlikely to be able to access sufficiency of protection.

**3.12.8** In the recent country guidance case of *AMM and others* (see section 2.5 above), the Upper Tribunal concluded that the incidence of FGM in Somalia is universally agreed to be over 90%. The predominant type of FGM is the "pharaonic", categorised by the World Health Organisation as Type III. The societal requirement for any girl or woman to undergo FGM is strong. In general, an uncircumcised, unmarried Somali woman, up to the age of 39, will be at real risk of suffering FGM.

**3.12.9** The risk will be greatest in cases where both parents are in favour of FGM. Should both parents oppose FGM, the question of whether the risk will reach the requisite level will need to be determined by reference to the extent to which the parents are likely to be able to withstand the strong societal pressures. Unless the parents are from a socio-economic background that is likely to distance them from mainstream social attitudes, or there is some other particular feature of their case, the fact of parental opposition may well as a general matter be incapable of eliminating the real risk to the daughter that others (particularly relatives) will at some point inflict FGM on her.

**3.12.10** If it is considered that an individual could successfully internally relocate individually and/or with their daughters in order to avoid a threat of FGM, a grant of asylum or Humanitarian protection will not be appropriate. Women who have not undergone the procedure and who can demonstrate that they are at risk of such mistreatment and could not escape the risk by internal relocation should be granted asylum on the basis of their membership of a particular social group.

<sup>122</sup> [Landinfo Country of Origin Information Centre \(Norway\), Female genital mutilation in Sudan and Somalia, 15/12/2008](#), 3.6 ATTITUDES TOWARDS GENITAL MUTILATION, [http://www.landinfo.no/asset/764/1/764\\_1.pdf](http://www.landinfo.no/asset/764/1/764_1.pdf)

<sup>123</sup> Report on the Human Rights and Security in Central and Southern Somalia: Joint British-Nordic Fact-Finding Mission to Nairobi 7-21 January 2004, published 17 March 2004. <http://www.unhcr.org/home/RSDCOI/405b2d804.pdf>

<sup>124</sup> Landinfo – Female genital mutilation in Sudan and Somalia December 2008 <http://www.unhcr.org/refworld/country,,LANDINFO,,SDN,456d621e2,498085871c,0.html>

<sup>125</sup> [http://www.newsfromafrica.org/newsfromafrica/articles/art\\_3744.html](http://www.newsfromafrica.org/newsfromafrica/articles/art_3744.html)

<sup>126</sup> [http://www.unicef.org/somalia/reallives\\_7723.html](http://www.unicef.org/somalia/reallives_7723.html)

### 3.13 Prison conditions

- 3.13.1** 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.
- 3.13.2** The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of Humanitarian Protection. If imprisonment would be for a Refugee Convention reason or in cases where for a Convention reason a prison sentence is extended above the norm, the asylum claim should be considered first before going on to consider whether prison conditions breach Article 3 if the asylum claim is refused.
- 3.13.3 Consideration.** The USSD reported that prison conditions remained harsh and life threatening in all regions in 2010. Overcrowding, poor sanitary conditions, lack of access to health care, and inadequate food and water persisted in prisons throughout the country. Tuberculosis, HIV/AIDS, and pneumonia were widespread. Abuse by guards was common. Detainees' families and clans generally were expected to pay the costs of detention. In many areas prisoners depended on food received from family members or from relief agencies.<sup>127</sup> In 2011, the FCO found that prison conditions are harsh and do not meet international standards<sup>128</sup> and the UN noted that prisons in southern central Somalia fail to meet the minimum standards required under the United Nations Standard Minimum Rules for the Treatment of Prisoners.<sup>129</sup>
- 3.13.4** As a result of the worsening security situation and infiltration of violent extremists in TFG-controlled parts of Mogadishu, TFG police arrested suspects in security operations. However, there were fewer prisoners and detainees held in TFG prisons than in previous years. TFG prison officials reported that there were an estimated 400 prisoners held at Mogadishu central prison. As part of their efforts to strengthen the rule of law and improve security in Somalia, in mid-September official foreign donors sponsored training for the TFG Police Advisory Committee (PAC) held in South Africa. PAC is a civilian oversight authority established to ensure prisoners and detainees are treated in accordance with international human rights standards.<sup>130</sup>
- 3.13.5** There have been no reports of TFG-allied militias operating detention centres since the end of Abdullahi Yusuf's regime in 2008. Antigovernment extremist elements and clan leaders, however, reportedly continued to operate detention centres in which conditions were harsh and guards frequently abused detainees. Al-Shabaab and affiliated extremist armed groups operated dilapidated detention centres in areas under their control in the south and central regions. Although there were no official numbers, informal/unpublished sources estimated that thousands were incarcerated throughout extremist-controlled areas in inhumane conditions for relatively minor offenses such as smoking, listening to music, watching or playing soccer, and not wearing the hijab. There were no reports by human rights organizations and civil society leaders in Mogadishu of the existence of makeshift detention centres in Mogadishu where prisoners were held during and after episodes of heavy fighting.<sup>131</sup>
- 3.13.6** The Puntland and Somaliland administrations permitted prison visits by independent monitors. A September 2009 report by the UNIE described conditions at Puntland's Garowe central prison as "terribly bad" due to lack of capacity. The updated March 23 UNIE report referred to "terrible detention conditions of the central prison in Garowe, in particular

<sup>127</sup> US State Department Human Rights Report 2010: Somalia [www.state.gov/g/drl/rls/hrrpt/2010/af/154369.htm](http://www.state.gov/g/drl/rls/hrrpt/2010/af/154369.htm)

<sup>128</sup> Foreign and Commonwealth Office, Human Rights and Democracy: The 2010 Foreign & Commonwealth Office Report - Section VII: Human Rights in Countries of Concern, 31/03/2011 <http://s3-eu-west-1.amazonaws.com/htcdn/Human-Rights-and-Democracy-The-2010-Foreign-Commonwealth-Report.pdf>

<sup>129</sup> United Nations, Report of the Secretary-General on Somalia, 28/04/2011 [http://unpos.unmissions.org/Portals/UNPOS/Repository%20UNPOS/S-2011-277%20\(28Apr2011\).pdf](http://unpos.unmissions.org/Portals/UNPOS/Repository%20UNPOS/S-2011-277%20(28Apr2011).pdf)

<sup>130</sup> US State Department Human Rights Report 2010: Somalia [www.state.gov/g/drl/rls/hrrpt/2010/af/154369.htm](http://www.state.gov/g/drl/rls/hrrpt/2010/af/154369.htm)

<sup>131</sup> US State Department Human Rights Report 2010: Somalia [www.state.gov/g/drl/rls/hrrpt/2010/af/154369.htm](http://www.state.gov/g/drl/rls/hrrpt/2010/af/154369.htm)

keeping prisoners in shackles."<sup>132</sup> The UN High Commissioner for Human Rights raised concerns in 2011 that prison conditions in Puntland and Somaliland remained poor and life threatening, and detention centres lacked basic health care and water supplies.<sup>133</sup>

**3.13.7** Somaliland authorities and the UN Development Program (UNDP) set up an independent prisoner monitoring committee. The UNDP also trained the prison custodial corps on human rights. There were no visits by the International Committee of the Red Cross to prisons in the country during the year; however, a prisons conditions management committee organized by UNDP and composed of medical doctors, government officials, and civil society representatives continued to visit prisons in Somaliland. During the year UNDP managed a program to improve Somaliland prisons by building new facilities and assisting in training wardens and judicial officials.<sup>134</sup>

**3.13.8 Conclusion.** Prison conditions in Somalia are harsh and life threatening and may breach the Article 3 threshold in individual cases. The individual factors of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3, relevant factors being the likely length of detention the likely type of detention facility and the individual's age and state of health. Where in an individual case treatment does reach the Article 3 threshold a grant of Humanitarian Protection will be appropriate.

#### **4.1 Discretionary Leave**

**4.1.1** 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) Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the Asylum Instructions on Article 8 ECHR.

**4.1.2** 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 related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL – see the Asylum Instructions on Discretionary Leave and on Article 8 ECHR.

#### **4.2 Minors claiming in their own right**

**4.2.1** Somalia now has the world's highest mortality rate for children under the age of five. Findings from the UN Inter-agency Group for Child Mortality Estimation show that Somalia's child mortality rate in 2010, stood at 180 deaths per 1,000 live births.<sup>135</sup> UNICEF stated in October 2011 that the humanitarian crisis in Somalia has already resulted in the deaths of thousands of children and more than 320,000 – half of them in Central and South Somalia - are so severely malnourished that they may die in the coming months.<sup>136</sup>

**4.2.2** Children are also frequently the victims of the conflict and are at a high risk of being forcibly recruited to fight for the armed Islamist groups. Al-Shabaab, in particular, increased their forced recruitment of boys as young as nine years old, alongside young men, into their forces. Girls were sometimes reportedly recruited to cook and clean for Al-Shabaab forces

<sup>132</sup> US State Department Human Rights Report 2010: Somalia [www.state.gov/g/drl/rls/hrrpt/2010/af/154369.htm](http://www.state.gov/g/drl/rls/hrrpt/2010/af/154369.htm)

<sup>133</sup> UN Human Rights Council, Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1, 21/02/2011 [http://www.ecoi.net/file\\_upload/1930\\_1314297449\\_q11110950.pdf](http://www.ecoi.net/file_upload/1930_1314297449_q11110950.pdf)

<sup>134</sup> US State Department Human Rights Report 2010: Somalia [www.state.gov/g/drl/rls/hrrpt/2010/af/154369.htm](http://www.state.gov/g/drl/rls/hrrpt/2010/af/154369.htm)

<sup>135</sup> [UNICEF, Most difficult place to grow up: Somalia has the world's highest child mortality rate, 16/09/2011](http://www.unicef.org/infobycountry/media_59840.html)

[http://www.unicef.org/infobycountry/media\\_59840.html](http://www.unicef.org/infobycountry/media_59840.html)

<sup>136</sup> [UNICEF, Response to the Horn of Africa emergency: a crisis affecting life, livelihoods and ways of life, 20/10/2011](http://www.unicef.org/esaro/HOA_3_month_2011_Report_Final.pdf)

[http://www.unicef.org/esaro/HOA\\_3\\_month\\_2011\\_Report\\_Final.pdf](http://www.unicef.org/esaro/HOA_3_month_2011_Report_Final.pdf)

or forced to marry al-Shabab members.<sup>137</sup> Civil society sources in Mogadishu estimate there are between 1,000 and 2,000 children in the ranks of Al-Shabaab.<sup>138</sup>

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

**4.2.2** Minors claiming in their own right without a family to return to, or where there are no adequate reception, care and support arrangements, should if they do not qualify for leave on any more favourable grounds be granted Discretionary Leave for a period as set out in the relevant Asylum Instructions.

### **4.3 Medical treatment**

**4.3.1** 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** The World Health Organisation reported in 2010 that after 19 years of conflict, the health system in Somalia remains underdeveloped, poorly resourced, inequitable and unbalanced. It struggles to provide services to a limited number of Somalis. The public health care network is small. It mostly relies on national and international NGOs that tend to be concentrated in towns and secure areas. Private health care outlets have proliferated throughout the country and are now estimated to be in thousands with large variations in size, type of services offered, staff qualifications and performance. The 2000UNDP's Human Development Report ranked Somalia lowest in all health indicators.<sup>139</sup>

**4.3.3** Médecins Sans Frontières has over 130 Somali staff working on the ground and has been continuously present in the country since 1991. Currently it has projects in Banadir, Bay, Galgaduud, Lower Juba, Hiraaan, Lower Shabelle, Middle Shabelle, Mudug, Somaliland and Puntland. The International Committee of the Red Cross (ICRC) provides equipment, staff training and other support for 39 Somali Red Crescent health-care facilities in the southern and central parts of the country to ensure that the basic needs of the population are met. IDPs and residents in conflict zones in central and southern Somalia had access to free health care at 36 Somali Red Crescent outpatient clinics supported by the ICRC. All clinics received ICRC drugs, dressing materials, funds and staff training for curative and mother-and-child care, while UNICEF provided vaccines. There are 8 ICRC-supported hospitals, two in Mogadishu.<sup>140</sup>

**4.3.4** Médecine Sans Frontières (MSF) has begun reinforcing its operations in Mogadishu. It was reported on 14 August that areas which were under the control of Al-Shabaab in Mogadishu can now be reached by aid workers and there is hope that this access will be expanded in the coming weeks.<sup>141</sup> Somalia is currently contending with malaria, measles, cholera/AWD and pneumonia. Waterborne diseases are expected to increase with the onset of the October to December rains. The OCHA Health Cluster aims to assist 2.6 million people with access to primary and/or basic secondary health care services. An emergency measles vaccination campaign targeting 2.3 million children in ten regions of south and central Somalia, including 745,000 children in Mogadishu was underway.<sup>142</sup>

<sup>137</sup> [Amnesty International, World Report 2011, 13/05/2011](http://www.amnesty.org/en/region/somalia/report-2011) <http://www.amnesty.org/en/region/somalia/report-2011>

<sup>138</sup> [IRIN News, Tempted with a phone to carry a gun, 18/10/2011](http://www.irinnews.org/report.aspx?ReportID=93998) <http://www.irinnews.org/report.aspx?ReportID=93998>

<sup>139</sup> COI Service Somalia Country Report May 2011 (para 25.01)

[www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)

<sup>140</sup> COI Service Somalia Country Report May 2011 (para 25.02)

[www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)

<sup>141</sup> Médecine Sans Frontières "MSF rapidly scaling up its activities in Mogadishu", 12 August 2011

<http://allafrica.com/stories/201108140126.html> Médecine Sans Frontières, Somalia "Expanding activities despite significant obstacles" 23 August 2011 <http://allafrica.com/stories/201108240815.html>

<sup>142</sup> OCHA: "Somalia Famine and Drought Situation Report No. 12" 6 September 2011

<http://ochaonline.un.org/Default.aspx?alias=ochaonline.un.org/somalia>

**4.3.5** Where a case owner 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. Returns**

- 5.1** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining returns documentation should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.
- 5.2** There is no policy precluding the return of failed Somali asylum seekers to any region of Somalia. Those without any legal basis of stay in the UK may also return voluntarily to any region of Somalia. There are scheduled air services to a number of destinations in Somalia – Mogadishu, Bosasso, Hargeisa, Berbera, Burao and Galcaiyu. Returns of failed asylum seekers from the UK to Somaliland are conducted under the terms of a confidential Memorandum of Understanding (MoU) between the UK and the Somaliland authorities which provides for the return of those individuals who have no legal basis to remain in the United Kingdom but who have a right of return to Somaliland. Returns to Somaliland are generally via Nairobi. We do not currently have a returns agreement with Puntland.
- 5.3** In the case of *HH (Somalia) & Others* [2010] EWCA Civ 426 the Court of Appeal found that in any case in which it can be shown either directly or by implication what route and method of return is envisaged, the First Tier Tribunal is required by law to consider and determine any challenge to the safety of that route or method. Where internal relocation is suggested, case owners should consider accessibility of the intended place of relocation from Mogadishu. Where return is to a home area other than Mogadishu, case owners should carefully consider any concerns expressed by the applicant regarding safety of the onward route of return but if this is not raised by the applicant at the decision stage, case owners and/or presenting officers should be prepared to deal with any challenge on this issue made by the applicant in the courts.
- 5.4** In that regard caseowners should note that in the recent country guidance case of *AMM and others* (see section 2.5 above), the Upper Tribunal clearly envisaged that the use of internal air travel as being significant. The Tribunal concluded that travel by land across southern and central Somalia to a home area or proposed place of relocation is an issue that falls to be addressed in the course of determining claims to international protection. Such travel may well, in general, pose real risks of serious harm, not only from Al-Shabab checkpoints but also as a result of the present famine conditions. Women travelling without male friends or relatives are in general likely to face a real risk of sexual violence. A person from Somaliland will not, in general, be able without real risk of serious harm to travel overland from Mogadishu International Airport to a place where he or she might be able to obtain an unofficial travel document for the purposes of gaining entry to Somaliland, and then by land to Somaliland. This is particularly the case if the person is female. A proposed return by air to Hargeisa, Somaliland (whether or not via Mogadishu International Airport) will in general involve no such risks. It is therefore important that if a claimant is totally disbelieved on their substantive claim then the case that they may in fact be from Somaliland or Puntland should generally be made at that stage.
- 5.5** Somali nationals may return voluntarily to Somalia at any time in one of three ways: (a) leaving the UK by themselves, where the applicant makes their own arrangements to leave the UK, (b) leaving the UK through the voluntary departure procedure, arranged through the UK Immigration service, or (c) leaving the UK under one of the Assisted Voluntary Return (AVR) schemes. The AVR scheme is implemented on behalf of the UK Border Agency by Refugee Action and co-funded by the European Refugee Fund. Refugee Action will provide advice and help with obtaining any travel documents and booking flights, as well as

organising reintegration assistance in Sudan. The programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Details can be found on Refugee Action's web site at: [www.refugee-action.org/ourwork/assistedvoluntaryreturn.aspx](http://www.refugee-action.org/ourwork/assistedvoluntaryreturn.aspx)

- 5.6** Refugee Action have confirmed that they are able to assist AVR applicants to return to Somaliland and Puntland, but are currently not able to assist AVR applicants to return to Southern or Central Somalia. For those AVR applicants falling within Refugee Action's current remit, all reintegration would be provided via cash card or, if access to cash machines was not possible, via western union, or, if neither of these were possible, via an alternative provider.
- 5.7** In terms of the reintegration assistance available for single adults in the asylum process, they receive £500 in cash on departure for immediate needs on arrival. They are then able to access up to a further £1,000 once they are back in the country of return. For families with children, they also receive £500 per individual on departure and are then eligible for an additional £1,500 per person on arrival. This assistance is administered by Refugee Action in the UK.
- 5.8** Further, Refugee Action is in the process of sourcing overseas partners for delivery of reintegration assistance post-arrival. As part of the planned development of the AVR scheme in Somalia, Refugee Action are seeking to identify an organisation (or two organisations covering different areas of Somalia) with good "on the ground" coverage across Somalia (including Southern and Central Somalia) and have been seeking advice on possible options in this regard. If this were possible, and depending on the advice received by the organisation, this may enable the AVR scheme to be extended beyond Somaliland and Puntland and therefore throughout the whole of Somalia. However, to date Refugee Action has been unable to identify a suitable organisation operating in Somalia itself.
- 5.9** In the meantime the UK Border agency AVR Team have put in place a mechanism to provide reintegration assistance for anyone choosing to return to south or central Somalia in the interim until Refugee Action have their full service in place. An individual seeking to make an application for AVR to travel to south or central Somalia via Refugee Action will have their application processed and determined by the UK Border Agency AVR Team and will liaise directly with the applicant to arrange the process of return and will have in place reintegration assistance.

Country Specific Litigation Team  
Appeals and Litigation Directorate

15 December 2011