



OPERATIONAL GUIDANCE NOTE

SOMALIA

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1. Introduction

- 1.1** This document summarises the general, political and human rights situation in Somalia and provides information on the nature and handling of claims frequently received from nationals/residents of that country. It must be read in conjunction with any COI Service Somalia Country of Origin Information at:

http://www.homeoffice.gov.uk/rds/country_reports.html

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

API on Assessing the Claim
 API on Humanitarian Protection
 API on Discretionary Leave
 API on the European Convention on Human Rights
 API on Article 8 ECHR

- 1.3** Claims should be considered on an individual basis, but taking full account of the information set out below, in particular Part 3 on main categories of claims. 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 API on Article 8 ECHR.

Source documents

- 1.4** A full list of source documents cited in footnotes is at the end of this note.

2. Country assessment

- 2.1** Since the fall of President Siad Barre in January 1991, Somalia has been without a functioning central government. During the 1990s, the country was in a perpetual state of civil war with rival clan warlords and their associated militias engaged in armed conflicts over control of various regions. The most serious outbreaks of clan violence were in southern and central regions. In some areas, notably Puntland and Somaliland in the north, local administrations function effectively in lieu of a central government. In these areas the existence of local administrations, as well as more traditional forms of conflict resolution such as councils of clan Elders, helps to prevent disputes degenerating rapidly into armed conflict.¹
- 2.2** In 2000, Djibouti hosted a major reconciliation conference; the 13th such attempt since 1991. In August 2000, the Transitional National Government (TNG) was inaugurated, however it failed to extend its authority much beyond some areas of Mogadishu during its 3-year mandate which expired in August 2003. In early 2002, Kenya organised a further reconciliation effort under Inter-Governmental Authority on Development (IGAD) auspices known as the Somalia National Reconciliation Conference, which concluded in October 2004.²
- 2.3** The country continues to be fragmented into three autonomous areas: the self-declared Republic of Somaliland in the northwest, and the State of Puntland in the northeast and the remaining south/central regions. In August 2004 a 275-member clan-based Transitional Federal Assembly (TFA) was selected, and in October 2004 the TFA elected Abdullahi Yusuf Ahmed, former Puntland president, as the Transitional Federal president. In December 2004 Yusuf Ahmed appointed Ali Mohammed Ghedi as Prime Minister. Presidential elections in Somaliland, deemed credible and significantly transparent, were held in April 2003. During Somaliland parliamentary elections in September 2005 there was little evidence of election violence or intimidation, and most voters were able to cast their ballots without undue interference. In January 2005 after years of internecine power struggles, Puntland's unelected parliament selected General Adde Musse as president. The civilian authorities did not maintain effective control of the security forces.³
- 2.4** In late February 2006 Somalia's parliament met inside the country for the first time since it was formed in Kenya more than a year before. The meeting was held in a food warehouse in the central town of Baidoa. It was the latest attempt to restore authority in the country after 15 years of factional fighting. Some 205 of the 275 MPs were present at the meeting, but several powerful Mogadishu warlords did not attend. The warlords are part of a group allied to Parliament Speaker Sharif Hassan Sheikh Adan who continue to be unhappy with President Yusuf. The two sides were split over whether Mogadishu is safe enough to host the interim government, and whether to keep foreign peacekeepers. Siting the first meeting in Baidoa was seen as a compromise between the two factions.⁴
- 2.5** In early June 2006 after a bloody four-month battle militiamen loyal to Mogadishu's network of Islamic courts (UIC) took virtually complete control of the capital. This extended to large swathes of southern Somalia by early July 2006, leading to a major shift in the balance of power across the country. Islamist leaders made a point of considerable political significance when, on 6 June 2006, they moved into the building in Mogadishu that had served as headquarters of the Alliance for the Restoration of Peace and Counter-Terrorism (ARPCT), a coalition of several Mogadishu-based clan faction leaders formed in February 2006 to counter the city's Islamist groups, and converted it to an Islamic court. Having flexed their muscle and ousted the secular clan-faction leaders who have run most of the capital for the past 15 years, the Islamic courts, called the Somali Supreme Islamic Courts

¹ COIS Somalia Country Report October 2006 (History & Constitution)

² COIS Somalia Country Report (History)

³ COIS Somalia Country Report (History; Peace initiatives 2000-2006)

⁴ COIS Somalia Country Report (History; Peace initiatives 2000-2006 & Annex A)

Council, elected a conservative leader in the form of Sheikh Hassan Dahir Aweys, who now heads the courts' legislative branch, the Council of Islamic Courts (CIC). Many observers in the West fear that Mr Aweys desires an Islamic state in Somalia, possibly creating a haven for international terrorist groups.⁵

- 2.6** The TFG meanwhile continued to control a dwindling area around the town of Baidoa while the UIC rapidly expanded its influence in most other southern and central regions. On 5 September 2006 the TFG hailed an agreement to unify armed groups allied to it with forces loyal to the UIC as an important first step towards restoring peace. Representatives from the TFG and the UIC agreed during talks mediated by the League of Arab States in the Sudan to 'reconstitute the Somali national army and the national police force and work towards reintegration of the forces of the Islamic Courts, the TFG and other armed militias in the country'. After appearing to stall in mid-September 2006, the Islamic Courts Council (ICC), which aims at establishing an Islamic state in Somalia, recovered its momentum, taking the key southern port city of Kismayo on 24 September 2006, resuming its program of social reconstruction and responding favorably to Washington's moves to open a 'diplomatic channel. By assuming control of Kismayo, the ICC extended its sphere of influence into Somalia's Middle and Lower Jubba regions running up against the Kenyan border in the country's south and filling out its presence to consolidate all of Somalia south of the border of the breakaway sub-state of Puntland.⁶
- 2.7** The human rights situation is defined by the absence of effective state institutions. Somalis enjoy substantial freedoms - of association, expression, movement – but live largely without the protection of the state, access to security or institutional rule of law. Institutions are emerging in some parts of the country, especially Somaliland. Islamic courts play a significant role in Mogadishu. Overzealous application of supposedly Islamic law in the aftermath of the UIC's successful struggle to secure Mogadishu in June 2006 attracted widespread media attention. Women generally have difficulty making their voices heard in the political arena but are currently playing a very active role in civil society organisations, which are flourishing in the absence of government.⁷
- 2.8** The human rights situation is better in Somaliland and Puntland than in other parts of Somalia. Somaliland and Puntland have constitutions that provide for citizens' rights and have civic institutions that provide a degree of protection to individuals; the human rights situation is in general better in these two regions than elsewhere in the country. There are a number of local and international NGOs engaged in human rights activity currently operating in southern Somalia, though their presence is subject to change according to the prevailing security conditions and the will of *de facto* administrations. The human rights groups located in Somaliland are able to operate freely but those based in Puntland are shown little tolerance by the political authorities.⁸
- 2.9** Somali society is characterised by membership of clan families (which are sub-divided into clans and sub-clans) or membership of minority groups. An individual's position depends to a large extent on their clan origins. In general terms, a person should be safe in an area controlled by their clan, and any person, irrespective of clan or ethnic origin, will be safe from general clan-based persecution in Somaliland and Puntland. The chronic and widespread level of underdevelopment in Somalia makes a large portion of the population vulnerable not only to humanitarian crisis, but also to violations of their human rights. Somalis with no clan affiliation, and thus protection, are the most vulnerable to such violations, including predatory acts by criminals and militias, as well economic, political, cultural and social discrimination.⁹

⁵ COIS Somalia Country Report (Recent developments)

⁶ COIS Somalia Country Report (Recent developments)

⁷ COIS Somalia Country Report (Human rights; Introduction)

⁸ COIS Somalia Country Report (History, Constitution, Judiciary, Political affiliation & Human rights Institutions...)

⁹ COIS Somalia Country Report (Ethnic groups & Annexes C-D)

- 2.10** Societal discrimination against women is widespread and the practice of female genital mutilation (FGM) almost universal. Instances of gender-based violence are increasing, including rape and domestic violence. The cultural attitudes of traditional elders and law enforcement officials routinely result in restrictions on women's access to justice, denial of their right to due process and their inhumane treatment in detention.¹⁰
- 2.11** The overwhelming majority of Somalis are Sunni Muslims and Islam has been declared the 'official' religion by some local administrations. The Sunni majority may view non-Sunni Muslims and people observing other faiths with suspicion. There have been reports of non-Muslims experiencing societal harassment problems because of their religion, in particular where an attempt has been made to convert Muslims. This practice is illegal in Somaliland and Puntland and effectively blocked by informal social consensus elsewhere.
- 2.12** The activities of the Islamic courts in 2005 and early 2006 appeared to be largely welcomed by Mogadishu because the courts brought a degree of order. Though some have objected to strict interpretations of Islamic law and there is international concern about its alleged links to Al Qua'ida, the UIC's control of the Somali capital since 4 June 2006 has reinforced this unprecedented level of order. The UIC is heterogeneous and serves as an umbrella coordination mechanism between individual Shari'a courts, with individual courts reflecting a moderate interpretation of Islam and others espousing an extremist form of Islam that has proven intolerant to traditional Somali societal and cultural practices. The UIC is extending its influence and building on a network of representatives and contacts that it has established in various areas of the country over the past two or three years.¹¹
- 2.13** There is no national judicial system or police force, however regional administrations have some functioning courts and civilian police forces. In most areas the locally organised judiciary is an inconsistent mixture of traditional and customary justice, Islamic Shari'a law and the pre-1991 penal code. In Somaliland and Puntland, where the pre-1991 penal code still generally applies, an accused person can be assisted by a lawyer and has some appeal rights, even in the Shari'a courts. The right to representation by an attorney and the right to appeal does not exist in most southern/central regions that apply traditional and customary judicial practices or Shari'a law. The death penalty is enforced.¹²
- 2.14** Since the collapse of central government in 1991 there has not been a national army in Somalia. The TNG attempted to re-establish a national army in November 2000 and maintain a police force in Mogadishu in March 2001, however their effectiveness was temporary and its authority limited. The Somaliland authorities have established an effective regional army, which numbered 7,000 in August 2002. In the absence of a national army or police force, and in spite of the establishment of the TFG in Kenya in 2004, control of the majority of the country continues to be in the hands of factional warlords and their localised majority clan-based militias.¹³
- 2.15** Despite the absence of a central government based in the country, there is generally free movement of both people and goods within Somalia, although travel between regions may be dangerous at times as bandits operate and militias mount roadblocks to extort tolls. Security conditions generally have however continued to improve enough in many parts of the country in recent years to allow many refugees to return to their homes since 2003. Scheduled international air services operate to airports in Somaliland, Puntland and Mogadishu from Djibouti, Ethiopia, Kenya and some Middle Eastern states.¹⁴

¹⁰ COIS Somalia Country Report (Women)

¹¹ COIS Somalia Country Report (Freedom of Religion)

¹² COIS Somalia Country Report (Security situation, Judiciary & Death penalty)

¹³ COIS Somalia Country Report (Armed forces)

¹⁴ COIS Somalia Country Report (Freedom of movement)

3. Main categories of claims

- 3.1** This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in Somalia. It also contains any common claims that may raise issues covered by the API on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant APIs, but how these affect particular categories of claim are set out in the instructions below.
- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the API on Assessing the Claim).
- 3.3** If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the applicant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.
- 3.4** This guidance is not designed to cover issues of credibility. Caseworkers will need to consider credibility issues based on all the information available to them. For guidance on credibility see paragraph 11 of the API on Assessing the Claim.
- 3.5** All APIs can be accessed via the IND website at:

http://www.ind.homeoffice.gov.uk/ind/en/home/laws_policy/policy_instructions/apis.html

3.6 Members of major clan families or related sub-clans

- 3.6.1** 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.
- 3.6.2** **Treatment.** Somali society is characterised by membership of clan families (which are sub-divided into clans and many sub-clans) or membership of minority groups. Clan members are classified as ethnic Somali and minority groups are usually classified as non-ethnic Somali. 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 clans/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.¹⁵
- 3.6.3** The dominant clan in any particular area has generally excluded and discriminated against other clans and minorities from participation in power in that area. Due to the fluid security situation and absence of a central government, instances of armed inter-clan and intra-clan conflict and serious human rights abuses continue to be reported in many southern and central areas as rival factions compete for control of local resources. As a result of this,

¹⁵ COIS Somalia Country Report (Ethnic groups & Annexes C-D)

there are many thousands of internally displaced persons living outside their traditional home area, particularly where rival clan factions have taken control of their home area. However, most ethnic Somalis (i.e. those belonging to major clans) are able to live safely within territories controlled by their clan. Though not usually targeted, civilians will very often know how to escape or avoid being involved in armed clan conflicts.¹⁶

3.6.4 Sufficiency of protection. In the absence of a central Government, most Somalis ensure their personal safety by residing in the 'home areas' of their clan, where they can seek and receive adequate protection from their kinship group.¹⁷ Generally, only those unable to reside in such areas will not be able to obtain sufficient protection from ill treatment/persecution on the basis of clan membership.

3.6.5 Internal relocation. Those affiliated to major clan families, their immediate clan groups and associated sub clans should be able to safely reside in an area in which their clan is present. Freedom of movement is restricted in some parts of the country due to sporadic clan or sub-clan conflict, especially in southern and central regions. Checkpoints manned by militiamen loyal to one clan or faction inhibit passage by other groups, nevertheless internal relocation for major clan affiliates is generally possible.¹⁸

3.6.6 Large parts of northern Somalia, namely Somaliland and Puntland, are considered generally safe regardless of clan membership. However, the authorities controlling the Somaliland and Puntland regions have made it clear that they would only admit to the areas they control those who originate from that territory or those who have close affiliations to the territory through clan membership. In the case of majority clan affiliates, this means those associated with the Majerteen in Puntland and the Isaaq in Somaliland.¹⁹

3.6.7 Caselaw.

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

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

SH (Somalia) [2004] UKIAT 00164. The claimant belonged to the Darod clan, sub-clan Marehan, which is not a minority clan in Somalia, so that members of the clan do not face persecution by reason of clan membership alone. The Marehan clans dominate the Gedo region, and that area would have provided adequate safety for the claimant.

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

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

HM (Somalia) [2005] UKIAT 00040. Somali women – Particular Social Group. The Tribunal found that women in Somalia form a PSG not just because they are women but because they are extensively discriminated against.

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

¹⁶ COIS Somalia Country Report (Political affiliation, Human rights; Introduction & Ethnic Groups; Somali clans)

¹⁷ COIS Somalia Country Report (Ethnic groups; Somali clans & Annex C)

¹⁸ COIS Somalia Country Report (Freedom of movement, Ethnic groups; Somali clans & Annex C)

¹⁹ COIS Somalia Country Report (Ethnic groups; Somali clans & Annex C)

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.

DM (Somalia) [2005] UKAIT 00158. Majority clan can protect. "The Tribunal remains of the view that (1) protection under the Refugee and Human Rights Conventions can be afforded by de facto or quasi-state entities. That view is now reinforced by Article 7 of the EU Refugee Qualifications Directive and (2) Whether majority clans in Somalia are willing and able to protect is a factual question." (para 32)

Gedow and others v SSHD [2006] EWCA Civ 1342 found that it was impossible for Immigration Judges in cases involving the safety of arrival at an airport and of a journey into Mogadishu to deal with all the eventualities at the time of the hearing. The judge might have to make it clear what had to be done by the secretary of state so that an enforced returnee to Somalia did not face a real risk of ill treatment at the point of his return. The judge was then entitled to assume, for the purposes of the hearing before him, that what was required would be done.

The judge might have to make it clear what had to be done by the secretary of state so that an enforced returnee to Somalia did not face a real risk of Art.3 ill-treatment at the point of his return. The judge was then entitled to assume, for the purposes of the hearing before him, that what was required would be done, **GH v Secretary of State for the Home Department (2005) EWCA Civ 1182** considered. G had shown that there could be real risks associated with the return to the airport and from there to home of a failed asylum seeker even from a majority clan. However, it was for the immigration judge to indicate what would need to be done to obviate the travel risks. A person whose claim to be a member of a minority clan had been disbelieved was unable to arrange for clan militia escorts until he knew where and when he was to be returned, **NM (2005) UKIAT 00076** considered. Appeal dismissed.

3.6.8 Conclusion. 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 persecution within the terms of the 1951 Convention on the basis of their clan affiliation alone. All clan family groups are represented in Mogadishu, many Somali clans are present in more than one area of Somalia and also in areas beyond Somalia's borders. Moreover, people displaced from their home area may move to other areas populated by their clan. Somalis are increasingly able to both visit and live in cities outside their clan's traditional domain. As emphasised in the cases of *NM and Others*, *DM and Gedow and others* above, there will usually be an area in Somalia in which any major clan member can live safely under the protection of their 'home' clan or an associated clan group. The grant of asylum is therefore not likely to be appropriate in such cases.

3.7 Bajunis

3.7.1 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.

3.7.2 Treatment. Somalis with no clan affiliation are the most vulnerable to serious human rights violations, including predatory acts by criminal and militias, as well economic, political, cultural and social discrimination. These groups comprise an estimated two million people, or about one third of the Somali population and include the Bajuni.²⁰

²⁰ COIS Somalia Country Report (Ethnic groups; General security position for minority groups & Bajunis)

3.7.3 The small Bajuni population (around 11,000 in 2003) is traditionally made up of fishermen and sailors from coastal settlements and islands south of Kismayo. They suffered considerably at the hands of Somali militia during the civil war in the early 1990s, have lost property and were prevented from pursuing their traditional livelihoods by occupying Somali clans, principally the Marehan. 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.²¹

3.7.4 **Sufficiency of protection.** Minority groups that are politically and economically the weakest and are culturally and ethnically distinct from Somali clan families such as the Bajuni are not able to secure protection from any major clan family or related sub-clan. They are vulnerable to discrimination and exclusion wherever they reside.²² Bajunis do not therefore have access to adequate protection from their persecutors.

3.7.5 **Internal relocation.** The Bajuni are vulnerable to discrimination and exclusion by major clan and sub-clan groups throughout southern/central Somalia,²³ internal relocation within these regions is therefore not a reasonable option. The possibility of internal relocation to Somaliland or Puntland is also not an option as the authorities in these areas have made it clear that they would only admit to the territory they control those who are of the same clan or who were previously resident in that particular area.²⁴

3.7.6 Caselaw.

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 clan identity is an assessment examining at least 3 different factors:

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

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.

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.

3.7.7 Conclusion. Bajunis are part of the underclass in Somali society and are subject to political and economic exclusion due mainly to them being culturally and ethnically unconnected to any major clan group. They are unable to secure protection from any clan group and are therefore in a vulnerable position wherever they reside. Individual applicants who have

²¹ COIS Somalia Country Report (Ethnic groups; Bajunis)

²² COIS Somalia Country Report (Ethnic groups; General security position for minority groups)

²³ COIS Somalia Country Report (Ethnic groups; General security position for minority groups)

²⁴ COIS Somalia Country Report (Freedom of movement)

demonstrated a reasonable likelihood that they are members of Bajuni ethnicity are likely to encounter ill treatment amounting to persecution. The grant of asylum in such cases is therefore likely to be appropriate.

3.8 Benadiri (Rer Hamar) or Bravanese

3.8.1 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.

3.8.2 *Treatment.* Somalis with no clan affiliation are the most vulnerable to serious human rights violations, including predatory acts by criminal and militias, as well as economic, political, cultural and social discrimination. These groups comprise an estimated two million people, or about one third of the Somali population and include the Benadiri (Rer Hamar) and Bravanese.²⁵

3.8.3 The Benadiri are an urban people of East African Swahili origin. They all lost property during the war and the majority of Benadiri fled to Kenya. Those that remain live mainly in the coastal cities of Mogadishu, Merka and Brava. The situation of the Benadiri remaining in Somalia is difficult, as they cannot rebuild their businesses in the presence of clan militias. As of 2003, 90% of the Rer Hamar population in Mogadishu had left the city as a consequence of civil war and lack of security. The majority of Rer Hamar who are still in Mogadishu are older people who live in Mogadishu's traditional Rer Hamar district; Hamar Weyn which is controlled by militias of the Habr Gedir sub-clan, Suleiman. Most homes belonging to the Benadiri and Bravanese in Mogadishu had been taken over by members of clan militias, although sometimes the clan occupants allowed them to reside in one room.²⁶

3.8.4 The Bravanese are believed to be of mixed Arab, Portuguese and other descent. Long established in the coastal town of Brava, which is controlled by the Habr Gedir, the Bravanese have been particularly disadvantaged and targeted by clan militia since the collapse of central authority in 1991. Most of the Bravanese have now fled from Brava and those who remain face abuses such as forced labour, sexual slavery and general intimidation.²⁷

3.8.5 *Sufficiency of protection.* Minority groups such as the Benadiri (Rer Hamar) and Bravanese based in southern or central Somalia are culturally and ethnically distinct from Somali clan families and are not able to secure protection from any major clan family or related sub-clan.²⁸ Though the Benadiri originate mainly from southern or central Somalia, a few who have been resident in more secure parts of the country such as Somaliland are able to avail themselves of the protection of a patron clan (see *A (Somalia) [2004] UKIAT 00080*).

3.8.6 *Internal relocation.* As the Benadiri (Rer Hamar) and Bravanese are vulnerable to discrimination and exclusion by major clan and sub-clan groups throughout southern and central Somalia, internal relocation within these regions is not a reasonable option. The possibility of internal relocation to Somaliland or Puntland is restricted; in these areas the authorities have made it clear that they would only admit to the territory they control those who are of the same clan or who were previously resident in that particular area.²⁹

3.8.7 Caselaw.

²⁵ COIS Somalia Country Report (Ethnic groups; General security position for minority groups)

²⁶ COIS Somalia Country Report (Ethnic groups; Bravanese and Benadiri)

²⁷ COIS Somalia Country Report (Ethnic groups; Bravanese and Benadiri)

²⁸ COIS Somalia Country Report (Ethnic groups; Bravanese and Benadiri)

²⁹ COIS Somalia Country Report (Freedom of movement & Ethnic groups; Bravanese and Benadiri)

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

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

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

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

3.8.8 Conclusion. The Benadiri (Rer Hamar) and Bravanese are part of the underclass in Somali society and are subject to political and economic exclusion due mainly to them being culturally and ethnically unconnected to any major clan group. They are usually unable to secure protection from any clan group and are therefore in a vulnerable position wherever they reside in southern and central Somalia. Though the Benadiri originate mainly from southern or central Somalia, a few who have been resident in more secure parts of the country such as Somaliland would not face a real risk of persecution or treatment in breach of the ECHR (see *A (Somalia) [2004] UKIAT 00080* above). However, individual applicants who have demonstrated a reasonable likelihood that they are of Benadiri (Rer Hamar) or Bravanese origins from southern or central Somalia are likely to encounter ill treatment amounting to persecution. The grant of asylum in such cases is therefore likely to be appropriate.

3.9 Midgan, Tumal, Yibir or Galgala

3.9.1 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, Tumal, Yibir or Galgala.

3.9.2 Treatment. The Gaboye/Midgan (usually referred to as the Midgan but also known as the Madhiban), Tumal and Yibir (a group said to have Jewish origins) traditionally lived in the areas of the four main nomadic clan families of Darod, Isaaq, Dir and Hawiye in northern and central Somalia though in the last few decades many of them have migrated to the cities. These groups are now scattered throughout the country. They are mainly found in northern and central regions but the Midgan have been able to settle in Puntland. Midgan can trade freely and their position improves at times of stability and recovery, although they are usually unable to own property and livestock. The Midgan, Tumal and Yibir and Galgala have always been placed at the lower end of Somali society and are subject to societal

discrimination in urban centres from other clan groups and harassment where no patron clan protection exists, particularly in rural areas.³⁰

3.9.3 Sufficiency of protection. These groups traditionally settle in areas where they can obtain protection from the dominant clan and engage in an economic activity. Most have assimilated into the other Somalia clans with whom they live. Some Gaboye, Tumul and Yibir assimilated into the Isaaq in Somaliland, while others have assimilated into the Darod in Puntland and central regions. Other Gaboye, Tumul and Yibir have assimilated with Hawadle, Murasade and Marehan clans in Galgaduud region.³¹ Members of groups other than the Galgala are therefore able to seek and receive adequate protection from their patron clans.

3.9.4 Internal relocation. Those assimilated into major clan families, their clan groups and associated sub clans should be able to safely reside in an area in which their patron clan is present. Freedom of movement is sometimes restricted in some parts of the country due to sporadic clan or sub-clan conflict, especially in southern and central regions. More usually, checkpoints manned by militiamen loyal to one clan or faction inhibit passage by other groups. Nevertheless internal relocation for members of occupational castes other than the Galgala is generally possible. The possibility of internal relocation to Somaliland or Puntland is restricted; in these areas the authorities have made it clear that they would only admit to the territory they control those who are of the same clan or who were previously resident in that particular area.³²

3.9.5 Caselaw.

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.

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.

3.9.6 Conclusion. Members of the Midgan, Tumul or Yibir groups are usually assimilated into major clan or sub-clan groups where they reside. While they may from time to time encounter discrimination and harassment from other clan groups due to their lowly social status, they may avail themselves of the protection of their patron clan or relocate to another region where their patron clan is represented. It is unlikely that such a claimant would encounter ill treatment amounting to persecution within the terms of the 1951 Convention. The grant of asylum in such cases is therefore not likely to be appropriate.

3.9.7 It is not clear however that members of the Galgala group are able either to reside safely in a home area or avail themselves of the protection of a patron clan group in the same way that the Midgan, Tumul and Yibir are. Consequently individuals affiliated to this group are

³⁰ COIS Somalia Country Report (Ethnic groups; Midgan, Tumul, Yibil and Galgala & Annexes C-D)

³¹ COIS Somalia Country Report (Ethnic groups; Midgan, Tumul, Yibil and Galgala & Annex D)

³² COIS Somalia Country Report (Freedom of movement, Ethnic groups; Minority groups & Annexes C-D)

likely to encounter treatment in breach of the 1951 Convention and should be granted asylum.

3.10 Prison conditions

- 3.10.1** 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.
- 3.10.2** 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 claim should be considered as a whole but it is not necessary for prison conditions to breach Article 3 in order to justify a grant of asylum.
- 3.10.3 *Consideration.*** Prison conditions remained harsh and life threatening in 2005. The main prison in Hargeisa, built in 1942 to hold 150 inmates, held over 800 prisoners. After his January-February visit, the UNIE [UN Independent Expert on Human Rights in Somalia] stated that in comparison to his previous visits in 2002 and 2003, the prison had deteriorated to an appalling condition. The UNIE noted that the prisons lacked funding and management expertise. Overcrowding, poor sanitary conditions, a lack of access to adequate health care and inadequate food and water supply persisted in prisons throughout the country. Tuberculosis, HIV/AIDS, and pneumonia were widespread. Abuse by guards reportedly was common in many prisons. The detainees' clans generally were required to pay the costs of detention. In many areas, prisoners were able to receive food from family members or from relief agencies.³³
- 3.10.4** Convicted juveniles continued to be kept in jail cells with adult criminals in 2005. In addition, the United Nations Commission on Human Rights (UNCHR) in its report by its independent expert Ghanim Alnajjar dated 11 March 2005 cited the practice of parents having their children incarcerated when they want them disciplined; these children were also reportedly held with adults.³⁴
- 3.10.5** The UNHCR independent expert noted in March 2005 that prisoners seem, in general, to be treated adequately in Somalia's prisons. The main problem identified during this mission, and acknowledged by prison officials, concerns the lack of basic care and amenities (medicines, nutrition, etc.) vocational training, and cramped conditions, which could be accounted for by lack of finances rather than a lack of willingness to improve the conditions of those incarcerated.³⁵
- 3.10.6** The independent expert noted that, compared to his previous visits in 2002 and 2003, the prison had deteriorated to an appalling condition. During his mission, the independent expert raised the issue of the treatment of female prisoners. Following his request in an earlier mission, experiments to establish a special unit in each police station staffed by women had enjoyed some success.³⁶
- 3.10.7 *Conclusion.*** Whilst prison conditions in Somalia are poor and taking into account overcrowding, poor sanitary conditions, a lack of access to adequate health care, an absence of education and vocational training, abuse by guards and widespread tuberculosis, conditions are unlikely to reach the Article 3 threshold. Therefore even where claimants can demonstrate a real risk of imprisonment on return to Somalia a grant of Humanitarian Protection will not generally be appropriate. However, the individual factors of each case

³³ COIS Somalia Country Report (Prison conditions)

³⁴ COIS Somalia Country Report (Prison conditions)

³⁵ COIS Somalia Country Report (Prison conditions)

³⁶ COIS Somalia Country Report (Prison conditions)

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. Discretionary Leave

4.1 Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See API on Discretionary Leave) Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the API on Article 8 ECHR.

4.2 With particular reference to Somalia the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances 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 API on Discretionary Leave and the API on Article 8 ECHR.

4.3 Minors claiming in their own right

4.3.1 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.

4.3.2 Minors claiming in their own right without a family to return to, or where there are no adequate care and support arrangements, should if they do not qualify for leave on any more favourable grounds be granted Discretionary Leave for a period of three years or until their 18th birthday, whichever is the shorter period.

4.4 Medical treatment

4.4.1 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.

4.4.2 According to Medecins Sans Frontiers (MSF) in January 2004 (and reaffirmed in January 2006) the overall level of healthcare and possibilities for treatment in central and southern Somalia were very poor. MSF refers to a lack of basic medical training amongst the personnel (doctors and particularly nurses) operating at the limited number of hospitals and clinics in the region. It was estimated that up to 90% of the doctors and health staff in hospitals is insufficiently trained. For those with sufficient funding to pay for treatment, primary healthcare was available in all regions. MSF indicated that women and children had a better chance of receiving treatment on the grounds that they are less likely to be the target of militias. The actual situation does vary within different parts of the country although the few health workers who remain tend to be based in the more secure urban centres.³⁷

4.4.3 In Mogadishu there are two public hospitals with facilities to perform certain surgical procedures. Public hospitals in Galkayo (Mudug) and Kismayo (Lower Juba) serve enormous areas. These hospitals were beset with insecurity, lack of funding, equipment, qualified staff and drugs. The only other hospitals in southern/central regions - in Belet Weyne (Hiran) and Baidoa (Bay and Bakool) - have been closed for some years. Aid

³⁷ COIS Somalia Country Report (Medical issues; Overview)

agencies have attempted to fill the gap in areas where health services and structures have all but collapsed. They struggle to provide health care in remote areas, where reaching the patients is a major problem. The Somali private health sector has grown considerably in the absence of an effective public sector. Of the population who get any care at all, about two thirds of them get it from the private health sector.³⁸

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

5. Returns

- 5.1** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document 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. On 4 July 2003 Home Office officials signed a Memorandum of Understanding (MoU) with the authorities in Somaliland that provides for the return of those people from Somaliland who have no legal basis to remain in the United Kingdom.
- 5.3** In its position paper of November 2005, UNHCR recommended that asylum-seekers originating from southern and central Somalia are in need of international protection and, excepting exclusion grounds, should be granted, if not refugee status then complementary forms of protection. UNHCR also re-iterated its call upon all governments to refrain from any forced returns to southern and central Somalia.³⁹ UNHCR's paper provides a broad assessment of the situation in Somalia and we do not dispute that it presents an accurate overview of the general humanitarian situation and the serious social and security problems inherent in a country without a central government. However, asylum and human rights claims are not decided on the basis of the general situation - they are based on the circumstances of the particular individual and the risk to that individual. We do not therefore accept UNHCR's conclusion, based on their overview of the general situation, that it is unsafe for all persons who have been found not to be in need of some form of international protection to return to Somalia.
- 5.4 *Caselaw.***

NM and Others (Somalia) CG [2005] UKIAT 00076. Risk on return for major clan member. 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.

³⁸ COIS Somalia Country Report (Medical issues; Overview, Hospitals, Provision of hospitals care... & Private sector...)

³⁹ COIS Somalia Country Report (UNHCR position on the return of rejected asylum seekers)

Gedow and others v SSHD [2006] EWCA Civ 1342 found that it was impossible for Immigration Judges in cases involving the safety of arrival at an airport and of a journey into Mogadishu to deal with all the eventualities at the time of the hearing. The judge might have to make it clear what had to be done by the secretary of state so that an enforced returnee to Somalia did not face a real risk of ill treatment at the point of his return. The judge was then entitled to assume, for the purposes of the hearing before him, that what was required would be done.

The judge might have to make it clear what had to be done by the secretary of state so that an enforced returnee to Somalia did not face a real risk of Art.3 ill-treatment at the point of his return. The judge was then entitled to assume, for the purposes of the hearing before him, that what was required would be done, **GH v Secretary of State for the Home Department (2005) EWCA Civ 1182** considered. G had shown that there could be real risks associated with the return to the airport and from there to home of a failed asylum seeker even from a majority clan. However, it was for the immigration judge to indicate what would need to be done to obviate the travel risks. A person whose claim to be a member of a minority clan had been disbelieved was unable to arrange for clan militia escorts until he knew where and when he was to be returned, **NM (2005) UKIAT 00076** considered. Appeal dismissed.

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

6. List of source documents

- UK Home Office IND-RDS COI Service Somalia Country of Origin Information Report October 2006 at http://www.homeoffice.gov.uk/rds/country_reports.html

Asylum and Appeals Policy Directorate
27 October 2006