



OPERATIONAL GUIDANCE

SOMALIA

I. Introduction

The document summarises the general political and human rights situation in the country of origin and provides information on the nature of claims frequently received from nationals of that country and relevant country conditions. It provides guidance on policy where required but does not, in itself, constitute a statement of Home Office policy. The document must be read in conjunction with the country assessment and other information distributed on the country of origin.

Applications for asylum in the United Kingdom are considered in accordance with the UK's obligations under the 1951 UN Convention relating to the Status of Refugees and the 1967 Protocol. All applications for asylum should be considered individually on their merits and, unless the applicants may reasonably be expected to seek asylum in a third country or the Dublin Convention applies, asylum should be granted where the applicant fulfils the criteria in the 1951 UN Convention.

Detailed guidance on assessing an asylum claim is contained in the Asylum Policy Instructions (APIs), chapter 1 section 2. Caseworkers must also familiarise themselves with the Home Office Country Assessment and its accompanying source material. If a claim for asylum falls to be refused, thought must be given as to whether a grant of exceptional leave is appropriate. As part of this process, Human Rights issues must also be considered. Further information on the European Convention on Human Rights and Fundamental Freedoms is contained in chapter 5 section 4 of the APIs. Information about the wider criteria for granting and refusing exceptional leave is contained in API chapter 5 section 1.

II. Country Assessment

The following is a very brief summary of the present country situation:

1. Political System

- There has been no functioning or internationally recognised central government since Siad Barre's administration was overthrown in January 1991. In some areas, notably Somaliland in the north west and Puntland in the north east, local administrations function effectively in lieu of a central government. Somaliland has declared its independence from the rest of Somalia, although this is not recognised internationally.
- A Transitional National Government (TNG) was established in 2000 after a peace conference in Djibouti. The TNG comprises representatives of all Somali clan-families, women and minority groups. The transitional President is Abdiqassim Salad Hassan. The TNG is based in Mogadishu, although its administration is opposed by some clan-based "warlords", who still control parts of Mogadishu, and by the Somaliland and Puntland administrations. The TNG is in the process of establishing greater authority in Mogadishu and beyond. Although not recognised internationally, the TNG has general backing from the UN.
- The situation in other parts of southern and central Somalia remains fluid. The Rahanweyn Resistance Army has established an administration in Bay and Bakool regions. A new administration, representing an alliance of clan-based factions, was established in Kismayo in June 2001.

2. Human Rights Situation

- The overall human rights situation remains poor, but this varies from region to region. In the absence of central government since 1991, human rights abuses have included lack of political rights, abuse of minority groups, denial of fair trial and excessively harsh punishments from faction-backed courts. Gross violations of human rights, committed by former Government supporters and clan-based militias, were widespread in the civil war that raged from the late 1980s through to the mid-1990s.
- The human rights situation is significantly better in Somaliland and Puntland than in other parts of Somalia; both regions have constitutions that provide for citizens' rights and have civic institutions that provide a degree of protection to individuals. Human rights groups are able to operate freely in Somaliland and Puntland, and the UNHCR considers both regions safe for the sustainable return of refugees.
- The TNG in Mogadishu is committed, in its charter, to promoting greater human rights. The security situation in Mogadishu remains tense as several warlord factions, including those led by Hussein Aideed and Musa Sude, remain opposed to the TNG and,

between them, control most of the city. Independent human rights groups are able to operate in Mogadishu.

- An individual's position in Somalia depends to a large extent on his/her clan origins. In general terms, a person should be safe in an area controlled by his/her clan, and any person, irrespective of clan or ethnic origin, will be safe in Somaliland and Puntland.
- Societal discrimination against women is widespread and the practice of female genital mutilation almost universal in Somalia. Although there are no women in prominent positions in government or local administrations, the TNG has, for the first time in Somali government, reserved seats for women.
- The overwhelming majority of Somalis are Sunni Muslims and Islam has been declared the 'official' religion by some local administrations. Non-Sunni Muslims and people observing other faiths may be viewed with suspicion by the majority, although there have been no reports of non-Muslims experiencing problems because of their religion. Islamic Shari'a courts have become the main system of justice in some areas. Christian-based international relief organisations generally operate unhindered providing they refrain from proselytising.
- In the absence of central government there is no national judicial system. The judiciary is presently organised locally and is in most areas a 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. Shari'a courts operating in various parts of Somalia have been criticised for ordering excessively harsh punishments, including execution and amputation.
- Despite the absence of central government, there is generally free movement within Somalia, although travel between regions may be dangerous at times as bandits operate and militias mount roadblocks to extort tolls. The "green lines" that divided Mogadishu for many years between different warlord factions came down in 1998 and there is free movement into and out of, and within, the city. Scheduled international air services operate to airports in Somaliland, Puntland and Mogadishu from Djibouti, Ethiopia, Kenya and some Middle Eastern states.
- Further information on the political and security situation in the different regions of Somalia may be found in the Country Assessment.

III. Common Types of Claim and Relevant Country Information

Somali society is characterised by membership of clan-families, which are sub-divided into clans and many sub-clans, or minority groups and any political affiliation generally follows clan lines. The majority of asylum claims are based on alleged persecution because of clan or minority group origin. However, most cases of alleged persecution arise from a civil war situation and persons compelled to leave their country of origin for this reason alone are not usually considered refugees under the 1951 Convention.

An individual from a Somali clan-family will normally be safe in an area that his/her clan controls. Also, large parts of Somalia are considered generally safe, particularly Somaliland and Puntland, and people from any clan or minority group will not face persecution based on their ethnic origin in those regions. The Somaliland and Puntland administrations include members of all clans living in their territories and are tolerant of people from clans and groups other than the majority moving into and transiting through their territories.

It is unlikely than any Somali applicant, unless they come from the minority Bravanese, Benadiri or Bajuni groups, will demonstrate that he/she has a well-founded fear of persecution within the terms of the 1951 Convention. The threshold may however be passed in individual cases.

1. Membership of Somali Clans

Members of the **Marehan** clan, part of the Darod clan-family, were disadvantaged after Siad Barre, a Marehan, was overthrown in 1991. However, Marehan have since been able to return to Mogadishu without fear of persecution, and Marehan control Gedo region and are safe in Puntland, which is dominated by the Majerteen, another Darod clan. Membership of the Marehan clan would not, of itself, usually qualify an applicant for asylum or ELTR.

The traditional territories of the **Rahanweyn** and **Digil/Mirifle** clan-families, Bay and Bakool regions, were occupied by mainly Hawiye clan militias in the mid-1990s. Since then, the Rahanweyn Resistance Army (RRA) has wrested control of Bay and Bakool from the Hawiye militias and a Rahanweyn administration is now in place in Bay and Bakool. Although the security situation in Bay and Bakool is not as good as in Somaliland or Puntland, as the Rahanweyn now control their own territory, membership of a Rahanweyn or Digil/Mirifle clan would not, of itself, qualify an applicant for asylum.

Further information on Somali clans may be found in the Country Assessment.

2. Membership of Minority Groups

Members of the minority **Bravanese**, **Benadiri** and **Bajuni** groups should usually be granted asylum. They have been assessed as persecuted minorities by the UNHCR and their situation in Somalia remains uncertain. Caseworkers should refer to separate guidance notes on determining membership of these groups, and refer to Senior Caseworker in cases of doubt.

The Bravanese and Bajuni minorities speak dialects of Swahili in addition to Somali. Some applicants claiming to be Bravanese or Bajuni, who are not able to speak Somali, may be nationals from other states posing as Somalis. See information below under Languages.

Members of the minority **Midgan**, a so-called occupational caste group, would not usually qualify for asylum or exceptional leave to remain (ELTR) on the basis of their ethnicity alone. Midgan live all over Somalia and are safe in Somaliland and Puntland. Midgan also seem no longer to be at risk in Mogadishu.

Further information on minority groups in Somalia may be found in the Country Assessment and in the Report on Minority Groups in Somalia of the Joint British, Danish & Dutch Fact-Finding Mission to Nairobi of September 2000, available from Senior Caseworker.

3. Individuals

If an applicant can demonstrate on an individual basis that he/she faces a risk over and above a civil war situation, he/she may qualify for asylum, or ELTR. This has in the past tended to apply only to high-ranking officials of the former Siad Barre administration, but this has become less of an issue with the passage of time, and the TNG is led by former Barre Ministers, including President Abdiqassim. Also, many former Barre officials were from Barre's Marehan (Darod) clan - see information above under Membership of Somali Clans.

IV. Other Issues

1. Languages

Applicants claiming to be Somali should usually be able to speak Somali. Some minority groups in southern Somalia also speak dialects of Swahili - the Bravanese speak a dialect known as Chimini and the Bajuni speak the Kibajuni dialect. Caseworkers should note that applicants claiming to be Bravanese and Bajuni should also be able to speak Somali in addition to the Swahili dialects that they speak within their own communities. Caseworkers should be aware that applicants claiming to be Bravanese or Bajuni who claim that they cannot speak Somali may be from neighbouring Swahili-speaking states and be posing as Somalis.

Further information on languages spoken by minority groups may be found in the Country Assessment and the Nairobi Fact-Finding Mission Report, available from Senior Caseworker. In cases of doubt refer to Senior Caseworker.

2. Other Nationals Posing as Somalis

It has become apparent that owing to the current policy of granting asylum to members of the Bravanese and Bajuni minorities, and the policy of granting exceptional leave to Somalis other than those from Somaliland and Puntland, other nationals have been posing as Somali nationals in the hope of a more favourable outcome to their asylum claim. Such applicants may be ethnic Somalis from Kenya, Ethiopia and Djibouti, or Swahili speakers from neighbouring states such as Kenya and Tanzania, posing as members of Swahili-speaking Somali minority groups.

See information above under Languages regarding Swahili dialects spoken by the Bravanese and Bajuni. In addition to being able to speak Somali, an applicant claiming to be Bravanese or Bajuni should demonstrate good knowledge about these minority groups. Detailed information on these groups may be found in the Country Assessment and the Nairobi Fact-Finding Mission Report.

3. Documents

It is not possible to verify the authenticity of claimed Somali documents that may be submitted in support of applications. There is no British diplomatic post in Somalia to refer such documents to for verification. Also, many official records in Somalia were destroyed in civil war fighting. Some local administrations issue documents (birth certificates, passports etc.) but these are not issued under any internationally recognised authority and are not verifiable. Furthermore, Somali documents may be obtained easily in many countries through unofficial channels. Little weight can therefore be attached to any claimed Somali document and they should not be accepted as sole proof of identity or nationality.

V. Exceptional Leave to Remain (ELTR) Policy

1. Revised ELTR Policy

The exceptional leave policy for Somalia has been revised. Under the revised policy, Somalis who are refused asylum and who originate from areas other than Somaliland* and Puntland* should be granted one year's ELTR (except unaccompanied minors, who should be granted four years' ELTR or ELTR to their eighteenth birthday, whichever is the lesser period). Applicants from Somaliland and Puntland who are refused asylum should not be

granted ELTR. Somaliland and Puntland are regarded as safe areas for returns by the UNHCR, and applicants from these two regions, whatever their clan or ethnic minority group, would not usually qualify for asylum under the 1951 Convention or ELTR.

(* Somaliland comprises the administrative regions of Awdal, Woqooyi Galbeed, Togdheer, Sanag and Sool and includes the towns of Hargeisa, Berbera, Burco and Boroma. Puntland comprises the regions of Bari, Nugal and the northern part of Mudug region and includes the towns of Galkayo, Garowe and Bosasso.)

A period of one year's ELTR (not four years) should normally be granted to Somalis who are not granted asylum and who do not come from Somaliland or Puntland. This is in recognition of the current practical difficulty in effecting returns to areas other than Somaliland and Puntland rather than on any particular human rights grounds. In individual cases, human rights grounds may, of course, qualify an applicant for asylum or ELTR, whatever region of Somalia they are from.

2. Applications for further ELTR or ILR

Somalis with expiring ELTR applying for further ELTR or for indefinite leave to remain (ILR) should be refused further ELTR or ILR if they originate in Somaliland or Puntland. All such cases should be referred to Senior Caseworker for advice.