



# OPERATIONAL GUIDANCE NOTE

## SOMALIA

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## 1 Introduction

- 1.1.** This document evaluates the general, political and human rights situation in Somalia and provides guidance on the nature and handling of the most common types of claims received from nationals/residents of that country, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseowners must refer to the relevant Asylum Instructions for further details of the policy on these areas.
- 1.2.** This guidance must also be read in conjunction with any COI Service Somalia Country of Origin Information published on the Horizon intranet site. The material is also published externally on the Home Office internet site 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, caseowners 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.

## 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.<sup>1</sup>
- 2.2.** 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 the Transitional Federal Assembly (TFA) was established, 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.<sup>2</sup>
- 2.3.** Between 24 December and early January 2007, militiamen loyal to Mogadishu's network of Islamic courts (UIC) who had taken control over 8 of Somalia's 18 administrative regions in July 2006 were dislodged by the military forces of the Transitional Federal Government (TFG) and Ethiopia. Remnants of the UIC were also pursued in Southern Somalia by the same forces.<sup>3</sup> After the fall of the UIC, the semblance of order and security that the UIC had created in Mogadishu began to deteriorate. Roadblocks and checkpoints returned, together with banditry and violence despite the efforts of the TFG to improve security in the capital.<sup>4</sup> The fall of the UIC also brought to the fore some of the inter and intra clan rivalries that had been suppressed during the conflict and serious clan related fighting ensued<sup>5</sup>.
- 2.4.** On 12 March 2007 Somali MPs voted unanimously for the cabinet to relocate to Mogadishu from Baidoa as Africa Union (AU) troops established their presence in the capital<sup>6</sup> and on 20 January 2008, the Prime Minister and his cabinet moved to Mogadishu.<sup>7</sup>
- 2.5.** A National Reconciliation Conference intended to forge social and political compromise between the country's various clans and factions closed on 30 August 2007.<sup>8</sup> The Foreign and Commonwealth Office reported that while the conference did not of itself achieve a great deal, it was encouraging that it convened for its planned duration and concluded in an organised manner. The TFG agreed to a list of conclusions and action points that they were committed to taking forward over the remainder of the transitional period. Furthermore, although flawed in its own right, the conference represented a significant first step in the Somali political reconciliation process.<sup>9</sup>
- 2.6.** Although the TFG has expressed confidence that they have broken the insurgency, security incidents within Somalia, in particular, Mogadishu persist<sup>10</sup> which have involved hand grenades and explosive devices in Mogadishu, as well as targeted killings. IRIN reported that in June 2008 fighting in Mogadishu was mostly concentrated in the districts of

<sup>1</sup> COIS Somalia Country Report August 2008 (History & Constitution)

<sup>2</sup> COIS Somalia Country Report August 2008 (History; Peace initiatives 2000-2006)

<sup>3</sup> COIS Somalia Country Report August 2008 (History)

<sup>4</sup> COIS Somalia Country Report August 2008 (History)

<sup>5</sup> COIS Somalia Country Report August 2008 (History)

<sup>6</sup> BBC World News 12 March 2007 <http://news.bbc.co.uk/1/hi/world/africa/6442661.stm>

<sup>7</sup> All Africa.com - <http://allafrica.com/stories/200801210011.html>

<sup>8</sup> Shabelle news – Somali national reconciliation conference wraps up <http://www.shabelle.net/news/ne3650.htm>

<sup>9</sup> Letter from the Foreign and Commonwealth Office to the Home Office dated 11 October 2007

<sup>10</sup> COIS Somalia Country Report August 2008 (Section 4)

Wardigley (in the South) and Yaqshid (in the North).<sup>11</sup> The UN reported in July 2008 that insecurity in Mogadishu varied from district to district and in some cases was neighbourhood specific. In August 2008, TFG forces opened a retaliatory attack on two buses outside of Mogadishu which left over 40 civilians dead. On the same day 56 people were killed and 80 wounded in incidents in and around Mogadishu.<sup>12</sup>

- 2.7. OCHA reported in March 2008 that fighting between the TFG supported by Ethiopian troops and anti government elements was taking place throughout central Somalia. In March, anti government elements had temporarily seized control of several major towns. In previous months they had taken at least ten towns in a series of hit and run attacks in which they voluntarily withdrew after capturing equipment and freeing prisoners.<sup>13</sup> More recent security incidents in Central and Southern Somalia were reported in July 2008 when up to 80000 people fled the town of Beletweyne and in early September 2008 when factions of opposed militia clashed in Jowhar (90km north of Mogadishu). It was also reported in early September 2008 that opposition fighters and remnants of the UIC had taken the key port of Kismayo (during August 2008) and made headway across Southern Somalia. However, a Somali government adviser said that the opposition had exaggerated the extent of its alleged comeback.<sup>14</sup>
- 2.8. The security situation in Northern Somalia remains better than in Southern and Central Somalia. Somaliland and Puntland did however continue to dispute their border in the Sool and Sanag regions.<sup>15</sup>
- 2.9. The human rights situation in Somalia 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 however emerging in some parts of the country<sup>16</sup> for example, in Somaliland and Puntland which have constitutions that provide for citizens' rights and civic institutions. The human rights situation is in general better in these two regions than elsewhere in Somalia though the USSD has advised that the human rights situation deteriorated in Somalia during 2007 exacerbated by the absence of effective governance institutions and the rule of law.<sup>17</sup>
- 2.10. Human rights abuses in Somalia during 2007 included: unlawful and politically motivated killings; kidnapping, torture, and beatings; harsh and life threatening prison conditions; and, arbitrary arrest and detention.<sup>18</sup> Societal discrimination against women in Somalia was also widespread and the practice of female genital mutilation (FGM) almost universal. Domestic violence including rape remained a problem. Traditional approaches to dealing with rape tended to ignore the victim's situation and often involved a resolution of the crime between members of the perpetrator's and victim's clans thus denying women's access to justice and right to due process.<sup>19</sup>
- 2.11. There are no legal provisions for the protection of religious freedom. The overwhelming majority of Somalis are Sunni Muslims. The TFG, Somaliland Constitution and Puntland Charter establish Islam as the official religion and there is strong societal pressure to respect Islamic traditions. 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. Societal pressure against conversion is such that there has also been anecdotal evidence that people were sometimes even killed.<sup>20</sup>

<sup>11</sup> COIS Somalia Country Report August 2008 (Security Situation)

<sup>12</sup> COIS – Country Information Request – 3 September 2008

<sup>13</sup> COIS Somalia Country Report August 2008 (Security Situation)

<sup>14</sup> COIS – Country Information Request – 3 September 2008

<sup>15</sup> COIS Somalia Country Report August 2008 (Security Situation)

<sup>16</sup> COIS Somalia Country Report March 2008 (Human rights; Introduction)

<sup>17</sup> USSD Somalia 2008

<sup>18</sup> USSD Somalia 2008

<sup>19</sup> COIS Somalia Country Report March 2008 Women)

<sup>20</sup> COIS Somalia Country Report June 2008 (Freedom of Religion)

- 2.12.** A number of local and international NGOs engaged in human rights activity do currently operate in Somalia investigating and publishing their findings on human rights cases. However, there were in 2007, attacks and incidences of harassment against humanitarian, religious and NGO workers which resulted in deaths. TFG officials accused NGOs and civil society organisations of siding with opposition groups and exaggerating human rights abuses committed by the TFG forces. The TFG intimidated and arrested NGO workers, who also received death threats from regional administrators, clan militias and criminals.<sup>21</sup>
- 2.13.** Independent journalists also reporting on human rights violations have been the subject of serious exactions. For example, most of those responsible for independent media have left the country and according to the Somalia Press Freedom Observer, eight journalists were killed in 2007, half of them in targeted assassinations carried out by contract killers.<sup>22</sup> Human rights groups located in Somaliland are able to operate freely but those based in Puntland are shown little tolerance by the political authorities<sup>23</sup>
- 2.14.** 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.<sup>24</sup>
- 2.15.** Although the Transitional Federal Charter provides for an independent judiciary, there is no functioning judicial system for the TFG to administer. However, regional administrations have some functioning courts. 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.<sup>25</sup> Similarly, there is no effective functioning police force. Members of the police force were often direct participants in politically based conflict and owed their positions to other politically active individuals. Reports suggest that police abuses are rarely investigated and that impunity remains a problem.<sup>26</sup>
- 2.16** Despite the absence of a central government based in the country, there is generally free movement of both people and goods within Somalia. The Transitional Federal Charter of the Somali Republic (TFC) and the Puntland Charter both provide for freedom of movement within the country though this right was restricted in some parts of the country.<sup>27</sup> Travel on some roads outside Mogadishu can sometimes be problematic. Amnesty noted in May 2008 that there were multiple checkpoints and roadblocks on the roads outside of Mogadishu. According to the USSD, these were operated by the TFG, TFG allied militias and armed clans factions who may sometimes inhibit passage of travellers by exposing them to looting, extortion, rape and harassment. USSD recorded 235 checkpoints in south and central Somalia with 13 on the road between Baidoa and Mogadishu (a distance of 170 kilometres). Amnesty recorded 88 checkpoints between Mogadishu and Bossasso (1500

<sup>21</sup> USSD Somalia 2008 (Section 18)

<sup>22</sup> Observatory for the Protection of Civil Rights Defenders, Steadfast in protest: annual report 2007, 19 June 2008, Somalia, pages 80-82 [http://www.omct.org/pdf/Observatory/2008/annual\\_report\\_2007/report2007obs\\_eng.pdf](http://www.omct.org/pdf/Observatory/2008/annual_report_2007/report2007obs_eng.pdf)

<sup>23</sup> USSD Somalia 2008 (Section 18)

<sup>24</sup> COIS Somalia Country Report August 2008 (Background; ethnic groups & Annexes C-D)

<sup>25</sup> COIS Somalia Country Report August 2008 (Judiciary & Death penalty & Police)

<sup>26</sup> COIS Somalia Country Report August 2008 (Police)

<sup>27</sup> USSD Somalia 2008

kilometres) and 150 from Mogadishu to the Southwest (500 kilometres to the Kenyan border).<sup>28</sup> There are now reported to be almost 400 roadblocks countrywide.

### 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 Kenya. 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 claimant 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** 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 the Asylum Instructions on 'Considering the Asylum' and 'Assessing Credibility in Asylum and Human Rights Claims'.
- 3.5** 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/>
- 3.6 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 situation in southern and central regions in light of the ousting of the Union of Islamic Courts (UIC) by Transitional Federal Government (TFG) forces in December 2006 and the fighting in Mogadishu which followed. Such claims may also raise the issue of clan affiliation.
- 3.6.2 *Treatment.*** During June to July 2006, militiamen loyal to Mogadishu's network of Islamic courts (UIC) took control of the capital and other parts of the south of Somalia after defeating rival clan warlords. Ethiopian National Defence Forces (ENDF) entered Somalia in December 2006 at the request of the Transitional Federal Government Forces (TFG) and by January 2007, had helped back an advance by the TFG to oust the UIC. Fighting in Mogadishu subsequently ensued between the TFG and remnants of the UIC and clan-based militias. By the end of January 2007, the TFG and Ethiopian forces controlled, to some extent, most of central and southern Somalia.<sup>29</sup>

<sup>28</sup> COIS Somalia Country Report August 2008 (Checkpoints)

<sup>29</sup> COIS Somalia Country Report August 2008 (Section 4)



- 3.6.3** Although the TFG has expressed confidence that they have broken the insurgency, security incidents within Somalia, in particular, Mogadishu persist<sup>30</sup> which have involved hand grenades and explosive devices in Mogadishu, as well as targeted killings. IRIN reported that in June 2008 fighting in Mogadishu was mostly concentrated in the districts of Wardigley (in the South) and Yaqshid (in the North).<sup>31</sup> The UN reported in July 2008 that insecurity in Mogadishu varied from district to district and in some cases was neighbourhood specific. In August 2008, TFG forces opened a retaliatory attack on two buses outside of Mogadishu which left over 40 civilians dead. On the same day 56 people were killed and 80 wounded in incidents in and around Mogadishu.<sup>32</sup>
- 3.6.4** OCHA reported in March 2008 that fighting between the TFG supported by Ethiopian troops and anti government elements was taking place throughout central Somalia. In March, anti government elements had temporarily seized control of several major towns. In previous months they had taken at least ten towns in a series of hit and run attacks in which they voluntarily withdrew after capturing equipment and freeing prisoners.<sup>33</sup> More recent security incidents in Central and Southern Somalia were reported in July 2008 when up to 80000 people fled the town of Beletweyne and in early September 2008 when factions of opposed militia clashed in Jowhar (90km north of Mogadishu). It was also reported in early September 2008 that opposition fighters and remnants of the UIC had taken the key port of Kismayo (during August 2008) and made headway across Southern Somalia. However, a Somali government adviser said that the opposition had exaggerated the extent of its alleged comeback.<sup>34</sup>
- 3.6.5** The security situation in Northern Somalia remains better than in Southern and Central Somalia. Somaliland and Puntland did however continue to dispute their border in the Sool and Sanag regions.<sup>35</sup>
- 3.6.6** The political situation underpinning the security situation has improved since January 2007. On 12 March 2007, Somali MPs voted unanimously for the cabinet to relocate to Mogadishu from Baidoa as AU peacekeepers (AU peacekeepers were deployed under the terms of a UN Resolution to replace the Ethiopian forces and to support the work of the TFG security forces) established their presence in the capital<sup>36</sup> and on 20 January 2008, the Prime Minister and his cabinet moved to Mogadishu.
- 3.6.7** The new Prime Minister has also made recognisable progress towards better governance and reconciliation.<sup>37</sup> At the end of January 2008, the Prime Minister concluded week long consultations which resulted in the release of many anti TFG detainees. Progress has been made in addressing media harassment involving mutual concessions from the security forces and the media houses. The Prime Minister has also addressed security arrangements for traders in Bakara market by reviewing the composition and mandate of a dedicated security committee.<sup>38</sup> Furthermore, the Prime Minister's open approach to dialogue with the Somali people from all walks of life is apparently welcomed by the general public who are longing for peace and stability and is reported likely to magnetise even some of the toughest opponents of the TFG.<sup>39</sup>
- 3.6.8** The former executive leader of the Union of Islamic Courts (UIC), Sheikh Sharif Sheikh Ahmed who now lives in Eritrea and who heads a group opposed to the TFG has also called for reconciliation in Somalia. All Africa.com suggests that the Sheikh's stand is the

<sup>30</sup> COIS Somalia Country Report August 2008 (Section 4)

<sup>31</sup> COIS Somalia Country Report August 2008 (Security Situation)

<sup>32</sup> COIS – Country Information Request – 3 September 2008

<sup>33</sup> COIS Somalia Country Report August 2008 (Security Situation)

<sup>34</sup> COIS – Country Information Request – 3 September 2008

<sup>35</sup> COIS Somalia Country Report August 2008 (Security Situation)

<sup>36</sup> BBC World News 12 March 2007

<sup>37</sup> Email correspondence to the Border and Immigration Agency from the FCO– 29 January 2008

<sup>38</sup> Email correspondence to the Border and Immigration Agency from the FCO– 29 January 2008

<sup>39</sup> Somalia: Radical Clerics Take a Softer Stance On New Premier – 31 January 2008 -

<http://allafrica.com/stories/200801311182.html>

opposite of the strong anti-TFG rhetoric he used to hold and amounts to the Asmara group softening the bargaining position towards some kind of power sharing.<sup>40</sup>

- 3.6.9** Roads outside Mogadishu are sometimes problematic. Amnesty noted in May 2008 that there were multiple checkpoints and roadblocks on the roads outside of Mogadishu. According to the USSD, these were operated by the TFG, TFG allied militias and armed clans factions and could inhibit passage of travellers exposing them to looting, extortion, rape and harassment particularly of civilians fleeing conflict. USSD recorded 235 checkpoints in south and central Somalia with 13 on the road between Baidoa and Mogadishu (a distance of 170 kilometres). Amnesty recorded 88 checkpoints between Mogadishu and Bossasso (350 kilometres) and 150 from Mogadishu to the Southwest (500 kilometres to the Kenyan border).<sup>41</sup>
- 3.6.10** While the humanitarian situation in Somalia is poor, there is not such an absence of the basic necessities of life or conditions that would lead to an immediate threat to life or personal dignity. The UN reported in August 2008 that the number of people in need of humanitarian aid had increased by 77% affecting a total of 3.2 million people. However, the UN also advised that aid agencies were on the ground whose assistance was vital in saving lives and livelihoods. The World Health Organisation (WHO) had distributed 100, 000 medical kits a week before the fighting in Kismayo and a local partner completed distribution of 373 metric tonnes of food to around 18,000 IDPs and residents around Kismayo on 22 August. In addition, two vessels transporting 17,000 metric tonnes of World Food Programme food arrived in Mogadishu in late August 2008.<sup>42</sup>
- 3.6.11 Sufficiency of protection.** As this category of claimants' fear is of mistreatment on the basis of the general country situation and not particular state or non-state agents, the availability of sufficient state protection is not relevant.
- 3.6.12 Internal relocation.** As this category of claimants' fear is of mistreatment on the basis of the general country situation and not particular state or non-state agents, the availability of of a viable internal relocation alternative is not relevant.
- 3.6.13 Caselaw.**

**ADAN [1998] UKHL 15; [1999] 1 AC 293; [1998] 2 ALL ER 453; [1998] 2 WLR 702.** A general civil war situation is not in itself sufficient grounds for granting asylum. Where a state of civil war exists it is not enough for an asylum-seeker to show that he would be at risk if he were returned to his country. He must be able to show a differential impact. In other words, he must be able to show fear of persecution for Convention reasons over and above the ordinary risks of clan warfare.

**HH & others (Mogadishu: armed conflict: risk) Somalia CG [2008] UKAIT 00022.** This case considered the issue of internal armed conflict in Somalia with reference to Article 15(c) of the Qualification Directive. The AIT found that there is an internal armed conflict confined to Mogadishu and its immediate environs but that there is not such indiscriminate risk of violence as to place the citizens of Mogadishu at individual risk of serious harm. The AIT said that unless there are substantial grounds for believing that on return to Somalia a person is at real risk of Article 2 or 3 harm it is unlikely that they would satisfy article 15(c). Even if an international or internal armed conflict had been found to exist, it did not mean that a claimant would automatically succeed under article 15(c) or its domestic counterpart (para 334).

The AIT also found in HH and others that clan support networks are still in existence and can be relied upon for support and assistance. The AIT indicated that the current situation in Mogadishu is different from the previously accepted view of majority clans preying on minority clans and fighting with majority clans over land (para 304). It found that in respect of minority clans, minority clans can in some cases avail themselves of the patronage of a majority clan. The AIT said that the Ashraf who have been able to live in Southern Somalia until recent times may have done so due to their geographic communities giving them protection rather than by living in hiding and suffering harassment (para 306).

<sup>40</sup> Somalia: Radical Clerics Take a Softer Stance On New Premier – 31 January 2008

<http://allafrica.com/stories/200801311182.html>

<sup>41</sup> COIS Somalia Country Report August 2008 (Checkpoints)

<sup>42</sup> UN OCHA – Report 29 August 2008

**3.6.14 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. The claimant can only demonstrate a well-founded claim for asylum where they can demonstrate they are at risk of adverse treatment on Convention grounds over and above the risk to life and liberty, which occurs during such instability / insecurity. In addition, a general risk of violence based on the weak control of the region by the TFG does not amount to a well-founded fear of persecution for a Convention reason and so will not in itself be sufficient to amount to an asylum claim.

**3.6.15** Although there still continue to be security incidents in Mogadishu since the fighting stopped, leaving some civilian casualties, these appear to be isolated and targeted incidents and do not demonstrate that there is a real and general risk to people living there. This position is consistent with the AIT findings in the case of HH & others. While the AIT in the case of HH found that an internal armed conflict exists in Mogadishu and its immediate environs, it also found that there is not such an indiscriminate risk of violence as to place the citizens of Mogadishu at individual risk of serious harm.

**3.6.16** Furthermore, although the humanitarian situation in Mogadishu and in Central and Southern Somalia is poor, there is not such an absence of the basic necessities of life as to cause an immediate threat to life or personal dignity. Food, water and shelter are available and there is access to international humanitarian aid.

**3.6.17** The grant of Humanitarian Protection on account of generalised violence/ the humanitarian situation will only be appropriate where the circumstances of the individual are such that their return will breach Article 3. Refer to the API on Humanitarian Protection for more information.

### **3.7 Members of major clan families or related 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.** 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.<sup>43</sup>

**3.7.3** The dominant clan in any particular area has previously excluded and discriminated against other clans and minorities from participation in power in that area. However, following the expulsion of the UIC from Mogadishu and the intervention of the Ethiopians, the situation in has moved away from the previous pattern of majority clan warlords preying on minority clans and fighting with other majority clans.<sup>44</sup> It has been reported that during the last three to four years, individuals from majority clans have not been targeted solely on account of their clan affiliation.<sup>45</sup> As long as a person is living in the traditional area of the clan he or she would enjoy the protection of that clan.<sup>46</sup>

**3.7.4 Sufficiency of protection.** 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

<sup>43</sup> COIS Somalia Country Report May 2007 (Ethnic groups & Annexes C-D)

<sup>44</sup> HH and others – AIT judgment

<sup>45</sup> Danish Fact Finding Mission Report – 14-27 March 2007

<sup>46</sup> Danish Fact Finding Mission Report – 14-27 March 2007



kinship group.<sup>47</sup> 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.

**3.7.5 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 or by the TFG or the Ethiopians can inhibit passage. For further information on checkpoints see section 2.16. Nevertheless internal relocation for major clan affiliates is possible.

**3.7.6** Somalis are generally able to pass through TFG checkpoints on the road that make a charge for safe passage<sup>48</sup> as well as checks to ensure people are not engaged in armed opposition and trying to escape from the authorities but those who can demonstrate that they do not fit into this category should not have any problems.<sup>49</sup> In addition, though there do continue to be security incidents along the main road between Mogadishu International Airport and the city, travel along the road is possible and individuals using it do not generally face any difficulties. Individuals will also not generally require an escort to travel on the road. However if they do consider an escort to be necessary, it is feasible for them to arrange one with their own clan before or after arrival.<sup>50</sup> Most if not all clans are represented in Mogadishu to some degree or another.<sup>51</sup>

**3.7.7** 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.<sup>52</sup>

#### **3.7.8 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

<sup>47</sup> COIS Somalia Country Report August 2008 (Ethnic groups; Somali clans & Annex C)

<sup>48</sup> COIS Somalia Country Report August 2008 (Checkpoints)

<sup>49</sup> BIA Fact Finding Mission report June 2007 para 6.06

<sup>50</sup> BIA Fact Finding Mission report June 2007 section 6

<sup>51</sup> COIS Somalia Country Report August 2008 (Freedom of movement, Ethnic groups; Somali clans & Annex C)

<sup>52</sup> COIS Somalia Country Report August 2008 (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.

**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 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.

**HH & others (Mogadishu: armed conflict: risk) Somalia CG [2008] UKAIT 00022.** This case considered the issue of internal armed conflict in Somalia with reference to Article 15(c) of the Qualification Directive. In this case, the AIT found that clan support networks are still in existence and can be relied upon for support and assistance. The AIT indicated that the current situation in Mogadishu is different from the previously accepted view of majority clans preying on minority clans and fighting with majority clans over land (para 304). It found that in respect of minority clans, minority clans can in some cases avail themselves of the patronage of a majority clan. The AIT said that the Ashraf who have been able to live in Southern Somalia until recent times may have done so due to their geographic communities giving them protection rather than by living in hiding and suffering harassment (para 306).

**3.7.9 Conclusion.** Large parts of northern Somalia, namely Somaliland and Puntland, are considered generally safe regardless of clan membership. In other parts of Somalia it is unlikely that 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 *HH 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.

**3.7.10** It is generally possible to travel safely about Mogadishu and from Mogadishu to the airport. Individuals are still flying into Mogadishu airport where AU troops are present and there has been no reporting of specific or sustained risks experienced by individuals travelling from the airport. If any protective measures are necessary in order to travel from the airport, it is feasible to arrange such measures before or after arrival with one's own clan. This means that majority clan members are also generally able to travel to a different area of Mogadishu where members of their clan are also represented. The grant of asylum is therefore not likely to be appropriate in such cases.

### **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.*** 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 22% of the Somali population and include the Bajuni.<sup>53</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.<sup>54</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>55</sup>
- 3.8.5** Information provided by the Foreign and Commonwealth Office in January 2007 about the fluid country situation following the ousting of the UIC indicates that the risk to personal safety for the vast majority of Somalis, whether affiliated to majority or minority clans, is the same and that individuals are not targeted simply on the basis of their ethnicity.
- 3.8.6 *Sufficiency of protection.*** Minority groups, such as the Bajuni, that are politically and economically the weakest and are culturally and ethnically distinct from Somali clan families are not able to secure protection from any major clan family or related sub-clan.<sup>56</sup> The Bajuni do not therefore have access to adequate protection from their persecutors.
- 3.8.7 *Internal relocation.*** The Bajuni are vulnerable to discrimination and exclusion by major clan and sub-clan groups throughout southern/central Somalia,<sup>57</sup> internal relocation within these regions is therefore not a reasonable option.
- 3.8.8 *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 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.

**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

<sup>53</sup> USSD –Somalia 2008

<sup>54</sup> Immigration Refugee Board Canada "Victims and Vulnerable Groups In Southern Somalia" May 1995

<sup>55</sup> COIS Somalia Country Report August 2008 (Ethnic groups: Bajunis)

<sup>56</sup> COIS Somalia Country Report August 2008 (Ethnic groups; General security position for minority groups)

<sup>57</sup> COIS Somalia Country Report August 2008 (Ethnic groups; General security position for minority groups)

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.

**3.8.9 Conclusion.** The Bajuni do not only originate from Somalia but also other countries along the Indian Ocean coast, notably Kenya. A claimant's nationality as well as their ethnicity therefore needs to be carefully examined.

**3.8.10** While for the vast majority of Somalis clan status should not in itself risk mistreatment, and some members of minority groups are able in some circumstances to secure protection from major or sub related clans in some areas (refer *HH & others Somalia CG [2008] UKAIT 00022*) the Bajuni are generally one of the minority groups unable to rely on a patron clans support and vulnerable to discrimination and social due mainly to them being culturally and ethnically unconnected to any major clan group.<sup>58</sup> For those Bajuni claimants who have demonstrated a reasonable likelihood that they have encountered ill treatment amounting to persecution a grant of asylum is therefore likely to 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.** 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.<sup>59</sup>

**3.9.3** 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 who 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 at March 2004, 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 Hamar Weyn and Shingani districts some of whom had been forced to marry off their daughters to members of the majority clans. 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.<sup>60</sup>

**3.9.4** 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.<sup>61</sup>

**3.9.5** Information provided by the Foreign and Commonwealth Office in January 2007 about the fluid country situation following the ousting of the UIC indicates that the risk to personal safety for the vast majority of Somalis, whether affiliated to majority or minority clans, is the same and that individuals are not targeted simply on the basis of their ethnicity.<sup>62</sup>

**3.9.6 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 generally able to secure protection from any major clan family or related sub-clan.<sup>63</sup> Though the Benadiri originate mainly from southern or central Somalia, a few

<sup>58</sup> COIS Somalia Country Report August 2008 (Ethnic groups; General security position for minority groups)

<sup>59</sup> COIS Somalia Country Report August 2008 (Ethnic groups; General security position for minority groups)

<sup>60</sup> COIS Somalia Country Report August 2008 (Ethnic groups; Bravanese and Benadiri)

<sup>61</sup> COIS Somalia Country Report August 2008 (Ethnic groups; Bravanese and Benadiri)

<sup>62</sup> COIS Somalia Country Report August 2008 (Ethnic groups; General security position for minority groups)

<sup>63</sup> COIS Somalia Country Report August 2008 (Ethnic groups; Bravanese and Benadiri)

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*). In addition, some members of the Ashraf have been able to live in Southern Somalia under the protection of the majority clan in their geographic community (*HH & others Somalia CG [2008] UKAIT 00022*)

**3.9.7 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.

**3.9.8 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 for caseworkers assessing the credibility of claims of Bajuni ethnicity but can be applied to all minority group claims.

**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.

**HH & others (Mogadishu: armed conflict: risk) Somalia CG [2008] UKAIT 00022.** The AIT indicated that the current situation in Mogadishu is different from the previously accepted view of majority clans preying on minority clans and fighting with majority clans over land (para 304). It found that in respect of minority clans, minority clans can in some cases avail themselves of the patronage of a majority clan. The AIT said that the Ashraf who have been able to live in Southern Somalia until recent times may have done so due to their geographic communities giving them protection rather than by living in hiding and suffering harassment (para 306).

**3.9.9 Conclusion.** For the vast majority of Somalis clan status should not in itself risk mistreatment, and some members of minority groups including the Benadiri are able in some circumstances to secure protection from major or sub related clans in some areas as evidenced in *A (Somalia) [2004] UKIAT 00080* (see above) where the AIT found that Benadiri 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 and in *HH & others Somalia CG [2008] UKAIT* (see above) where the AIT found that some members of the Ashraf (a Benadiri sub group) have been able to live in Southern Somalia under the protection of the majority clan in their geographic community. However, the Benadiri or Bravanese are generally one of the minority groups unable to rely on a patron clans support and vulnerable to discrimination and social exclusion due mainly to them being culturally and ethnically unconnected to any major clan group.<sup>64</sup> For those Benadiri/ Bravanese claimants who have demonstrated a reasonable likelihood that they have encountered ill treatment amounting to persecution a grant of asylum is therefore likely to be appropriate.

<sup>64</sup> COIS Somalia Country Report August 2008 (Ethnic groups; General security position for minority groups)



### 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/Midgan (usually referred to as the Midgan but also known as the Madhiban), Tumul 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, Tumul 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.<sup>65</sup>
- 3.10.3** Information provided by the Foreign and Commonwealth Office in January 2007 about the fluid country situation following the ousting of the UIC indicates that the risk to personal safety for the vast majority of Somalis, whether affiliated to majority or minority clans, is the same and that individuals are not targeted simply on the basis of their ethnicity.<sup>66</sup>
- 3.10.4 *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.<sup>67</sup> The Galgala have assimilated into the Abgal in Jowhar and Mogadishu and the Nuh Mohamud sub clan of the Majerteen clan.<sup>68</sup> Members of these groups are therefore able to seek and receive adequate protection from their patron clans.
- 3.10.5 *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 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 or by the TFG or the Ethiopians can inhibit passage. For further information on checkpoints see section 2.16. Nevertheless internal relocation for occupational castes is generally possible.
- 3.10.6** Somalis are generally able to pass through TFG checkpoints on the road that make a charge for safe passage<sup>69</sup> as well as checks to ensure people are not engaged in armed opposition and trying to escape from the authorities but those who can demonstrate that they do not fit into this category should not have any problems.<sup>70</sup> In addition, though there do continue to be security incidents along the main road between Mogadishu International Airport and the city, travel along the road is possible and individuals using it do not generally face any difficulties. Individuals will also not generally require an escort to travel on the road. However if they do consider an escort to be necessary, it is feasible for them to arrange one with their own clan before or after arrival.<sup>71</sup> Most if not all clans are represented in Mogadishu to some degree or another.<sup>72</sup>

<sup>65</sup> COIS Somalia Country Report August 2008 (Ethnic groups; Midgan, Tumul, Yibil and Galgala & Annexes C-D)

<sup>66</sup> COIS Somalia Country Report August 2008 (Ethnic groups; General security position for minority groups)

<sup>67</sup> COIS Somalia Country Report August 2008 (Ethnic groups; Midgan, Tumul, Yibil and Galgala & Annex D)

<sup>68</sup> UN-OCHA Study on Minority Groups in Somalia

<sup>69</sup> COIS Somalia Country Report August 2008 (Checkpoints)

<sup>70</sup> BIA Fact Finding Mission report June 2007 para 6.06

<sup>71</sup> BIA Fact Finding Mission report June 2007 section 6

<sup>72</sup> COIS Somalia Country Report August 2008 (Freedom of movement, Ethnic groups; Somali clans & Annex C)

**3.10.7** 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.<sup>73</sup>

### **3.10.8 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.

**3.10.9 Conclusion.** Members of the Midgan, Tumul Yibir or Galgala groups have assimilated into major clan or sub-clan groups. 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.

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

**3.11.1** 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.

**3.11.2 Treatment:** The practice of FGM is widespread throughout Somalia. There have been estimates that up to 98% of women have undergone FGM which according to the United Nations Children’s Fund (UNICEF) is primarily performed on girls aged 4-11<sup>74</sup>. The majority of women are subjected to infibulation commonly referred to as “pharaonic circumcision”, the most severe form of FGM. The less radical type of FGM sometimes called “sunna” is practised mainly in the coastal towns of Mogadishu, Brava, Merca and Kismayo.<sup>75</sup> In Puntland and Somaliland FGM is illegal; however, the law is not enforced.<sup>76</sup>

**3.11.3** Many Somalis mistakenly view the FGM procedure as a religious obligation. The concept of family honour is also involved. FGM is carried out to ensure virginity and because virginity and family honour are seen as related, it is believed that a family’s honour will remain intact if daughters undergo the procedure. Women who do not undergo the procedure may be thought of as having loose morals or will provide less bridalwealth for their families.<sup>77</sup>

<sup>73</sup> COIS Somalia Country Report August 2008 (Ethnic groups; Somali clans & Annex C)

<sup>74</sup> UNICEF advocacy paper: Eradication of Female Genital Mutilation in Somalia

[http://www.unicef.org/somalia/cpp\\_136.html](http://www.unicef.org/somalia/cpp_136.html)

<sup>75</sup> USSD Somalia: Report on Female Genital Mutilation (FGM) or Female Genital Cutting (FCM) – June 2001

[http://www.asylumlaw.org/docs/somalia/usdos01\\_fgm\\_Somalia.pdf](http://www.asylumlaw.org/docs/somalia/usdos01_fgm_Somalia.pdf)

<sup>76</sup> Somalia COIR (Women; FGM) – August 2008

<sup>77</sup> USSD Somalia: Report on Female Genital Mutilation (FGM) or Female Genital Cutting (FCM) – June 2001

- 3.11.4** The avoidance of FGM is dependent on whether a girl is from the town or the countryside. If a family lives in a major city it is 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). It has also been reported that there is a tendency towards Somali men being more easily convinced not to have their daughters circumcised.<sup>78</sup>
- 3.11.5** 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>79</sup> However, there are no reliable statistics to measure the success of their programs.
- 3.11.6** UNIFEM has also indicated that a mother can 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 his wife does have the option to leave the community with the child.<sup>80</sup>
- 3.11.7 *Sufficiency of protection:*** Though illegal in Somaliland and Puntland, the law on FGM in these areas is not enforced. The procedure is also 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 may not be able to access sufficiency of protection.
- 3.11.8 *Internal relocation:*** Internal relocation to escape a localised threat of FGM from members of a family/ clan is an option. Those women 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. Nevertheless internal relocation for major clan affiliates is possible. Somalis are generally able to pass through TFG checkpoints on the road that make a charge for safe passage<sup>81</sup> as well as checks to ensure people are not engaged in armed opposition and trying to escape from the authorities but those who can demonstrate that they do not fit into this category should not have any problems.<sup>82</sup>
- 3.11.9** In addition though there do continue to be security incidents along the main road between Mogadishu International Airport and the city, travel along the road is possible and individuals using it do not generally face any difficulties.<sup>83</sup> Individuals will also not generally require an escort to travel on the road. However if they do consider an escort to be necessary, it is feasible for them to arrange one with their own clan before or after arrival.<sup>84</sup> Most if not all clans are represented in Mogadishu to some degree or another.<sup>85</sup>
- 3.11.10** 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

<sup>78</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>

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<sup>80</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.

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<sup>81</sup> COIS Somalia Country Report August 2008 (Checkpoints)

<sup>82</sup> BIA Fact Finding Mission report June 2007 para 6.06

<sup>83</sup> BIA Fact Finding Mission report June 2007 para 6.06

<sup>84</sup> BIA Fact Finding Mission report June 2007 section 6

<sup>85</sup> COIS Somalia Country Report August 2008 (Freedom of movement, Ethnic groups; Somali clans & Annex C)

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.<sup>86</sup>

- 3.11.11** However, each case must be considered on its individual merits. Some women relocating within Somalia to escape an individualised threat of FGM or to escape so that their daughters do not have to undergo the procedure may encounter a lack of acceptance by others in a new environment as well as a lack of accommodation etc which may make internal relocation unduly harsh.
- 3.11.12 Conclusion:** Though illegal in Somaliland and Puntland, FGM remains widely practised in these areas and the law is not enforced. FGM is also widely practised in the rest of Somalia where it has not been made illegal. There are a number of NGOs working to promote women's rights and campaign against FGM. However, there is no reliable information to indicate the success of these campaigns.
- 3.11.13** It is evident that not all Somali females would face being ostracised from their community if they chose not to undergo FGM either for themselves or their daughters, for example, a mother can protect her daughter from being circumcised 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. Internal relocation may also be a viable option for some to escape a localised threat of them/ their daughter having to undergo the procedure. However, each case must be considered on its individual merits. Much will depend on the ability of the woman to live independently of her family and the availability of other family members who might be able to offer protection.
- 3.11.14** 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.
- 3.12 Prison conditions**
- 3.12.1** 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.
- 3.12.2** 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.
- 3.12.3 Consideration.** Prison conditions remained harsh and life threatening in all regions of the country in 2007. The main Somaliland prison in Hargeisa, designed for 150 inmates, held more than 700 prisoners. Overcrowding, poor sanitary conditions, lack of access to health care, and inadequate food and water supply persisted in prisons throughout the country. Tuberculosis, HIV/AIDS, and pneumonia were widespread. Abuse by guards was common. Detainees' 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>87</sup>
- 3.12.4** Convicted juveniles continued to be kept in jail cells with adult criminals. The incarceration of juveniles at the request of families who wanted their children disciplined also continued to be a major problem in 2007.<sup>88</sup>

<sup>86</sup> COIS Somalia Country Report August 2008 (Ethnic groups; Somali clans & Annex C)

<sup>87</sup> COIS Somalia Country Report August 2008 (Section 12)

<sup>88</sup> COIS Somalia Country Report August 2008 (Section 12)

**3.12.5 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, HIV/AIDS and pneumonia, 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 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 Asylum Instructions 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 Asylum Instructions on Discretionary Leave and 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 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.

#### **4.4 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.<sup>89</sup>

**4.4.3** In Mogadishu there are two public hospitals (Medina and Keysane) 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,

<sup>89</sup> COIS Somalia Country Report August 2008 (Section 26)



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 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.<sup>90</sup>

- 4.4.4** Mental health care provision is provided by NGOs who assist in the provision of services to mental patients and street children and training for primary health care personnel. There are only three centres for psychiatry including the mental hospital in Berbera and the general psychiatric wards in Hargeisa and Mogadishu. There is no private psychiatric inpatient facility though there are a few private clinics in Mogadishu and Hargeisa.<sup>91</sup>
- 4.4.5** 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, where necessary, 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. There are scheduled air services to a number of destinations in Somalia – Mogadishu, Bosasso, Hargeisa, Berbera, Burao and Galcaio. Returns 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.
- 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.<sup>92</sup> 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

<sup>90</sup> COIS Somalia Country Report August 2008 (Section 26)

<sup>91</sup> COIS Somalia Country Report August 2008 (Section 26)

<sup>92</sup> COIS Somalia Country Report August 2008 (UNHCR position on the return of rejected asylum seekers)

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.

**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 Organization for Migration (IOM) and co-funded by the European Refugee Fund. Under these arrangements IOM are able to assist with returns to Mogadishu, Hargeisa, Bosasso and Galcaiyo. IOM will provide advice and help with obtaining any 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 0800 783 2332 or [www.iomlondon.org](http://www.iomlondon.org).

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