

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76062

AT AUCKLAND

<u>Before:</u>	B L Burson (Member)
<u>Counsel for the Appellant:</u>	E Griffin
<u>Appearing for the Department of Labour:</u>	No Appearance
<u>Date of Hearing:</u>	6 & 7 August 2007
<u>Date of Decision:</u>	15 October 2007

DECISION

[1] This is an appeal against the decision of a refugee status officer of the Department of Labour (DOL), declining the grant of refugee status to the appellant, a national of Somalia.

INTRODUCTION

[2] The appellant claims to be at risk of being persecuted if returned to Somalia on the basis of his belonging to a minority clan, the *Tunni Torre*. He claims this clan membership means he is unable to be protected from the more powerful clans in Somalia. What follows is a summary of the appellant's evidence. An assessment will follow thereafter.

THE APPELLANT'S CASE

[3] The appellant was born in Kismayo in southern Somalia in 1983. He is the eldest of three siblings. The family lived in simple accommodation in a suburb on the outskirts of the northern edge of Kismayo. His father owned a plot of land some distance from Kismayo where he grew various crops on which the family

lived. The family was poor and the appellant was aware at even a young age that his family's life was financially much harder than that of others in his neighbourhood.

[4] In 1989, the appellant started attending a local state primary school. He had by that time already started attending a *madrasa* near to his home for religious instruction. However, in 1990, as the country descended into civil war, the schools in the area, including the appellant's, closed. He continued going to the *madrasa*.

[5] In 1991, while at the *madrasa*, Kismayo came under attack. As the appellant left the *madrasa* to return home he noticed that a number of buildings in the area had been destroyed. The appellant went quickly towards his home. Upon reaching home, he saw that it had been destroyed and that his parents and siblings were dead. The appellant began crying. A neighbour, HH, with whose son the appellant used to play, saw him and took the appellant back to her house which was unscathed. HH, and her husband began looking for means to leave the city and the following day managed to secure passage for themselves, their children, and the appellant on a lorry leaving for Kenya. The lorry travelled to Utange Camp, a large refugee camp near Mombassa.

[6] The appellant was approximately 8 years old when his parents died. While he does not have much recollection of life with them, he recalled his parents telling him that he was a *Tunni Turre* and that his sub-clan was *shan gamar*. Beyond this he did not know anything more about his lineage.

[7] There the appellant remained living with HH and her family until 1995. He was fed and looked after by HH. He was not himself issued with a ration card in his own name. HH was registered with the UNHCR but he is not sure if he was named in her card. He did not go to school at the camp because he was still troubled by the deaths of his parents and siblings. Instead, he just played with other children in the camp and helped HH as and when she needed it.

[8] In 1995 the camp was closed. The camp inhabitants had experienced ongoing problems with a local Kenyan tribe called *giriama* who they called "the wild people". There were often fights with *giriama* people and Somali women who went to gather the firewood outside the camp were often attacked by *giriama* men. On a number of occasions the *giriama* set fire to the camp and on one occasion it was completely burnt down. For this reason, the camp was closed and its inhabitants either returned to Somalia or moved on to other camps.

[9] HH proposed for the appellant to return to Somalia with her but the appellant said he did not want to go to Somalia as it reminded him of his parents. By this time, the appellant had become friends with another *Tunni* boy called AR who living in a nearby camp called Benadiri Camp. The appellant mentioned to AR that he did not want to return to Somalia with HH. AR mentioned this to his mother who invited the appellant to live with them in the nearby camp. When HH and her family left to return to Somalia the appellant went to Benadiri Camp where he lived for the next two years with AR and his family. The conditions in this camp were similar to those in Utanga Camp. The appellant also did not go to school at Benedari Camp for the same reason.

[10] From AR, the appellant learned that there were in fact two groups of *Tunni* people, namely, the *Tunni Brava* and the *Tunni Torre*. Until AR told him of this distinction the appellant had no idea that there were any other *Tunni* apart from *Tunni Torre*. AR said that he and his family was *Tunni Brava*. They were of a lighter skin colour than the appellant. Although they could speak Somali, unlike the *Tunni Torre* they also had their own dialect that they used to communicate between themselves. There were many *Tunni Brava* in this camp.

[11] The appellant remained living with AR and his family in this camp until 1997. The inhabitants of this camp had similar problems with the *giriama* tribe and again the camp was closed. On this occasion, however, the camp inhabitants were supposed to be settled at another camp called Kakuma. The appellant had heard that conditions in Kakuma Camp were far worse than those in Benadiri Camp. The appellant decided to go to Mombasa which was situated approximately one hour's drive away. The appellant caught a bus to Mombasa with money given to him by AR's mother. She told him that Somalis believed in tribes and that he should therefore seek out other *Tunnis* when he got to Mombasa. She also told him to be careful as anything could happen to him in Mombasa.

[12] When the appellant got to Mombasa he went to a market in which Somalis sold various goods and commodities. The appellant approached a Somali and asked him if he knew of any *Tunnis*. Eventually a person pointed to a small shop nearby selling radios, video recorders and televisions and said that the person who owned that shop, OO, was *Tunni*.

[13] The appellant went to this shop and approached OO. He introduced himself to OO and told him where he was from and what his situation was. OO confirmed he was *Tunni*. He said he lived nearby and, when he finished work for

the afternoon, he took the appellant to his house. The appellant stayed with OO in his small two bedroom house for the next five years. At this time the appellant was only 14 years of age. Initially, he did not work as OO said there were Kenyan men who robbed and attacked young Somali boys working on their own. He could not help OO in his shop as it had very little space. He tried to obtain for the appellant small jobs running errands for people but nobody had any work for him.

[14] Eventually, in 2000, OO gave the appellant some money and he started up a business selling drinks to people in the market. Although on average his daily profit was between 80 and 100 Kenyan shillings, OO did not ask that the appellant pay rent or contribute to the food after he commenced work. The appellant only spent money on transport, clothing and medicine. He survived by drinking his juice and eating a meal in the evening with OO. His whole life he had learned to go hungry and was not used to having more than one meal a day. Also, he wanted to save money because he did know what the future held for him and wanted to have some money set aside in case he needed it for any reason.

[15] In 2002, OO left to go to Nairobi. The appellant understood from OO that he would try to travel abroad to seek a better life. He left the appellant his bed, mattress and a small television. The appellant sold these items and used the money he obtained to pay the rent. He continued renting the house he had shared with OO for another year before he too decided to leave for Nairobi to seek a better life. As an illegal immigrant, the appellant often had to hide from the police who came to the market to arrest undocumented Somali persons like himself. By the time he left for Nairobi, the appellant had saved around US\$1,000.

[16] In 2003 the appellant went to Nairobi. He went to an area called Eastleigh which was a bustling market area with a significant Somali population. There, he met a man called AA, a Somali from the *midgan* clan, who took him to the hotel where he was staying. The appellant told AA that he had come from Mombasa and was looking for a job. AA took the appellant to Garissa Lodge, a former hotel that had been converted into a market where many different types of goods were sold. They found a narrow alley between two shops that was covered in rubbish. After securing the agreement of the owners of the small shops on either side of the alley, the appellant set up a small business selling tea and coffee. He obtained a table and chairs and the equipment he needed to provide people with hot tea and coffee.

[17] After a while, the appellant and AA moved into a room in a house that had been rented by other Somalis. They shared a room and between them paid 1,000 Kenyan shillings a month. This was very cheap in comparison to other rentals. They lived together for the next two years.

[18] Although there were frequent visits from Kenyan police to the Garissa Lodge area, the appellant was never approached by them. He believes that the police assumed he had some residence papers because many of the traders did so as a result of an amnesty. The police usually stopped people who were walking around. As he was trading from one place he was never questioned.

[19] The appellant eventually began to tire of his hard life and began thinking about a better life overseas. One day, while in a restaurant, a Somali man began talking to him about New Zealand and saying what a peaceful country it was. The appellant began to think about coming to New Zealand. He had by this time saved around US\$3,000. The appellant told AA of his desire to leave Kenya and together with AA began looking for an agent. They eventually found a man who said that he knew a person who could help bring the appellant to New Zealand. He told the appellant to meet him in a particular hotel.

[20] At this meeting, he met an Indian man and told him of his desire to come to New Zealand. The Indian man said that this would be very difficult and asked him to think about going to another country. The meeting finished with the man promising to consider the appellant's request to take him to New Zealand and with the appellant promising to reconsider his desire to go to New Zealand.

[21] Approximately one month later, he received word that this man had agreed to take him to New Zealand and they met again in the same hotel. At this meeting, the Indian man arranged for the appellant's passport photograph to be taken. The appellant gave him US\$3,000.

[22] The appellant and the agent boarded a flight from Nairobi in September 2005. The appellant believes it was an African airline because all of the people working inside the airline were Africans. They transited in an Asian country the name of which the appellant does not know. They then transferred to another aeroplane. The people working inside this aeroplane were Asian. The appellant was advised by the agent simply to follow his orders and not ask any questions. He was told that if he did not follow the agent's orders the agent would leave him. The appellant did exactly what he was told.

[23] When they arrived in Auckland, the appellant was carrying a bag. He did not have any passport or other documentation on him. This was all in the possession of the Indian man. The Indian man approached the immigration counter and the appellant stood two or three metres behind him. The appellant was not asked any questions and was allowed into New Zealand. Once outside the airport, the agent gave the appellant \$25 and told him to go to the city. The agent told him that they were never to meet again and that they did not know each other.

[24] The appellant caught a taxi from the airport into the city, sharing with two others. Once in the city centre he began looking for a Somali person. He eventually saw a Somali person driving a car and stopped this person and asked him for help. The Somali person took him to an area with other Somalis. He was then taken to a mosque where he spoke with other Somalis. They told him that he had to make a claim for refugee status and helped him to do so.

[25] The appellant believes that he arrived in New Zealand at around 9am on 12 December 2005. He knows this because he arrived approximately a week before he filed his refugee application which was signed on 19 December 2005.

THE EVIDENCE OF VV

[26] The Authority heard from VV. VV arrived in New Zealand 10 years ago and is a New Zealand citizen. For the last 8 years he has been the president of a Somali association in Auckland. This association was formed in 1997 as a vehicle to provide education, health, employment and other social services for Somali refugees in Auckland. VV has had contact with the appellant in his capacity as president of this organisation. In VV's opinion, there is no doubt that the appellant is a person born in Somalia. He says this because of the appellant's fluency in Somali. Somalis who have been born in Kenya speak Somali as if it is a second language. The appellant speaks Somali like it is his first language.

[27] Moreover, people who were born in Kenya often do not know words that people born in Somalia use and the appellant knows these words. It was not possible for a person of Somali ethnicity who was nevertheless born in Kenya to learn these words from the Somali refugee population in Kenya. This is because the two sets of Somalis often did not mix. The Kenyan government often used Kenyan-born Somalis to spy on Somali-born Somalis and there was often a culture of distrust.

[28] VV believes that the appellant is a *Tunni* as claimed. There are two reasons. First, the appellant himself has told VV that he is a *Tunni* and that culturally it is impossible that a person would lie about this. However, one of the unfortunate side effects of the Said Barre dictatorship has been the prominence given to clan affiliation. The effect of this means that if a Somali person living in New Zealand needs any assistance the first and foremost place to seek assistance is within their own clan because a tribe would know if an outsider was falsely claiming to be a member of that clan. For this reason it is impossible to lie.

[29] In this regard, VV has seen the appellant outside the main mosque for Somalis in Auckland. After the prayer session has finished, the crowd breaks up into clan based groups to which non-clan members are not always welcome. VV himself has been told that some conversations are 'private' when he has attempted to talk outside his clan in these circumstances in his official capacity. He told the Authority that he has not seen the appellant talk within any of these groups on these occasions. There is no *Tunni* community in Auckland which gathers outside the mosque in this fashion, this points towards his being *Tunni*.

[30] Secondly, there was also a member of the association, ZZ, who told VV that he knew the appellant's father at Kismayo. Unfortunately this person has now gone to Australia and so could not speak to the Authority. However, ZZ told VV that he knew the appellant was *Tunni*.

THE EVIDENCE OF WW

[31] The Authority heard from WW who has been in New Zealand since 2000. WW is a New Zealand citizen. He met the appellant in April or May of 2006 at a lunch in another Somali person's house. WW had a lengthy conversation with the appellant on this occasion and at a mosque the following day. He has seen the appellant on a number of occasions since then although on these occasions they have only said greetings and briefly chatted.

[32] From the conversations WW had with the appellant, WW is "one hundred per cent" sure the appellant is from southern Somalia. Although he has not undertaken formal study, WW has a passion for language and, in particular, the Somali language. He knows all of the regional dialects and can tell whether or not a person is from northern, central or southern Somalia. He is in no doubt that the appellant is a person from southern Somalia.

[33] As for the appellant's clan affiliation WW believes that the appellant is a *Tunni*. The appellant has told him that he is a *Tunni* and it is a matter of deep shame for someone to claim they belong to a tribe when they do not. It would also cause problems in the community. For these reasons WW believes the appellant is a *Tunni*.

OTHER EVIDENCE

The statement of YY

[34] YY gave a signed statement dated 12 January 2006 to the Refugee Status Branch (RSB). He describes himself as a *Tunni* and states that he is the Chairman of a Somali organisation in New Zealand. He was not, however, called as a witness. YY states that the current emphasis on genealogy was something that arose after the civil war and that it was not unusual for a Somali not to have detailed knowledge of their genealogy. YY states that the *Tunni* are "a big clan" and that *Tunni* had five sons, although he could only recall the names of three. *Goygal* was one of those sons. YY stated that *Tunni* are a minority and have no protection in Somalia. He also states that *Tunni* associated with the *Digil* are being persecuted and cannot seek assistance from the Rahanweyn Resistance Army because they are a separate tribe.

The statement of ZZ

[35] ZZ had by the time of the hearing emigrated to Australia and could not be called. In his statement dated 26 March 2006, ZZ confirms that in general discussion he had with the appellant, he came to realise that the appellant was in fact the son of a *Tunni* couple who were his neighbours for approximately three years in Kismayo. He said he knew the couple had children but could not recall how many. He left Kismayo for Mogadishu in 1989. ZZ therefore has no doubt that the appellant is from Somalia and is *Tunni*.

[36] ZZ also states that he lived in both Utange Camp and Benadiri Camp and that both had been burnt down. The fire at Utange in 1995 was, ZZ states, the third such fire at the camp.

Photographs

[37] On the morning of the hearing on 6 August 2007 counsel submitted two original photographs. The first was said to be taken by the appellant outside Benadiri Refugee Camp, the second in a park in Central Nairobi.

SUBMISSIONS

[38] The Authority has received written submissions from counsel dated 31 July 2007 and 29 August 2007, together with country information. This material has been taken into account in reaching this decision.

THE ISSUES

[39] The Inclusion Clause in Article 1A(2) of the Refugee Convention provides that a refugee is a person who:

"... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

[40] In terms of *Refugee Appeal No 70074/96* (17 September 1996), the principal issues are:

- (a) Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
- (b) If the answer is yes, is there a Convention reason for that persecution?

ASSESSMENT OF THE APPELLANT'S CASE**CREDIBILITY**Travel to New Zealand

[41] In the course of the appellant's refugee application a substantial issue arose in relation to the appellant's identity and travel to New Zealand. This arose

because, although the appellant claims to have arrived in New Zealand on the morning of 12 December 2005, there is no record of him on the only flight from an Asian country which arrived on that morning.

[42] Certainly, in declining the appellant's claim for refugee status the refugee status officer placed great emphasis on the fact that the appellant belonged to a category of asylum-seekers in respect of which the DOL had no established record of entry into New Zealand. The refugee status officer noted that the unique feature of this category of claimants was that the overwhelming majority of them were Somali asylum-seekers, some of whom had been later found to have alternative identities and citizenship in third countries.

[43] The Authority acknowledges these concerns but reminds itself of the point made in *Refugee Appeal No 75633* (8 February 2006) at para [48] where it was stated:

"[48] ...while the appellant's account of his travel to New Zealand is not credible, it must also be remembered that there can be subjectively compelling reasons for the withholding of information about illegal travel. Care should be taken before rejecting the core of a refugee claim solely because of lies told about travel methods. Agents may have frightened a claimant with the fear of reprisals, or there may be other family members who are perceived to be at risk. Such possibilities are speculative, of course, but they do suggest that the wholesale rejection of claims in such circumstances should not be seized upon without close analysis."

[44] Having so reminded itself, the Authority is in no doubt that the account given to it by the appellant as to the circumstances of his entry is an untrue one. He told the Authority that at the time he passed through immigration control, he was not in possession of the passport used to secure entry into New Zealand and stood some two or three metres behind the agent who approached the New Zealand immigration official essentially on his own. The appellant would have the Authority believe that a New Zealand immigration official would not be suspicious about an Indian man approaching an immigration counter with two passports essentially on his own and handing over for inspection two passports, one of which related to a man of obvious east African appearance standing some two or three metres behind him. This account is so improbable as to be implausible.

[45] Moreover, the appellant told the Authority that the agent had not given him any cover story for his recitation in the event he was stopped and questioned by any official during his journey. It is implausible that there would not have been some cover story discussed to deal with a situation that could easily have arisen.

The appellant's time in Kenya

[46] An issue which arose during the hearing was the appellant's apparent incorrect naming, at his RSB interview, of the two main streets running through the Eastleigh area. The appellant indicated these streets were the Number Six and Number Nine Street whereas a map produced by the refugee status officer indicated that they were called First and Second Avenue. Asked for an explanation for this, the appellant told the Authority that the local Somalis called them Number Six and Number Nine because that was the route that local busses called *matutas* (broadly akin to minibuses) called the Number Six and Number Nine travelled. Country information both sourced by the Authority and submitted by counsel confirms that this, indeed, is the case – see Transport Routes Numbers: Nairobi Busses <http://www.kenyaweb.com/transport/routes.html> (accessed 7 August 2007); E. H. Campbell "Formalizing the Informal Economy: Somali Refugee and Migrant Networks in Nairobi" Global Commission on International Migration *Global Migration Perspectives No 47* (September 2005) at p19.

[47] The appellant was questioned closely by the Authority over one and a half days about the minutiae of his life in both refugee camps and Mombasa and Nairobi. The answers he gave to the Authority were generally consistent with the country information. The Authority does have some doubts as to the veracity of the appellants claims as to the length of time that he spent particularly in Mombasa as it seems unusual that OO should wait for some five years until the appellant was 19 before setting him up with means for his own business. Nevertheless, the spontaneity in which he gave his answers to questions about his life in both Mombasa and Nairobi and his general demeanour pointed towards him having, in fact, spent some time in the places that he claims.

The appellant's clan affiliation

[48] As regards the appellant's identity and clan affiliation, the Authority is satisfied from the totality of the evidence that the appellant is both Somali-born and is *Tunni* as he claims. As to the latter point, the Authority recalls the statement of ZZ as to his having known the appellant's father in Kismayo. While the weight that can be attached to this statement is to some extent limited by the fact that ZZ has, since its making, emigrated to Australia, it is significant in the Authority's view that he confirmed this belief to VV who did appear. VV holds a

responsible position in a Somali Community Association and has done so for a number of years. ZZ did so prior to his departure. Given these positions, as well as VV's demeanour before the Authority, the Authority finds that the weight that it can attach to ZZ's belief as expressed in his written statement is greater than would ordinarily be the case.

[49] The Authority notes that the refugee status officer did not believe the appellant's claims to be *Tunni Torre*. While not in any way bound by the refugee status officer's decision, the Authority notes the careful analysis undertaken by the officer regarding the *Tunni Torre* generally in what is a complex area. However, two matters cause the Authority to come to a different conclusion on this as it relates to the appellant's credibility. The appellant gave his lineage, so far as he knew, *Tunni Torre – Shangemas-Goygal-Garlu-Abu Nur*. He also said he knew that the *Tunni Torre* had another group called *Dafarad*. The appellant stated he thought all *Tunni Torre* were *shangamas*. As the Authority's examination of the limited country information available will demonstrate, the *Tunni Torre* are a Bantu grouping who are vassals of the Bravanese Tunni, whose various sub-clans, in turn, are collectively known as *shangamas*. While these sub-clans further bifurcate, it appears to the Authority that at a general level there are only two broad groupings using the name Tunni, namely, the *Tunni* from Brava area and the *Tunni Torre* who are their vassals. This correlates with the appellant's general understanding. Furthermore, it appears entirely plausible to the Authority that a *Tunni Torre*, a group considered outside the traditional clan structure, would include *shangamas* and *goygal* in their account of their own lineage as a result of this federation.

[50] Second, insofar as weight was placed on the appellant's answers given in his RSB interview that the *Tunni Torre* looked like other Somalis when country information at least implies they may look otherwise, it seems clear from the RSB interview record (see p65 of file) that the appellant was asked only about the differences in skin colouring between the *Tunni Torre* and another *Tunni* group he identified. He was not asked to make any statement as to the facial features of the *Tunni Torre*. His assertions that *Tunni Torre* have a darker skin tone than other *Tunni* is consistent with country information

CONCLUSION ON CREDIBILITY

[51] It is recognised in *Refugee Appeal No 75634* (24 May 2006) at para [46], that claimants who falsify or conceal particulars of their travel to New Zealand run the risk that their dishonesty in respect of this aspect of their claim will count against them when decision-makers at the RSB or the Authority have to make a decision on the overall credibility of the claim. In this case, and after giving the matter careful reflection, the Authority is not satisfied that this is such a case.

[52] Whilst the Authority cannot be satisfied that the appellant spent the length of time that he claims to have spent in each Kenyan location it is satisfied he has spent some time there. While none of these findings mean that the appellant does not, in fact, enjoy habitual residence or nationality in some third country, there is no direct evidence of this and the account as presented by the appellant has not been characterised by such vagueness, implausibility, mobility or discrepancy as might cast doubt on his entire claim.

[53] As such, after careful consideration of all the evidence presented in this appeal, the Authority, while troubled by the appellant's lack of candour about his entry and mindful of concerns that this may be an indicator of third country status, is left in some doubt as to the truthfulness of the appellant's claim. He is, in accordance with usual principles in this jurisdiction, entitled to the benefit of that doubt.

[54] The Authority therefore accepts, for the purposes of assessing whether the appellant is at risk of being persecuted, that the appellant is a Somali national from Kismayo and a member of the group called the *Tunni Torre*. It accepts his account that his family were killed in an attack in 1991 and that until he arrived in New Zealand in 2005, he spend his life living in Kenya as claimed.

A WELL FOUNDED FEAR OF BEING PERSECUTED

Country conditions in Somalia and the question of clan identity

[55] The Authority has long recognised that following the overthrow of the Siad Barre regime in 1991, centralised governance structures collapsed and were replaced by a patchwork of localised clan-based fiefdoms in which clan identity determined the ability of any particular individual to live freely in areas in which their particular clan was not dominant. Moreover, the Authority has also long

accepted that within this complex and highly atomised clan-based governance structure, not all Somali clans have the same social standing. Some clans are more powerful than others who are either minority clans or groups who fall outside the traditional clan structure – see, for example, *Refugee Appeal No 2147/94* (18 July 1996); *Refugee Appeal No 72168/2000* (12 October 2000); *Refugee Appeal No 73740* (15 December 2003) at [36]-[47]; *Refugee Appeal No 75667* (28 October 2005) at [39]-[49].

The *Tunni* and the *Tunni Torre* within the Somali clan structure

[56] At the outset, the Authority notes that despite both its own efforts and those of counsel, detailed information regarding the *Tunni Torre* has proven remarkably difficult to locate. While the Authority has had before it in the past two appeals in which the appellant has claimed a *Tunni* lineage, in neither case has the risk to *Tunnis* been addressed. In *Refugee Appeal No 75634* (26 May 2006) the issue did not need to be addressed because the appellant, while identifying himself as a *Tunni*, was found to be excluded from the protection of the Refugee Convention under Article 1F(a) of the Convention. In *Refugee Appeal No 72168/2000* (12 October 2000) the appellant was of mixed lineage, his mother being *Tunni*, his father being Bravanese. Although that appellant was granted refugee status, it is clear that he self-identified as Bravanese. In the context of discussing whether the appellant had an internal protection alternative available to him the Authority stated, at para [22]:

“[the] appellant is of mixed [Bravanese]/Tuni background. Both are small minority groups without wider clan affiliations or protection.”

[57] However, the Authority’s risk analysis was undertaken on the basis of his Bravanese identity. No country information on *Tunni* was therefore cited in relation to this statement.

The Tunni

[58] What limited information can be ascertained is to be found, firstly, in a *Report of a British Danish and Dutch intergovernmental fact-finding missions Report on Minority groups in Somalia 17-24 September 2000* Danish Immigration Service (December 2000) (the 2000 Joint Report) published after the Authority issued its decision in *Refugee Appeal No 72168/ 2000*, which sheds light on the basis upon which that case was decided. This states, at pp 41–42:

“The elders from Brava told the delegation that they consisted of two sub-groups: the Bravanese and the Tunni. Both groups are from Brava and they share to a large extent the same culture. They intermarry between their groups. However, the Bravanese consider themselves Benadiri, while the Tunni do not. The Bravanese are of Persian/Arab/Portuguese/Spanish origin. According to the Bravanese elders the Tunni belong to the Digil clan-family. They are originally from the region of Brava. However, the elders gave the delegation a copy of a letter, written by the Baravani elders in Nairobi to a number of organisations (including UNHCR, the US Immigration Department and Amnesty International) on their situation in Kenya, in which the Tunni are mentioned with the Bravanese as part of the Baravani community (see annex 8).

The UNHCR overview classifies the Tunni with the Digil (annex 3).

The Bravanese sub-divided themselves into:

- Bida
- Hatimi
- Ashraf

The Tunni explained that they are sub-divided into the Tunni Torre plus five *gamas* (sub-groups):

- Da'afarad
- Goygal
- Daqtiro
- Hayo
- Werile

Perouse de Montclos notes that some of the Tunni Torre of the hinterland claim a relationship with the Ajuran, the Gaaljaal and the Gurreh of the Hawiye clan family, while others claim a relationship with the Helai and the Hadam of the Rahanweyn clan-family. In concrete terms, they are the vassals of the Tunni Digil of the Brava Coast.”

[59] It continues, at pp 56-57:

“Lewis (1994a) describes the Tunni as a large tribe, or rather tribal confederacy. They lived at one time on the Juba river, but since the tenth century they were driven south-west and eventually settled in and around Brava. They had a mixed cattle-cultivation economy and also hunted. The Tunni Torre, a Negroid group, were federated to the Tunni of Brava as their vassals.

As described in chapter 7, the Tunni in Brava town are culturally close to the Benadiri (Reer Brava). The five lineages (*gamas*) which the Bravanese Tunni mention as sub-divisions of the Tunni clan, can be found in Lewis (1994a) as Daffarat, Werile, Aggiuwa, Dacktira and Goigal, with further sub-groups.”

[60] Second, there is a report prepared by M-A Perouse de Montclos “Exodus and Reconstruction of Identities: Somalia “minority refugees” in Mombasa” [1999] *Autrepart* French Research Institute for Development No 11, available at http://www.observtoore_humanaire.org/etudes/Som_minorite_GB.pdf (accessed 28 September 2007). Perouse de Montclos states at p8:

“Historically, the city of Brava can be compared to the port of Merka, where the Arabs from Zanzibar allied with the Tunni, a Digil clan, in order to counter the Hawiye from the hinterland.”

[61] After discussing the plight of Bravanese during the civil war and noting the perception of shared identity among displaced persons from the general area of Brava, he continues, at p10:

“However, looking closer, we discover communities with very diverse backgrounds despite numerous instances of inter-marriage. On the one hand there are immigrants of Arab origin : the Hatimy, the Bida and the Asharaf. On the other hand, there are the Somali of the Brava surroundings, “the five” *shangamaas* whose minority status is more doubtful because they are part of the Tunni lineage of the Digil (fig. 3). Here we find the “three of the rear-guard”, i.e. the Dafarad, numerically the largest, the Werile and the Hajuwa, as well as the “two of the shore”, i.e. the Daqtira and the Goygal. As opposed to the traders of the Brava port, these clans were engaged in agricultural, breeding and fishing activities.”

[62] The Canadian Immigration and Refugee Board *Somalia: Information on the Tuenis [Tunni] clan from Barawe including the languages spoken, their unique qualities, any identifiable attributes, and on which clans from Barawe [Brava] speak Chimini* (1 August 1997) (“the CIRB report”) observes the information it received is contradictory. One source made no mention of *Tunni* being part of the Bravanese community while another source confirmed that they are. This second source, however, drew a distinction between urbanised *Tunni* who lived in Merka and Brava who were effectively Bravanese and rural *Tunni* who were not.

[63] The only other information found has been a document by an American non-governmental organisation called the Institute for Cultural Partnership, prepared in collaboration with a Somali national who worked for UNHCR and served in Kenya with Somali refugees between 1993 and 1995. The report, *The Rer Brava and ShanGamas Tunis [Tunni] from Somalia* (“the IPC report”) states:

“Like many communities of the East African Coast, Rer Brava are a complex population blending African and non-African origins. Rer Brava people are sometimes referred to as Bravan or Barawan. Ethnically, the Rer Brava are part of the greater Somali clan of Tunni. Rer Brava are also part of what is collectively known and described as the Benadir communities.”

[64] However, the United Kingdom Immigration Appeal Tribunal (as it then was) has on a number of occasions considered the position of *Tunni* – see *J (Somalia)* [2003] UKIAT and *MM (Somalia)* UKIAT 00129 (4 November 2003); *AH (Town Tunni regarded as Bravanese)* Somalia [2004] UKIAT 0144 (8 June 2004); *MN (Town Tunni regarded as Bravanese)* Somalia CG [2004] UKIAT 0224 (16 August 2004) and *AN (Tunni Torre)* Somalia [2004] UKIAT 00270.

[65] The decisions in *J* and *MM*, held that *Tunni* were not members of minority clans and generally faced no real chance of being persecuted on that basis. However, this finding was departed from in *AH* and the matter came before the

Tribunal in *MN* for a binding “country guidance” determination to be issued. While plainly not binding on this Authority, the decision in *MN* is helpful because it cites the expert evidence given by Dr Virginia Luling, a social anthropologist who has specialised in Somali society since the 1960s. Two important points are recorded in the decision in *MN* as being made by Dr Luling in her oral expert evidence to the Tribunal. First, the *Tunni* belong to the *Digil* clan family. However, while correctly identified as a “major clan family” comprising five sub-clan (including the *Tunni*), this status did not mean the *Digil* were powerful. *Digil* land had largely been occupied by armed militia belonging to the powerful *Hawiye* clan and their cattle confiscated. Second, Dr Luling, expanding the point made in the CIRB report, stated that those *Tunni* who originate from urban centres of Brava and Merka, while remaining of *Tunni-Digil* lineage, will be perceived by other clans as being Bravanese because of a large degree of cultural overlap and a sustained history of inter-marriage. However, those *Tunni* who originate from rural areas have largely preserved their own distinct identity and would be perceived as part of the *Digil* clan family.

[66] As far as the *Tunni* clan structure is concerned, available country information is contradictory. The various IAT judgments do not detail any evidence Dr Luling may have given in this matter. The IPC report refers to there being “7 clans”. However, the IPC report’s description of the clan structure is unsatisfactory. First, the IPC report lists one of the seven clans as “the *Tunni* clan”. Second it states that there are two major divisions suggesting that some of claimed seven clans are, in fact, sub-clans or other groupings. This taxonomical confusion does not inspire confidence and the Authority finds little weight can be attached to this report.

[67] Furthermore, the assertion of there being seven *Tunni* clans is contradicted by other evidence which the Authority finds can be given weight. Thus, the 2000 Joint Report, after conducting interviews with clan elders and referring to an oft cited work of academic commentary, states there are only five *Tunni* sub-clans. This is the position adopted by Perouse de Montclos. Although the weight that can be given to his statement is limited because of his non-attendance as a witness at the appeal, the Authority notes YY, who identified himself as a *Tunni* in his witness statement, also states therein that the *Tunni* comprise 5 “families”.

[68] The 2000 Joint Report implies that the five are sub-clans of “Bravanese *Tunni*.” This is also the position taken by one of the sources cited by the CIRB

report. Perouse de Montclos distinguishes between the *Dafarad*, *Werile* and *Hajuwa* who he describes as “clans of the rear guard” and the *Daqtira* and *Goygal*, who are clans of the shore”. All five clans are, however, described by Perouse de Montclos as *shangamas* and said to be “the Somali of the Brava surroundings” and be engaged in agricultural, breeding and fishing activities”.

Summary on the Tunni

[69] From this tangle of country information the following appears to be the case. The *Tunni* are part of the *Digil* clan and are divided into five sub-clans collectively known as *shangamas*. These sub-clans typically engage in pastoral occupations or fishing. While all five sub-clans originate from Brava and its surrounding countryside, two – the *Daqtira* and *Goygal* – typically originate from the coastal area and three sub-clans, the *Dafarad*, *Werile* and *Hajuwa*, typically originate from the hinterland. Of these sub-clans, those who inhabit the coastal urban centres of Brava and Merka – most likely to be the *Goygal* and *Daqtira* – while still belonging to the *Digil* clan, would nevertheless be perceived by other clans as being Bravanese. Those non-urbanised *Tunni* would be regarded as *Digil*.

[70] The Authority should also point out at this time that use of phrases “town tunnis” and “rural tunnis”, as used in the IAT decisions to describe the first category of *Tunni*, are inventions of the immigration authorities in the United Kingdom and entirely exogenous to the Somali clan structure. Their use is apt to confuse by adding an unnecessary layer of complexity onto an already complex structure and should be avoided.

The Tunni Torre

[71] Information on the *Tunni Torre* is even scarcer than that for the *Tunni*. The appellant could shed no light on what *Tunni Torre* meant. The decision in *MN* notes that the *Tunni Torre* constitute a different group from the group under consideration in that case, namely *Tunni* who would be perceived as Bravanese and, understandably, declines to discuss the evidence relating to them. That *Tunni Torre* represent a distinct grouping of people is confirmed by the 2000 Fact Finding report (*op cit* at p42) which states that the *Tunni* compose the *Tunni Torre* plus five named subgroups or lineages including the *Goygal*.

[72] Perouse de Monclos (*op cit* at pp17–18) discusses the *Tunni Torre* in the context of his broader discussion of Negroid groups of southern Somalia who are the descendents of slaves. He states;

“Other groups between the Juba and Shebelle Rivers are despised. The Eile of the Bur Eibi hills, for example, have a name which etymologically, comes from ei, their hunting dog. It is important to understand that all these names are appellations and not tribes, since the Somali deny the Bantus any genealogy that would legitimize their presence in the South of the country. The Helai of Baidoa thus claim to be a homonymous Rahanwein lineage, settled at Bur Acaba; this relationship is obviously denied by the latter. The same case goes for the Tunni Torre of the hinterland who for some of them claim a relationship with the Ajuuran, the Galjaal and the Gurreh of the Hawiye family, and for some others with the Helai and the Hadam of the Rahanwein family. Actually, they are the vassals of the Tunni Digil of the Brava Coast, who themselves established a relationship with the Darod of General Morgan during the war, a position which was hardly shared.”

[73] A similar statement to the effect that the *Tunni Torre* are a Negroid group can be found in E R Turton “Bantu, Galla and Somali Migrations in the Horn of Africa: a Reassessment of the Juba/Tana Area” *Journal Of African History* Vol 16 No 4 (1975) at p524.

[74] Perouse De Montclos’ statement is cited without adverse comment in the 2000 Joint Report, which also states at p57 :

“The Tunni Torre, a Negroid group, were federated to the Tunni of Brava as their vassals”

[75] The use of the word vassal is instructive. It implies some form of subservient relationship; a relationship of lower status to that of *Tunni* or Brava. This is echoed by the evidence of Dr Luling in the *AN* case, the only decision the Authority is aware of (despite researching the decisions of Tribunals in Australia and Canada, as well as the United Kingdom) in which the position of *Tunni Torre* is considered. The consideration in *AN*’s case (see pp263-264 of the file) is not as great as could be as the substantive merits of the case were remitted for rehearing. Nevertheless, in the course of its decision the IAT noted Dr Luling’s evidence that:

“The distinct group known as the Tunni Torre belong to the so-called Bantu. They are descended either from slaves and freedmen of the Tunni, or from a group of negro peasants who became clients of the Tunni, or very likely from both.”

[76] The decision goes on to observe country information stating that the Bantu are a minority grouping who link themselves to dominant clans.

Findings regarding Tunni Torre

[77] The *Tunni Torre* would appear to be a Negroid group of Bantu origin, who are outside the traditional clan structure and who therefore attached themselves to the *Tunni* clan as their vassals. At least some live in the hinterland of the Brava region of Somalia. While it is unclear whether they would fall within those categories of *Tunni* who would be perceived as being Bravanese by reason of their being “federated to the Brava Tunnis as vassals” – on balance, it seems that this is unlikely. According to Dr Luling’s evidence in *MN*, the perception that some *Tunnis* are Bravanese derives from a far closer relationship of intermingling and one can reasonably expect Dr Luling to have made this point when discussing the position in this case.

Assessment of the appellant’s claim

[78] In her written submissions of 29 August 2007, counsel conducts her analysis of whether the appellant possesses a well-founded fear of being persecuted, on the basis that he is a *Tunni*. However the appellant’s case is that he is a *Tunni Torre* and country information clearly establishes that this is a separate grouping from the *Tunni*. There is no country information or other evidence before the Authority to establish that *Tunni Torre* are *Tunni* and therefore are to be assessed as being *Digil* (the general clan affiliation of the *Tunni*) as opposed to being treated as part of the wider Bantu grouping.

[79] The Authority therefore finds that in the absence of any country information suggesting the contrary, the appellant’s case falls to be determined on the basis of his forming part of a grouping of Bantu origin. However, this is not to say that the particular clan to which the appellant’s Bantu grouping federated is irrelevant. Rather this may, depending on the particular facts, have some bearing on the ability of the appellant to seek sufficient protection so as to reduce the risk of harm arising because of his Bantu status to below the real chance threshold.

The position of Bantu in Somali Society

[80] Perouse de Montclos (*supra*) categorises the *Tunni Torre* as being part of a larger Bantu grouping that “are despised”. Other country information on the Bantu paints a similar picture. Thus, the Amnesty International report *Somalia; Urgent Need for Effective Human Rights Protection* AI Index AFR 52/001/2005 (March

2005) notes at p21 that the Bantu comprise one of the main minority groups in Somalia. It states that:

“Minority groups are customarily prohibited from inter-marrying with the pastoralist clans and have no clan protection from them. The most discriminated minority groups are the Bantu/Jarir and the occupational groups, who are often subjected to direct or indirect verbal abuse and exploitation, and mostly live in extreme poverty.

The minority groups, who have no armed militias have been extremely vulnerable during the period of state collapse and absence of a justice system and rule of law to killing, torture, rape, kidnapping for ransom, and looting of land and property with impunity by faction militias and clan members. Such incidents are still common and are being documented by local human rights NGOs.”

[81] Similar observations are made in the executive summary of The United Nations Office For Coordination of Humanitarian Affairs Report *A study on Minorities in Somalia* (1 August 2002) (“the OCHA report”) which observes that when the state collapsed minority clans suffered “brutal reprisals”. It also states in relation to minority groups including the Bantu that:

“These groups continue to live in great poverty and suffer numerous forms of discrimination and exclusion.”

[82] Specifically in relation to the Bantu, the OCHA report observes at para 3.3 that, although the Bantu did not take part in the clan-based conflicts, they still suffered attacks and violations of their rights. However, the OCHA report notes, at para 3.4, that the then current condition of minority groups changed as a result of shifting social, political and economic factors. It notes, for example that in Kismayo, an alliance between previously warring clans brought a generalised improvement in security which positively impacted upon the position of minorities. This suggests that, while generally suffering from abuses of their human rights, the form and intensity of discrimination may change depending on the particular constellation of wider socio-economic and political factors at any time. For example, minorities have generally faced social and political exclusion since independence – see para 3.2. During the 1970s this took on a specific form as Bantu land was expropriated by the Siad Barre regime for distribution to his supporters from another clan – see para 3.1. The form and intensity of discrimination changed yet again during the 1990s with Bantu being subjected to violent reprisal attacks during the period of inter-clan civil war – see para 3.4.

[83] Sources cited in the 2000 Joint Report make the same point at p21 thus:

Kalunga Lutato, Head of Somali Operations, UNHCR-Nairobi, informed a member of the delegation that although members of minority groups in Somalia are, at the present time, generally not individually targeted by members of the major Somali clans or their militias, under certain conditions they might be. This is typically the case when a former positive relation or alliance between a minority group and a

major Somali clan is subject to a change as a result of a shift in the local power balance between major Somali clans and their militias.

Kalunga Lutato explained that minority groups are especially vulnerable to fluctuations in the local power balance, as they are mostly unarmed and totally dependent for their protection on a major Somali clan-militia. If that protection disappears they are at the mercy of their new "masters". This situation applies, for example, to a number of the Bantu communities along the Shabelle River, especially those in Lower Shabelle region.

[84] The political superstructure has not remained constant in the period since 1991. While open clan-based civil war dominated the 1990s, in 2000 a Transitional National Government (TNG) was established. This body was replaced by a set of new institutions, including a Transitional Federal Government (TFG) and a Transitional Federal Parliament (TFP) in 2004, after two years of Kenyan-brokered talks under the auspices of a regional inter-governmental organisation. Created on the basis of a power sharing agreement between the various clans, the TFG was nevertheless created outside Somalia and was unable to establish and maintain any authority within Somalia. Internal conflicts in the TFG, created a power vacuum which was exploited by the Council of Somali Islamic Courts, also known as The Islamic Courts Union ("the Courts"). Between June and December 2006, despite the existence of Sudanese sponsored peace talks between the TFG and the Courts, in a series of military operations the Courts expanded their control outward from Mogadishu. Originally operating at a local level as a *sharia*-based parallel governance structure since 2004, by the end of this period, the Courts controlled most of the territory between the Kenyan border in the south and the autonomous (but internationally unrecognised) region of Puntland in the north-east. This relative hegemony proved short-lived, however, as TNG forces, backed by a substantial Ethiopian military force, ousted the Courts from power. Since that time the continued conflict has taken on a more asymmetric form in which small groups associated with the Courts, while weakened, continue to mount an insurgency against TFG forces and Ethiopia – see generally, International Crisis Group report *Somalia: The Tough Part is Ahead* (26 January 2007) at pp1-4; Human Rights Watch *Shell Shocked: Civilians Under Siege in Mogadishu* Vol 19 No 12(A) August 2007 at pp10-36 ("the HRW report").

[85] These various reports make clear that, despite these changes to the political super-structure, what has remained constant is the dominance of clan-based, identity politics with both the TNG and the TFG being perceived as being no more than vehicles for furthering the interests of the particular clan to which the

then President belonged – see generally International Crisis Group *Somalia: Continuation Of War By Other Means?* Report No 88 (21 December 2004). The current protagonists have clan bias. The TFG forces are largely *Darod*, drawn from the President's home area of Puntland and members of a *Rahanweyn* militia, the Rahanweyn Resistance Army. Pitted against them are insurgent groups drawn in substantial part from *Al-Shabaab*, an Islamic militia drawn from the *Hawiye* and *Ogaden* clans and clan-based militia associated with the *Hawiye*.

[86] In other words, the current political situation in Somalia, while substantially different from the highly fractured landscape of the 1990s, nevertheless continues to exhibit a core tendency for power to be projected to a significant extent, through clan-based structures and for conflict to be understood as an expression of inter-clan rivalry. Thus, for example, current operations by TFG forces in Mogadishu are perceived by the dominant *Hawiye* population of Mogadishu to be directed at them as *Hawiye* by *Darod*-based TFG forces as revenge for abuses against *Darod* clan members carried out in the 1990s by *Hawiye* militia. The latter had, in turn, sought revenge on *Darod* clan members as Siad Barre had, in due course, come to rely on his *Darod* clan identity to maintain himself in power – see the HRW report at pp31-32.

[87] The significance of this for the purposes of this appeal is that the human rights reports referred to in the decisions of the Authority mentioned in paragraph [55] make clear that, historically, regardless of changes to the political superstructure, members of minority clans (including those from otherwise dominant clans who form a minority in a particular area) have suffered egregious human rights abuses including extra judicial execution, abductions and rape – see also in this context report by the Danish, Finnish, Norwegian and British Intergovernmental Fact-Finding mission *Human rights and security in central and southern Somalia 7-21 January 2004* (February 2004) at p36 where it is stated that United Nations and non-governmental organisations and agencies consulted by the delegation *all* stated that there had been no change in the security and human rights situation for minority clans over the four years that had elapsed since an earlier report (“the 2000 Joint Report”) was prepared.

The ability of the Tunni to offer protection to the Tunni Torre

[88] Insofar as the appellant's particular Bantu group, the *Tunni Torre*, is federated to the *Tunni*, a *Digil* clan, this would give them only a marginal increase

in their level of protection from any of these harms, if at all. In *MN's* case (*op cit* at 7) Dr Luling stated that while the *Digil* are a major clan within the broad clan structure this does not mean they are “politically powerful” or important. By and large *Digil* land had been occupied by Hawiye armed groups and *Digil* cattle have been confiscated”.

[89] Similarly the 2000 Joint Report notes, at p57:

The Digil and Mirifle are held in contempt by the nomadic Somali clans for their lowly origins, stemming from Sab as opposed to Somali, for their heterogeneous composition that includes Bantu elements, for their lack of a clear, politically significant genealogical structure, and, more important perhaps, because they are predominantly cultivators. They were shunned as marriage partners by the 'noble' Somali clans. They do have *diya* paying groups, and thus fall within this aspect of clan law. Villages could function as *diya* paying groups, even if villagers were members of different kinship-based *diya* paying groups.

...

The Digil and Mirifle did not play a major role in either the Barre government or the military rebellion against it. But in 1991-92 they found themselves in the middle of a struggle between three heavily armed factions: the Hawiye USC, retreating government forces that sought to regroup in the Gedo region, and the Ogaden-dominated Somali Patriotic Movement.”

It goes on to state, at p59:

“During the civil war, the Digil and Mirifle have repeatedly been victims of killings, lootings and other human rights violations by the various militias, mainly Aideed's USC.”

CONCLUSION ON WELL-FOUNDEDNESS

[90] Aggregating these factors, the Authority concludes that the appellant, as a person of Bantu origin whose group is affiliated to a minority Somali clan, would have little ability to obtain protection from any discrimination that he might encounter because of his Bantu origins. This discrimination has taken the form of killings, torture, kidnapping and the confiscation of property with impunity. While none of these things have happened to the appellant in the past because he left Somalia at a young age, the prevalence of these violations of the human rights over the past two decades is such that they are now embedded in the foundational clan-based structure of Somali society itself. The absence of a durable and effective centralised Government has meant that there has been no alternative institutional framework established for providing socially and politically disenfranchised groups with mechanisms for securing protection from any serious harm they may face. It is far too soon for the Authority to be satisfied that this current political landscape will result in reducing the future risk to the appellant as

a member of a Bantu group federated to a powerless Somali clan to below the real chance threshold.

[91] As a result, the Authority accepts he has a well-founded fear of being persecuted. The first principle issue is answered in the affirmative.

CONVENTION GROUND AND NEXUS

[92] The appellant's predicament is being contributed to by his ethnic origins as a *Tunni Torre*. The Convention reason is thus race. The second principle issue is also answered in the affirmative.

CONCLUSION

[93] For the reasons set out above, the Authority finds the appellant is a Refugee within the meaning of Article 1A(2) of the Refugee Convention. The appeal is allowed. Refugee Status is granted.

"B L Burson"
B L Burson
Member