REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76376

AT AUCKLAND

Before: B L Burson (Member)

Counsel for the Appellant: P Moses

Counsel for the Department of Labour: M Whelan

Date of Hearing: 17 & 18 March 2010

Date of Decision: 11 May 2010

DECISION

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[1] This is an appeal against the decision of a refugee status officer (RSO) of the Refugee Status Branch (RSB) of the Department of Labour (DOL), cancelling the refugee status of the appellant pursuant to s129L(1)(b) of the Immigration Act 1987 ("the Act").

[2] These cancellation proceedings relate to an appellant from Somalia who has admitted that he concealed relevant information from the RSB in support of his claim for refugee status in 2002. He has pleaded guilty to three criminal charges laid against him by the New Zealand Police arising from providing false information to Immigration New Zealand (INZ) in respect of which he was sentenced to 15 months' imprisonment in January 2009. The central issue to be determined in this appeal is whether it is appropriate for the Authority to cease to recognise the appellant as a refugee on the basis he no longer has a well-founded fear of being persecuted in Somalia.

THE CANCELLATION JURISDICTION

[3] In *Refugee Appeal No 76151* (25 July 2008), the Authority observed that the cancellation jurisdiction of the Authority comprises two distinct streams which could be called an appellate and application streams – see [3]. The Authority

observed:

[4] The appellate stream has its origins in s129L(1)(b) of the Act, which provides:

> "**129L Additional functions of refugee status officers**
>
> (1) In addition to their function of determining claims for refugee status, refugee status officers also have the following functions:
>
> ...
>
> (b) Determining whether a decision to recognise a person as a refugee was properly made, in any case where it appears that the recognition given by a refugee status officer (but not by the Authority) may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information, and determining to cease to recognise the person as a refugee in such a case if appropriate."

[5] Where a RSO ceases to recognise a person's refugee status, that person may appeal to the Authority against that decision. See s129O(2) of the Act, which provides:

> "A person who is dissatisfied with a decision of a refugee status officer on any of the matters referred to in section 129L(1)(a) to (e) and (2) in relation to that person may appeal to the Refugee Status Appeals Authority against the officer's decision."

[6] Under both streams of the Authority's jurisdiction, there are two elements to the enquiry. The Authority must first determine whether the grant of refugee status may have been procured by fraud. If so, it must then determine whether the person should cease to be recognised as a refugee. That determination is, in effect, the Authority's usual forward-looking enquiry as to whether, on current circumstances, the appellant faces a real chance of being persecuted for a Convention reason on return. That second stage of the enquiry is engaged only if the first element – that the grant of refugee status may have been procured by fraud – is established – see *Refugee Appeal No 75392* (7 December 2005) at [12].

[7] Furthermore, as noted in *Refugee Appeal No 75663 (2 June 2006)* at [20]:

> "It is the responsibility of the Department of Labour to present such evidence in its possession by which it can responsibly be said that the grant of refugee status may have been procured by fraud. We also consider that the term "may have been" signals a standard of proof that is lower than the balance of probabilities but higher than mere suspicion. Beyond that it is not realistic to define an expression that is deliberately imprecise."

[8] In order to put the present appeal in context it is necessary to record brief details of both the appellant's original refugee claim and the granting of refugee status to him.

The appellant's original refugee claim

[9] What follows is a summary of the evidence recorded in the RSB interview report prepared by the RSO following the appellant's interview on 11 December 2002 and 28 January 2003.

[10] The appellant arrived in New Zealand on 4 November 2002 and lodged a claim for refugee status the following day. The basis of his claim was that he was from the minority Reer Maanyo clan. He claimed to have entered into a secret marriage with a member of the dominant ABC clan. Such inter-clan marriage was disapproved of so, after the marriage, the appellant and his wife lived with their respective families. He claimed his wife became pregnant and, under pressure from her family, revealed the appellant's identity as her husband and father of her unborn child. Male members of her clan began looking for him and when they could not find the appellant they kidnapped one of the appellant's nephews and killed him. The appellant was subsequently captured, detained and beaten by them but he managed to escape and fled into hiding in the forest. In approximately 1992 the appellant's child, a son, was born.

[11] The appellant claimed that, when his son was less than a year old he was kidnapped by the wife's family. The wife's family then shot his son in front of him. It was only with the intervention of his wife's mother that he was released. He again went into hiding but continued to receive clandestine visits from his wife and, over time, they had five children together.

[12] In 1995, fighting occurred between members of the Murosade and ABC clans near to where the appellant and his family were staying. The Murosade ordered the appellant and two of his brothers to fight with them against the ABC clan. When the appellant's mother protested, she was shot in the leg. This caused a fight between the appellant's siblings and the Murosade men which resulted in the death of two of his brothers. The appellant himself was shot in the shoulder and the hand on this occasion.

[13] In 1997, the appellant's wife was pregnant with their fifth child. Her family came looking for the appellant and the wife. They went to where the appellant's mother and siblings were staying and harassed them. Wanting to relieve his family of this harassment, the appellant presented himself to his wife's family who beat him and forced him to take them to where his wife and children were. There they caned his wife and told him that this was his last chance. They threatened to

execute all his remaining children and siblings if he did not divorce his wife. The appellant agreed to do so.

[14] In April 1998, after the birth of the fifth child, the wife's family brought this child, a boy, to the appellant. This was the last time he saw his wife. The appellant subsequently married his second wife in late 1998 and they have a number of children together.

[15] The appellant claimed that as a member of the Reer Maanyo tribe he would be without any protection whatsoever in Somalia. Every clan was the enemy of the Reer Maanyo and that the Somalia Transitional National Government could not protect him from the members of the majority clans generally or his wife's clan in particular.

THE GRANT OF REFUGEE STATUS TO THE APPELLANT

The RSB grant of refugee status

[16] By decision dated 12 February 2003, the RSB granted refugee status to the appellant. The RSB had reservations about the appellant's claim to be from the Reer Maanyo clan because of apparent inconsistency with country information. However, after noting submissions from the appellant's then legal representative, the RSB accepted that he was from the Reer Maanyo clan as he claimed. Having accepted the appellant's account, the RSB found that the appellant did have a well-founded fear of being persecuted. As a member of a minority clan in Somalia, it was accepted that he was "vulnerable to incidents of serious harm at the hands of members from the noble tribes" and was found to have a well-founded fear of being persecuted by this reason alone. The RSB further found that the instances of discrimination the appellant had suffered in his education, employment and in respect of his right to marry did not on their own rise to the level of his being persecuted but, nevertheless, strengthened the claim of being persecuted that had already been established by reason of his clan membership alone.

Notice of intended determination concerning loss of refugee status and cancellation of refugee status by the RSB

[17] On 24 December 2008, the appellant was served with a notice dated 19 December 2008 advising that it was intended to make a determination as to

whether his original grant of refugee status may have been improperly made. The notice referred to:

(a) the appellant's previously undisclosed travel to another country ("Z") in 1992 where he claimed refugee status under the name AA;

(b) that he had been granted refugee status there in 2002; and

(c) his period of lawful residence in Z for 10 years before travelling to New Zealand in 2002.

[18] The appellant was subsequently interviewed by a RSO on 23 and 26 March 2009. On 23 April 2009, a report of these interviews was prepared and sent to Mr Moses, who was now acting for the appellant. The appellant replied through Mr Moses on 26 May 2009. By decision dated 18 June 2009, the RSB concluded that the grant of refugee status to the appellant may have been procured by fraud, forgery, false or misleading representation or concealment of relevant information – namely, his concealment of the fact that he had legally resided in Z for a period of 10 years between 1992 and 2002 as a recognised Convention refugee.

[19] The RSB further decided that, as the appellant's refugee status and residency in Z were genuine, under relevant Z law, his residence permit could only lapse if he had chosen to return to his country of origin (Somalia) or had been offered protection in a third country. The RSB held that, as the appellant had not returned to Somalia or "legitimately acquired the surrogate protection of New Zealand", his Z residency had not lapsed. The RSB noted the appellant had declined to comply with its request to lodge an application with the Z authorities regarding the continued existence of his resident status there. Consequently, the RSB decided that, as the appellant had failed to establish that he did not have surrogate international protection in Z, Article 1E of the Refugee Convention applied. In these circumstances, the RSB decided it was appropriate that it should cease to recognise the appellant as a refugee. The appellant appeals to this Authority against this decision.

Preliminary legal issues

The applicability of Article 1E of the Refugee Convention

[20] Article 1E of the Refugee Convention operates as an exclusion clause. It provides:

> "This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country."

[21] Therefore, if the facts of this appeal fall within the bounds of Article 1E the appellant is not entitled to claim against New Zealand the benefit of Convention based protection against any fear of being persecuted in Somalia. Rather, if Article 1E applies, it is to Z that he must look for protection from any harm he fears in Somalia unless he can also establish a well-founded fear of being persecuted for a Convention reason in Z

[22] When this matter came before the Authority on 17 March 2010, Ms Whelan, on behalf of the DOL, applied for an adjournment of the hearing for a period of nine months. She sought a direction from the Authority that the appellant make an application to the Z immigration authorities to confirm whether or not he was presently entitled to Z residency for the purposes of determining whether Article 1E applied. In support of her application, Ms Whelan cited *Refugee Appeal No 1949/93* (13 May 1999) in which a Somali resident in a third country was required by the Authority to exercise a statutory right of appeal when the authorities of that country initially refused to issue him with a passport. Ms Whelan also referred to a more recent decision of the Authority, *Refugee Appeal No 76370* (17 September 2009), in which another appeal was adjourned to allow an Iraqi national previously resident in a third country to make enquiries of the immigration authorities of that country to "ascertain whether or not re-entry will be a mere formality or otherwise". She urged a similar course of action in this case.

[23] Mr Moses, on behalf of the appellant, opposed this application. He referred to an email he had received from the Asylum Office of the Z Immigration Service dated 25 June 2009 in response to an email he had sent to them on 26 May 2009. In his email, Mr Moses enquired as to the appellant's immigration status in Z, and, if his residence status has been lost, whether there is any chance of him re-acquiring similar status on application. In its reply, the Z Immigration Service advised that the appellant received asylum in Z on 4 December 1992 but since 2003 had been registered as "disappeared". The Z immigration official referred to the Z relevant legislation regarding the lapsing and revocation of residence permits and went on to state (*verbatim)*:

> "Since your client had stayed outside Z at least since 2003 and had stayed in New Zealand since then his residence permit in Z has lapsed. We consider New Zealand to have given him de facto protection due to his long stay in that country.
>
> Thus, your client cannot return to Z. However, your client can apply for a decision on whether his residence permit in Z should be considered as not lapsed."

He was then advised as to which particular form he was required to fill out and return to the Z Immigration Service, should he decide to do so.

[24] Mr Moses submitted that the relevant provisions of the Z relevant legislation meant it is unlikely that the appellant would be granted a residence permit as his original grant of refugee status in Z had been obtained through the provision of incorrect information as to his identity, date of birth and underlying account. Furthermore, Mr Moses advised the Authority that he had given the appellant certain advice regarding his inability to establish a well-founded fear of being persecuted *vis-à-vis* Z. He advised the Authority that, while the appellant had accepted this advice, the appellant had instructed him to inform the Authority that he nevertheless had a fear for his personal safety and liberty in Z and that he would not be disposed to making an application to the Z authorities regardless of any direction to this effect the Authority might make.

[25] For all these reasons Mr Moses submitted that granting the adjournment would serve little practical purpose and only add to the further delay in resolving this appeal.

[26] The Authority declined to grant the adjournment application. The Authority held that, in light of the substantial delay such an adjournment would entail and the presence of witnesses ready to give evidence in support of the appellant, it was appropriate to use the scheduled hearing dates to determine whether the appellant met the 'inclusion criteria' of Article 1A(2) of the Refugee Convention. If, having heard the evidence, the Authority was of the view that the appellant had met the inclusion criteria, a minute would be issued to this effect and the hearing would be reconvened to hear further argument on the applicability of Article 1E. If, however, the Authority was of the view that the appellant did not meet the inclusion criteria, Article 1E would cease to have any relevance to the proceedings as the appellant would not be entitled to refugee status in any event thereby obviating the need for the hearing to be reconvened.

The applicability of Article 1F of the Refugee Convention

[27] The documentation on the file records that the appellant was convicted of three separate criminal offences of a non-political nature in Z namely:

(a) Threat of violence against a public authority for which he was sentenced to 40 days' imprisonment;

(b) Assault of a particularly heinous, brutal or dangerous character for which he received a sentence of six months' imprisonment; and

(c) Sale of narcotics for which he received a sentence of 60 days' imprisonment.

[28] Article 1F(b) of the Refugee Convention provides:

> "The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:
>
> (b) He has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;"

[29] At the commencement of the hearing, Ms Whelan for the DOL confirmed that INZ accepted that these offences, while not trivial matters, did not individually or cumulatively reach the level of seriousness required for the purposes of excluding the appellant under Article 1F(b) of the Refugee Convention. As such, this was not an issue that the Authority needed to resolve on appeal. While the ultimate decision on exclusion must always rest with the Authority, the concession made is an appropriate one – see detailed discussion of Article 1F(b) in *Refugee Appeal No 76157* (26 June 2008) at [122]-[201]. Having regard to the ultimate conclusion reached, this decision – already lengthy – need not engage with this issue further.

<u>THE RESPONDENT'S CASE ON APPEAL</u>

[30] In his written and opening submissions, Mr Moses advised the Authority that, in relation to the first stage of the Authority's cancellation inquiry, the appellant accepted that his original grant of refugee status may have been obtained by fraud, forgery, false or misleading representation, or concealment of relevant information. Owing to this concession made by the appellant, the Authority heard no evidence from any witness called by the DOL, as to whether the appellant's original grant of refugee status may have been may have been improperly made.

<u>THE APPELLANT'S CASE ON APPEAL</u>

[31] The Authority heard from the appellant and two witnesses called by him. What follows is a summary of their evidence. An assessment follows thereafter.

The appellant's evidence

[32] The appellant told the Authority that he was born in August 1970 in Mogadishu and was the third eldest of eight children born to his parents. His father died in 2000 but his mother remains living. As to his clan membership, the appellant confirmed that he was Reer Maanyo and that his sub-clan was Reer Bahar. These were part of a larger grouping called Mahiban. His family were hunters.

[33] The appellant went to school in Mogadishu where he met a girl from the noble ABC clan. Her name was BB ("the first wife"). The appellant was aware that his being a member of a minority clan meant that her family would not accept him as a legitimate husband for their daughter and this would cause problems. He accepted his first wife's assurances that she would protect him. At the time of their marriage the government of Siad Barre had not yet fallen and they had not anticipated that Somalia would descend into civil war.

[34] In approximately late 1989, the appellant and his first wife were married in a secret fashion and the news was hidden from their families. The couple did not live together after the marriage but instead resided with their respective families, meeting clandestinely on occasions thereafter. Eventually, the appellant's first wife fell pregnant. Upon discovering this, her family demanded to know the identity of the father. The first wife refused to divulge this information but after being beaten by them was forced to reveal the appellant's identity as the father. Thereafter the first wife's brothers and uncles began looking for the appellant.

[35] Eventually, the appellant was located, beaten and abducted by them. He was taken to a compound where he was placed in a dark room and beaten again. After a while, an armed youth opened the door in response to the appellant's knocking and directed his attention to another person 'sleeping' in the room. The appellant now noticed that the person lying in the room was one of his cousins who, far from sleeping, had been beaten to death and placed in the room. The appellant immediately lunged for the armed youth, grabbing the gun. After a brief scuffle, the appellant managed to escape.

[36] The appellant ran back to his house and informed his mother and family what had happened. Recognising that the wife's family would soon come looking for the appellant, he and his family fled to a bush area on the outskirts of Mogadishu. After approximately two months the first wife, pregnant with the appellant's first child, was brought to where they were all hiding by one of the

appellant's relatives. She told him that in the two months he had been in hiding she had run away from home for a month but had been returned to the family home. The wife stayed with the appellant and his family for about a month and a half before returning to her family.

[37] Some time later, towards the end of 1990, the first wife returned to where the appellant was hiding. This time she only stayed for a couple of days before returning to her family. The purpose of this visit was to show the appellant his newborn son. She said she was scared to stay longer this time because if they found out that she was with them all of them including the child would have been killed.

[38] Four to six months later, at around mid-1991, the appellant's hiding place was discovered by the first wife's family. A number of armed men came to where they were hiding and an argument ensued. As a result, the appellant's elder brothers were both shot and killed. During this incident, the appellant's mother ran towards the attackers and was shot in the leg and the appellant was shot in the shoulder and hand. He was made to say he divorced his wife and agreed to do so thinking this would be the end of the matter. However, they proceeded to shoot his infant son in front of him. In the end, one of the elders in the attacking group indicated that they should leave the appellant and not kill him.

[39] After the first wife's family departed, the appellant buried the bodies and tried unsuccessfully to seek medical attention for his injuries. He then retreated further into the bush, from time to time returning to his original hiding place to check up on his mother who had remained at their first hiding location.

[40] Through his extended family network his situation was made known to a cousin living in the United States who sent the appellant approximately US$250 to help him escape Somalia. The appellant travelled to Ethiopia. After encountering some minor physical abuse at the border he was able to enter Ethiopia towards the end of 1991. In Ethiopia, he went to Addis Ababa where he stayed with a maternal aunt. This aunt made all the arrangements for the appellant to travel including obtaining for him a passport belonging to one of his brothers who had left Ethiopia in 1990 and become a citizen of a European country. Using this passport the appellant, along with his maternal aunt and her children, travelled to Z. In Z they were met by the relatives of his maternal aunt's former husband and taken by them to a refugee camp.

[41] In the camp an application form for refugee status was completed on his behalf by one of his maternal aunt's sons. They were then interviewed by a Z police officer in the presence of Somali interpreters. The appellant was interviewed with his aunt but his aunt answered most of the questions. The appellant simply signed where he was told to. As a result of this interview the appellant was given residency in Z. The appellant then made arrangements to bring his first wife to Z. He had received a telephone call from her shortly before his departure from Addis Ababa and she told him that she had managed to flee to Saudi Arabia. The appellant successfully applied for his wife to join him in Z. She was accompanied by the appellant's young daughter who had been born in Saudi Arabia after the appellant's departure from Ethiopia. This child subsequently died and the appellant and his first wife had a further four children in Z.

[42] The relationship between the appellant and his first wife eventually soured. She came under pressure from her clan living in Z and they made trouble for him in Z. As a result, the appellant divorced his first wife in early 1998 and married his second wife in late 1998. The appellant's first wife's clan continued to cause problems for him in Z resulting in him being convicted of the criminal offences outlined above. The appellant fled Z for New Zealand.

[43] Since being in New Zealand the appellant's first wife has continued to make trouble for him. She moved to the United Kingdom and informed the New Zealand authorities about his previous life in Z which led to the cancellation enquiry. Late last year he was assaulted in his family home, which he also attributes to these clan problems.

[44] The appellant fears that if he is returned to Somalia he would be without protection. As a member of the minority Reer Maanyo clan he would be at risk of being killed in the current lawlessness. In addition, the particular problems he has with the wife's family continue to exist and they would locate and kill him.

The evidence of Dr Mohamad Yusuf Haji Osman

[45] The Authority heard from Dr Osman who is a New Zealand citizen originating from Somalia. Dr Osman told the Authority that he met the appellant in approximately 2005 or 2006. The appellant speaks with an accent which indicated to Dr Osman that he was from the Mogadishu area. Dr Osman explained that sometime later the appellant asked him where he had lived and Dr Osman told him. The appellant then asked if he knew a person called CC, who was a well

known fisherman in the area. When Dr Osman confirmed that he knew CC the appellant informed him that CC was in fact married to his maternal aunt. Knowing CC was a fisherman, Dr Osman understood that the appellant's family must be from the Reer Maanyo clan, a minority clan who lived in the area. Dr Osman's belief that the appellant is from the Reer Maanyo clan was strengthened following a discussion they had about a particular song sung by Reer Maanyo youths in their area.

[46] Finally, Dr Osman confirmed that marriage between a minority clan member and a majority clan member was fraught with danger and that the people involved were exposing themselves to being killed. He explained that the previous government had tried to suppress such things but with the collapse of the government anything could happen to the people involved now.

The evidence of Mr Abdullahi Ahmed Bare

[47] The Authority heard from Mr Bare who is a New Zealand citizen of Somali origin. Mr Bare left Somalia in 1991 when he was about 11 years old. He has been in New Zealand since 1997.

[48] Mr Bare met the appellant in approximately 2002 or 2003. He explained that exiled Somalis generally ask a person where he or she originates from and this is a polite way of showing their clan. It is culturally unacceptable to ask such questions directly.

[49] Upon asking the appellant where he was from the appellant informed Mr Bare that he was from a particular suburb in Mogadishu which neighboured the suburb from where Mr Bare originated. At the boundary between the two neighbourhoods was an area in which members of the Reer Maanyo or Bahar clan lived in traditional African style houses built of mud. The appellant told Mr Bare that he lived in this particular part of his suburb. In further discussions between them they discovered that Mr Bare knew one of the appellant's paternal uncles. They made this connection because the paternal uncle was a well known individual in the area because of his having a large gap between his two front teeth.

[50] Mr Bare told the Authority that, as a member of a minority clan, it would not be safe for the appellant to live anywhere in Somalia at the present time.

Documents and submissions

[51] On 14 October 2009, the Authority received from Ms Whelan a witness statement of the RSO who had conducted the interviews on 23 and 26 March 2009 and who made the decision cancelling the appellant's original grant of refugee status.

[52] On 12 October 2009, the Authority wrote to Mr Moses advising that it would be greatly assisted in determining this appeal by having before it the appellant's Z immigration and/or refugee file. The Authority noted that on 18 March 2009 the appellant had signed a privacy waiver authorising the release to INZ of information held about him by the Z Police, Z Immigration Service, refugee processing organisations and other relevant agencies. However, at that time no file had been received. By letter dated 15 October 2009, Mr Moses advised the Authority that he had written to the Z Immigration Service requesting the files and enclosed a copy of the letter he had sent to the Z Immigration Service to that effect.

[53] On 12 October 2009, the Authority received a memorandum of submissions from Mr Moses. Attached to these submissions were statements by the appellant, Dr Osman and Mr Bare. Also attached to the memorandum were the appellant's original birth certificate and correspondence between Mr Moses and the Z authorities regarding the appellant's immigration status in Z Finally, there was also attached an excerpt from the Danish Immigration Service report *Minority Groups in Somalia 17-24 September 2000* dated 8 January 2001 ("the DIS Minority Groups report").

[54] On 22 October 2009, the Authority received a memorandum of counsel from Ms Whelan on behalf of the DOL dated 21 October 2009.

[55] On 3 March 2010, the Authority received from Mr Moses a copy of the Z immigration file released by the Z immigration authorities. The contents of the file included a folder and 18 appendices, one of which was in Somali. Translations of the Z and Somali appendices were also submitted. During the course of the hearing the Authority received from the DOL a copy of a report by the Immigration Refugee Board of Canada (1 October 1989) relating to the bundle of rights given under Z law to persons with different domestic refugee related statuses.

[56] During the course of the hearing the Authority served on counsel a number of items of country information, namely:

(a) Copy of relevant passages from *YS and HA (Midgan – not generally at risk) Somalia CG* [2005] UKIAT 00088;

(b) Austrian Centre for Country of Origin and Asylum Research in documentation *Ethiopia; treatment of Midhiban/Midgan/Medigan minority clan* originating *from the Ogaden area by Ethiopian forces in the area and members of majority clans* Query Response A – 6754 (20 May 2009);

(c) A Abbey, *Field research project on minorities in Somalia* Oxford House, UK, October 2005;

(d) Copy relevant passages of the DIS minority groups report relating to the Midgan group.

(e) Pages 1-40 Human Rights Watch *So much to fear war crimes and devastation of* Somalia (December 2008); ("the 2008 HRW report")

(f) LanInfo Country of Origin Information Centre Report *Conflict, security and clan protection in south Somalia* (Norway, 12 November 2008);

(g) UNHCR press release *Conflict displaces 63,000 civilians in southern Somalia so far this year* (19 January 2010);

(h) UNHCR press release *UNHCR concerned about situation of thousands of Somalis in Mogadishu* (12 March 2010).

[57] At the conclusion of the hearing on 18 March 2009, counsel were given leave to file and serve submissions on the country information provided by the Authority and in relation to the appellant's assertions regarding the relationship of the Kulber clan to Reer Maanyo. On 1 April 2010, the Authority received submissions dated 31 March 2010 from Ms Whelan and on 14 April 2010 received submissions in reply from Mr Moses.

Stage One – was the original grant of refugee status procured by fraud, forgery or concealment of relevant information?

[58] As noted, the appellant has conceded that there is no issue as to whether his original grant of refugee status may have been procured by fraud, forgery or the concealment of relevant information. He accepts it was. The only issue to be determined is whether or not the he is now a refugee.

[59] In light of this concession, again properly made, the stage one issue is answered in the affirmative. The Authority finds that the appellant's original grant of refugee status may have been procured by fraud, forgery or the concealment of relevant information.

Stage Two – should the appellant cease to be recognised as a refugee?

[60] This involves the Authority's orthodox enquiry as to whether the appellant, as of the date of determination of this appeal, is a refugee within the meaning of Article 1A(2) of the Refugee Convention. This requires the Authority to consider two principal issues namely:

(a) Objectively, on the facts as found does the appellant have a well-founded fear of being persecuted;

(b) Is there a nexus to a Convention reason?

Objectively, on the facts as found does the appellant have a well-founded fear of being persecuted?

CREDIBILITY

[61] Having seen and heard the appellant, the Authority finds that the appellant is not a reliable witness as to his true circumstances and background in Somalia. Review of the Z Immigration Service file reveals substantial discrepancies between what he told the Z immigration authorities and what he told the New Zealand immigration authorities. Moreover, there are substantial differences between what he first told to the New Zealand immigration authorities in 2002 when lodging his claim for refugee status and what he now, in the context of this appeal, says to be his true circumstances and background. His latest account is also fundamentally implausible. The cumulative effect of these matters means the Authority can have no confidence that the appellant is a reliable witness as to his true circumstances, the evidence of his witnesses notwithstanding.

Differences between the account given to the Z immigration authorities and that given to the New Zealand immigration authorities

[62] There are a number of substantial differences between the appellant's accounts in Z and New Zealand. In particular:

Different account of his clan membership

[63] When interviewed by the Z authorities the appellant indicated that he was from the Midgan minority group and that his sub-clan was called Kulber. However, when the appellant came to New Zealand he said that his clan membership was Reer Maanyo. In New Zealand he claimed the Reer Maanyo to be a sub-group of the Midgan and, in his cancellation interview, he drew a diagram purporting to show how the Reer Maanyo derive from the Midgan.

[64] Country information available to the Authority paints a different picture of the relevant clan structure from that painted by the appellant. The DIS Minority Groups report, which derives from information obtained from elders in Nairobi and other sources, discusses Reer Maanyo in the context of them being a sub-group of the people known as Benadir and not Midgan. By way of counter Mr Moses, in his submissions dated 14 April 2010, highlights passages in the country information which point to some variability in usage of the term Midgan. Thus, for example, a Midgan representative is cited in the DIS Minority Groups report at page 49 as stating 'Midgan' is:

> "A collective term covering the sub-groups Madhiban, Musa, Dhertyo, Tumal, Yaher, Yibir and Jaje."

This is despite other sources cited in this same report stating that the Midgan, Yibir and Tunal are separate groups.

[65] Similarly, the United Kingdom Immigration Appeal Tribunal decision in *YS and HA,* at p15, quotes an expert whose evidence was that *:*

> "In Somalia, the outcaste groups are collectively referred to as "Midgan" or Madhiban."

[66] On the other side, the DIS Minority Groups report, at page 38, notes that the term Benadir is used to indicate "a diverse coastal population in Somalia roughly between Mogadishu and Kismayo in the south who share an urban culture and who are of mixed origins separate from the major Somali clans". They note Perous de Montclous, a leading author in the field, as stating that:

> "The name Benadir does not correspond to any well defined sociological reality. In the context of the settlement programmes for Somali refugees in Kenya, the Somali traders of the coastal ports decided to regroup under the term Benadir which designates greater Mogadishu. Those indigenous to this area succeeded in calling themselves Benadiri."

[67] While it can be accepted, as Mr Moses submits, that in light of this country information a certain amount of fluidity may exist in usage of the term 'Midgan' this

does not resolve the Authority's credibility concern for two reasons. First, while Midgan, at least in some quarters, is used as a *collective* term to denote a range of non-noble clans, express evidence that it can cover the Benadiri, of whom the Reer Maanyo are said to belong, is missing. At best, there is the broad statement in the United Kingdom decision in Y*S and HA* set out above.

[68] Second, and more crucially, even assuming it does cover the Benadiri groups, country information establishes that the term Midgan is not used *only* as a collective term, but also has a *specific* meaning. At this specific level, usage of the term Midgan is to denote particular sub-groups of people as distinct from other particular sub-groups belonging to *other* minority or non-noble peoples. In this specific context, the DIS Minority Groups report discussion of particular sub-groups of Midgan contains no express reference to either the Reer Maanyo or, for that matter, the Kulber. Instead, the report cites de Montclous, an oft cited author in these matters, who includes the Reer Maanyo as a sub-category of Benadiri – see page 40.

[69] While the Oxford House report and the Immigration Appeal Tribunal decision in *YS and HA* also talk about the Midgan as a specific grouping of non-noble people, again, no mention of the Midgan sub-groups being *the same* as the Benadiri sub-groups is made by the experts quoted therein. Instead, one of the experts cited in *YS and HA*, states that Kulber are one of the sub-groups of the Midgan. Equally, the Oxford House report, at p27, lists Kulber as a sub-group of the Midgan as a specific group.

[70] The significance of there being both a collective and specific usage of the term Midgan is that, if the appellant had told the Z immigration authorities simply that he was Midgan then, given this fluidity, he could possibly have been given the benefit if the doubt. However, he went further. He named a particular sub-group (Kulber) to which he claimed to belong. Thus it is clear that he was claiming to be Midgan in the *specific* and not the collective sense. Yet in his evidence in New Zealand as to his specific level of clan attachment he claimed to be from the Reer Maanyo sub-group which available country information establishes to be a particular sub-group not of the Midgan, but the Benadiri, a different group altogether.

[71] By way of explanation the appellant now asserts that the Reer Maanyo are part of the people known collectively as Midgan and that Kulber is simply another name for Reer Maanyo. In other words, he claims there to be no material

difference in terminology. However, the appellant's evidence in this regard was contradicted by his own witnesses. The evidence of both Dr Osman and Mr Bare was that, because of their backgrounds, they had familiarity with the Reer Maanyo living in their area in Mogadishu. Yet, as Ms Whelan emphasises in her closing submissions, neither witness, when asked by both the DOL and again by the Authority, had heard that the Reer Maanyo, with whom they were familiar, to be also known as Kulber. This failure by these witnesses to corroborate the appellant's explanation for this discrepancy is surprising if the appellant's assertions were true.

[72] In summary on this point, the appellant has given different accounts as to the specifics of his clan membership to the Z and New Zealand Immigration authorities. His explanations for this are not supported by country information or the appellant's own witnesses.

[73] However, the problems with the appellant's claim to be from a minority clan do not end there. Rather his account of his experiences *as a minority clan member* to the Z and New Zealand are characterised by significant discrepancies, further undermining the reliability of his claim to be such a minority group member at all.

Differences in his claimed problems in Somalia

[74] The Z Immigration Service file contains an application form completed in the Somali language, a translation into Z of that document and an interview report of the interview conducted with the appellant translated into English. Mr Moses has arranged for the application from to be translated from Somali into English. While there are some differences between this translation and the translation of the same document from Z into English, what is abundantly clear is that in neither document does the appellant make any reference to the problems with his first wife's family that he now claims to have precipitated his original flight from Somalia to Ethiopia. There is no mention of the marriage to the first wife or the death of his first son and two older brothers at the hands of the first wife's family. Nor is the murder of his cousin and his own detention and beatings mentioned. Rather, the appellant claims his predicament arose within the context of the generalised violence that erupted in Somalia following the collapse of the Barre regime and the outbreak of the civil war. For this reason, the appellant appears not to have been recognised as a Convention refugee under the relevant Z legislation but rather given complimentary protection.

[75] The appellant's explanation for this substantial discrepancy was twofold. First, the interpreter was someone who he recognised as being from the same clan as his first wife and he was reluctant to divulge particulars of his suffering at the hands of the same clan because he feared the interpreter might make trouble for him in Z. Second, the appellant asserts that it was his aunt who did all the talking. The form was, he claims, completed by her son and that she answered all the interview questions. These explanations are not accepted. The first is fanciful in that the Authority has no doubt that the interpreters engaged by the Z Immigration Services are as professional as those employed by INZ for the purpose of New Zealand refugee status determination system. Moreover, the appellant's assertion that his cousin and aunt answered all the questions is not corroborated by the Z file. The Z interview report makes no mention of anyone being present in the interview apart from the appellant as applicant, the interviewing offer and the interpreter. Had the appellant's aunt been at this interview as claimed the Authority has no doubt that this would have been mentioned somewhere in the Z Immigration Service file. However, it is not.

Discrepancies in the account given to RSB and to the Authority regarding his true circumstances in Somalia

[76] In contrast to his Z claim, the appellant's New Zealand claim has sought to place his predicament in Somalia within the context of his marrying a woman from the dominant ABC clan. Even putting this evidential mobility to one side, substantial discrepancies in relation to core aspects of his New Zealand claim have emerged between his account as originally given to the RSB in 2002 and that which has been given in the context of these cancellation proceedings.

As to the death of his son

[77] The appellant's evidence has been extremely mobile on this event. In his original claim for refugee status the appellant indicated that his son had been born in 1992 and died in 1993 at the hand of his first wife's family. When the RSO, in the context of the cancellation proceedings, raised credibility concerns about the appellant's evidence as to the timing of his son's death, the appellant repeated on two separate occasions that his son's death had occurred a few hours after the death of his cousin whose body had been in the dark room where he had been detained. Yet, before the Authority the appellant initially maintained that his son had been killed on the same day as his two brothers had been killed and he and his mother had been shot – that is, a period of some months after the death of his

cousin and after the appellant and his family had gone into hiding. When asked to account for this discrepancy the appellant changed his evidence yet again. He now claimed that the sequencing of events was that his cousin was killed first then, a few months later, his two brothers and finally, a couple of months after that his son was murdered by the first wife's family.

[78] Quite apart from the mobility in this evidence, the final account adopted by the appellant appeared implausible considered alongside evidence he had given previously. He told the Authority that his life had been spared by the first wife's clan on the day his two brothers were shot and killed because he believed they thought they had taught him a sufficient lesson. The appellant could not, in these circumstances, explain why some two months later the same people specifically tracked him down with a view of killing the child.

As to the death of his two brothers

[79] In his original refugee claim in New Zealand the appellant maintained that his two brothers had been killed in 1995 at the hands of a clan called the Murosade who were engaged in a gun fight with members of the rival ABC clan. The fight between these two clans engulfed the family home and the two older brothers were being pressured to fight for the Murosade against the ABC clan. When they refused they were shot.

[80] During the cancellation proceedings, the appellant's account of these deaths was significantly different. First, the deaths occurred not in 1995 as he had originally claimed but in 1992. More significantly, however, in both his cancellation interview and in the appeal statement, the appellant claimed that these brothers were murdered by members of the rival Murosade clan. Yet, before the Authority, his evidence changed again. Rather than being killed in the context of the generalised inter-clan fighting during the civil war, the appellant now asserted that his two brothers were killed in the specific context of the dispute he had with the first wife's clan.

Contact with the first wife

[81] In his appeal statement the appellant asserts that he had no contact with the first wife between going into hiding following the death of his cousin and the birth of his first son in about November or December 1990. However, the

appellant's evidence before the Authority contained an account of multiple visits by her to him in this period.

[82] The appellant had no sensible explanation for these multiple discrepancies in his accounts to the New Zealand authorities. He asserted that at the time he gave his cancellation interview he was in prison and under a lot of stress. This is no doubt true but the matters upon which the discrepancies arise are fundamental and significant matters. They are not, taken together, things that can be credibly explained away by stress.

[83] Furthermore, the appellant's underlying account is, in key aspects, implausible.

Implausibilities

[84] The appellant's account is notable for his asserting a trans-national vendetta being waged against him by his first wife and her wider family/clan members. The basis of their complaint is his "illegitimate" marriage to the first wife. He asserts an extreme level of personal animosity towards him which caused the first wife's clan to beat his cousin to death in lieu of him, kill his two older brothers, kill his son, and shoot and injure his mother. He claims the same family have caused him trouble in Z and now in New Zealand. And yet, according to the appellant, at the very time he was at the mercy of the same clan in Somalia who had clear opportunity to kill him with impunity he was let go. It is implausible that, if such a family truly had such a level of animosity against him, they would not have taken the opportunity to kill him in Somalia, a land of relative lawlessness rather than take their chances with a more sturdy and robust criminal justice system such as operates in both Z and New Zealand.

[85] A further implausibility relates to the appellant's evidence as to the first wife's movements following his incarceration at the hands of her family for marrying him. The appellant has painted a picture of a family for whom, honour is paramount to the point that his first wife has been beaten to reveal his identity and they killed his son. And yet he claims that his wife was able to visit him and remain with him for up to six weeks at a time on occasion over the course of 10 months or so between the discovery of the pregnancy and his eventual departure for Ethiopia. This also is implausible. If it were truly the case that the appellant did marry into this noble family and had an illegitimate son, it is implausible that the first wife would be able to make these visits in the way the appellant claimed.

[86] Dr Osman confirmed that these are serious matters and are viewed seriously by the families of the noble clan. It is not uncommon, Dr Osman said, for people to be killed or the movements of the person from the noble clan to be severely curtailed. Yet, according to the appellant, by the time his first wife visited him after he had gone into hiding, she had already run away for a month. She had then returned to the family home before running away again to stay with him for a further six weeks. When the Authority expressed its surprise at this evidence, the appellant told the Authority that his wife had said to him that she told her family that she was staying with relatives. Yet it is implausible to suggest that the first wife's family would not have checked with their relatives when the wife was away for a period of six weeks. It would have been immediately apparent to her family that she had not been with relatives as she had claimed. The Authority has no doubt that, at this point, her predicament would have been very dire indeed. If she was not killed to assuage the family's honour then she would have been monitored very closely and her movements strictly curtailed. The idea that she could continue to visit the appellant on multiple occasions is implausible. His evidence is rejected.

CONCLUSION ON CREDIBILITY

[87] As the foregoing analysis reveals the appellant's evidence is a tangle of inconsistency, mobility and implausibility. He has presented different stories to different immigration officials in different countries at different times depending on his objective. Moreover, when first questioned by INZ about being the person known to the Z immigration authorities the appellant originally denied that he was the same person. It was only when he was confronted with fingerprint evidence confirming that he was the same person that the appellant was forced, reluctantly, to admit the truth. This evidences a person who is not willing to be frank and open with the immigration officials but rather is guarded and selective in terms of the information he chooses to present.

[88] While Mr Moses concedes that there are substantial credibility issues in this case he submits that certain things "are known". In particular, the appellant has always maintained that he is a member of a minority clan even if the precise clan is shrouded in a degree of confusion. In other words, Mr Moses seeks to cauterise the issue of the appellant's clan membership from the wider claims made by the appellant. The Authority finds this, with respect, to be an artificial position. The appellant's claim to be a member of a particular minority clan is intimately bound up with his account of harassment at the hands of the first wife's family. Moreover,

the fluidity in the appellant's account of his clan membership in itself inspires little confidence as to its underlying veracity.

[89] Therefore, the Authority has no confidence that the appellant is indeed from a minority clan at all. The experiences of minority clan members are well-known and an account can easily be fabricated by non-minority clan members in order to seek safe haven from the undoubtedly poor situation in Somalia generally. Indeed, both Dr Osman and Mr Bare told the Authority that the identifiers by which they had made the association between the appellant and the Reer Maanyo clan were things which would be known to anybody who lived in the suburb they did whether they were from a minority or a noble clan. In other words, the personalities were famous locally to all, not just to minority clan members. Therefore, that the appellant knows these people is not in itself determinative of his clan membership. The same applies to the appellant familiarity with the chant or song. It is clear Dr Osman was also familiar with it to some extent despite not being from a minority clan

[90] The Authority is mindful that the appellant has called two witnesses who have given evidence as to their genuinely held belief as to his clan origins and, by necessary implication, his place of habitual residence. However, their understanding of his clan comes from what the appellant has told them of his background and not from any source independent of him. Having regard to the generally negative credibility finding made in respect of the appellant, the weight that the Authority can attach to their evidence is limited. At the end of the day, the appellant is a wholly unreliable witness and the Authority can have no confidence that anything he says to the Authority or to others actually represents the truth of his background.

[91] For these reasons the Authority rejects the appellant's claim to be a member of a minority clan. The Authority accepts, however, that he is a male who speaks the Somali language with a Mogadishu accent. As to his claims to have been born in Mogadishu and to have lived there up to his date of departure from Somalia in 2002, the Authority notes the appellant has produced an original birth certificate recording Mogadishu as his place of birth. Yet the weight the Authority can attach to this document must be seen in the context of the overall negative credibility findings made. However, the Authority notes that the Z file also records him as stating that he was born in Mogadishu. While the Authority cannot be certain about his precise age, his appearance is plainly of someone born a number of years prior to the outbreak of the civil war in 1991. His Mogadishu accent is

therefore unlikely to have been acquired through his birth or residence as a youth in a refugee camp in Kenya or Tanzania following the outbreak of the civil war. Weighing these matters carefully against his otherwise unimpressive qualities as a witness of truth, the Authority accepts that he is a Somali male from Mogadishu who travelled to Z in 1992. His claim will be assessed against this background.

A well-founded fear of being persecuted

[92] In *Refugee Appeal No 76062* (15 October 2007) the Authority, at [55], noted the significance of clan-based politics in Somalia following the collapse of the Barre regime in 1990:

> "[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]."

[93] The Authority went on to observe:

> "[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").
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> [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 is substantial part from *Al-Shabaab*, an Islamic militia drawn from the *Hawiye* and *Ogaden* clans and clan-based militia associated with the *Hawiye*.
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> [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."

[94] The situation inside Somalia has deteriorated markedly since then. The appalling human rights situation inside Somalia is graphically, if tragically, captured in the 2008 HRW report. This report paints a picture of widespread and indiscriminate violence in which even membership of a majority clan can provide no protection from the widespread violence. The report notes, at p18, that following the entry into Mogadishu of Ethiopian forces:

> "Somalia has spiralled ever deeper into bloody and unrestrained fighting. All sides have pursued military strategies with little or no concern for the civilians living in their urban battlefields. Insurgent fighters quickly adopt hit and run tactics that have remained a defining feature of the conflict, staging ambushes or mortar attacks and then fading back into the cover of the civilian population. Ethiopian and TFG forces developed patterns of responding to those attacks and have since become part of the day to day reality of life in Mogadishu – reacting to indiscriminate mortar attacks in kind, with devastating barrages of rocket, mortar, and artillery fire across populated neighbourhoods. ENDF and TFG forces began sealing off sections of entire neighbourhoods to conduct often violent house to house searches for insurgent fighters and weaponry. The brunt of all this fighting has been borne not by the warring parties but by the hundreds of thousands of civilians trapped between them."

[95] The report continues, at p19:

> "In 2008 the human rights and humanitarian situation in Somalia deteriorated into an unmitigated catastrophe. Several thousand civilians have been killed in fighting. More than one million Somalis are displaced from their homes and thousands flee across the country's borders every month. Mogadishu, a bustling city of 1.2 million in 2006, has seen more than 870,000 of its residents displaced by armed conflict. All sides have used indiscriminate force as a matter of routine, and in 2008 violence has taken on a new dimension with the targeted murders of aid workers and civil society activists."

[96] A similar picture is painted by the LanInfo report which, at page 11, notes that the situation is more difficult in Mogadishu than it has been for several years

and that all of their interlocutors described the situation in Mogadishu "as violent and unpredictable" characterised by indiscriminate violence.

[97] In *Refugee Appeal Nos 76335 and 76364* (29 September 2009) the Authority observed in relation to events in 2009:

> [47] A period of relative stability ended in May 2009, when Islamist insurgents launched an onslaught on Mogadishu with the aim of establishing a regime that will strictly impose Sharia law. President Ahmed soon after declared a state of emergency in response to intensifying violence and appealed to neighbouring countries to send troops to Somalia to assist government forces against Islamic insurgents: "Timeline: Somalia, A chronology of key events" *BBC News* (1 July 2009); "Analysis: Who is fighting whom in Somalia" *IRIN News* (2 September 2009).
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> [48] In June 2009, the UNHCR and UNICEF issued a joint statement which noted that 117,000 people were estimated to have fled Mogadishu in the previous month, the majority of whom were women and children, that 200 had been killed in the current conflict and 700 were estimated to have been wounded, that there was no safe place for children in Mogadishu and that adolescent males were being forcibly recruited into all armed forces. *Garowe Online* reported on 10 June 2009 that crimes against humanity were being committed on a daily basis "on all sides" in the conflict in Mogadishu and that the UN had stated that all sides in the fighting have flaunted humanitarian principles by ignoring the safety of civilians, shelling civilian areas, forcibly recruiting children and raping women: United Kingdom Home Office *Country Report: Somalia* (21 July 2009) para 4.02 to para 4.05.
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> [49] Current reports indicate that the conflict continues to worsen and that almost every town in central Somalia is affected by the violence: "Somalia: Record number of displaced at 1.5 million" *IRIN News* (7 September 2009). A report by UNICEF released on 26 August 2009 concluded that the humanitarian crisis in Somalia was now at its worst level for almost two decades and that in the previous six months, the number of people in Somalia in need of humanitarian assistance had increased by 40%. A statement released by UNHCR at the same time stated that the current violence was aggravating an already desperate humanitarian situation, that the majority of civilians displaced by the conflict were women and children and that there were reports of rape and sexual exploitation during their flight and in places of refuge: United Nations Children Fund (UNICEF) *UN Report finds crisis in Somalia at its worst in two decades* (26 August 2009); United Nations High Commissioner for Refugees (UNHCR) *Somalia Violence Escalates* (26 August 2009)."

[98] According to UNHCR, the situation has not improved in 2010. In the two weeks to 19 January 2010 some 14,000 people had been displaced from and within Mogadishu and some 63,000 people have been displaced overall in southern Somalia – see UNHCR press release *Conflict displaces 63,000 civilians in southern Somalia so far this year* (19 January 2010); UNHCR press release *UNHCR concerned about situation of thousands of Somalis in Mogadishu* (12 March 2010).

Application to the appellant's case

[99] By any description Somalia continues to be plagued by civil war. As the discussion in *Refugee Appeal No 71462/99* (27 September 1999) at [49]-[76] shows, assessing whether a claimant from a country or locality suffering civil war requires no difference of approach in terms of the assessment of risk to that taken in other cases. This, however, cuts both ways. While the claimant must only establish on the evidence the 'ordinary' real chance of being persecuted and not some increased level of risk or that he/she has been singled out for persecution, nevertheless, the claimant must still establish that the risk they do face arises by reason of their civil or political status as protected by one of the five Convention grounds. It cannot be assumed that simply because the claimant is a national of a country suffering even lengthy periods of civil war that, by this reason alone, the claimant is entitled to refugee status. Cases from civil war countries raise complex factual issues and are highly context dependent, turning on the particular characteristics, attributes, and background of the claimant viewed against the underlying drivers of the civil war and the resulting human rights landscape.

[100] While it is accepted that the civil war in Somalia is characterised, at least in Mogadishu, by a high degree of indiscriminate violence being used as a weapon of war by all protagonists to the conflict, the Authority has not been provided with nor is it otherwise aware of country information which establishes that the level of violence in Mogadishu or across Somalia as a whole has reached such proportions that all Somali males, by that fact alone and irrespective of their other personal characteristics, attributes, or background, face a well-founded fear of being persecuted. Not having any credible information as to the appellant's true identity, background and experiences, there is no evidential basis upon which the Authority can conclude that the appellant does have a well-founded fear of being persecuted for a Convention reason at the present time.

[101] For these reasons the Authority finds that the appellant has not established that he is a refugee within the meaning of Article 1A(2) of the Refugee Convention.

CONCLUSION

[102] The Authority therefore determines that it is appropriate to cease to recognise the appellant as a refugee.

<u>“B L Burson”</u>

B L Burson
Member