Home Office
Border & Immigration Agency

OPERATIONAL GUIDANCE NOTE

SOMALIA

CONTENTS

1. Introduction

1.1. This document evaluates the general, political and human rights situation in Somalia and provides guidance on the nature and handling of the most common types of claims received from nationals/residents of that country, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseowners must refer to the relevant Asylum Instructions for further details of the policy on these areas.

1.2. This guidance must also be read in conjunction with any COI Service Somalia Country of Origin Information published on the Horizon intranet site. The material is also published externally on the Home Office internet site at:

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

1.3. Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the Asylum Instructions on Article 8 ECHR. If, following consideration, a claim is to be refused, caseowners should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.

Source documents

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

2. Country assessment

2.1. Since the fall of President Siad Barre in January 1991, Somalia has been without a functioning central government. During the 1990s, the country was in a perpetual state of civil war with rival clan warlords and their associated militias engaged in armed conflicts over control of various regions. The most serious outbreaks of clan violence were in southern and central regions. In some areas, notably Puntland and Somaliland in the north, local administrations function effectively in lieu of a central government. In these areas the existence of local administrations, as well as more traditional forms of conflict resolution such as councils of clan Elders, helps to prevent disputes degenerating rapidly into armed conflict. [1]

2.2. The country continues to be fragmented into three autonomous areas: the self-declared Republic of Somaliland in the northwest, and the State of Puntland in the northeast and the remaining south/central regions. In August 2004 the Transitional Federal Assembly (TFA) was established, and in October 2004 the TFA elected Abdullahi Yusuf Ahmed, former Puntland president, as the Transitional Federal President. In December 2004 Yusuf Ahmed appointed Ali Mohammed Ghedi as Prime Minister. Presidential elections in Somaliland, deemed credible and significantly transparent, were held in April 2003. During Somaliland parliamentary elections in September 2005 there was little evidence of election violence or intimidation, and most voters were able to cast their ballots without undue interference. In January 2005 after years of internecine power struggles, Puntland's unelected parliament selected General Adde Musse as president. [2]

2.3. Between 24 December and early January 2007, militiamen loyal to Mogadishu's network of Islamic courts (UIC) who had taken control over 8 of Somalia's 18 administrative regions in July 2006 were dislodged by the military forces of the Transitional Federal Government (TFG) and Ethiopia. Remnants of the UIC were also pursued in Southern Somalia by the same forces.[3] After the fall of the UIC, the semblance of order and security that the UIC had created in Mogadishu began to deteriorate. Roadblocks and checkpoints returned, together with banditry and violence despite the efforts of the TFG to improve security in the capital.[4] The fall of the UIC also bought to the fore some of the inter and intra clan rivalries that had been suppressed during the conflict and serious clan related fighting ensued[5].

2.4. On 12 March 2007 Somali MPs voted unanimously for the cabinet to relocate to Mogadishu from Baidoa as Africa Union (AU) troops established their presence in the capital[6] and it was later reported that the fighting in Mogadishu ended on 26 April when Prime Minister Ghedi announced that government and Ethiopian troops were in control of the capital and that Islamic insurgents and clan militia hostile to the TFG had been defeated.

2.5. Up to 2000 people are estimated to have been killed during the recent fighting in Mogadishu, the majority of whom were from the Haiwye clan.[7] As at the end of June, the UN reported that out of the 406,000 who had fled Mogadishu during the heavy fighting the number of returnees totalled 126,000. Though there are still security incidents involving hand grenades and explosive devices in Mogadishu, as well as targeted killings[8], these are incidents against the TFG and other security forces and high profile political targets.[9] .

2.6. A National Reconciliation Conference intended to forge social and political compromise between the country's various clans and factions closed on 30 August.[10] The Foreign and

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[1] COIS Somalia Country Report May 2007 (History & Constitution)
[2] COIS Somalia Country Report May 2007 (History; Peace initiatives 2000-2006)
[3] COIS Somalia Country Report May 2007 (Recent Developments)
[4] COIS Somalia Country Report May 2007 (Recent Developments
[5] COIS Somalia Country Report May 2007 (Recent Developments
[6] BBC World News 12 March 2007
7 BIA fact finding mission report May 2007. Interview with Walid Musa on 30 April 2007
[8] UN Office for the Coordination of Humanitarian Affairs (OCHA) Situation report 8 June 2007 http://ochaonline2.un.org/Default.aspx?tabid=5064
[9] BIA Fact Finding Mission Report June 2007 para 4.04
[10] Shabelle news – Somali national reconciliation conference wraps up http://www.shabelle.net/news/ne3650.htm

Commonwealth Office reported that while the conference did not of itself achieve a great deal, it was encouraging that it convened for its planned duration and concluded in an organised manner. The TFG agreed to a list of conclusions and action points that they were committed to taking forward over the remainder of the transitional period. Furthermore, although flawed in its own right, the conference represents a significant first step in the Somali political reconciliation process.[11]

2.7. In late August, the United Nations Security Council unanimously extended the mandate of the Africa Union (AU) peacekeeping mission in Somalia for a period of six months.[12]

2.8. The human rights situation is defined by the absence of effective state institutions. Somalis enjoy substantial freedoms - of association, expression, movement – but live largely without the protection of the state, access to security or institutional rule of law. Institutions are emerging in some parts of the country, especially Somaliland. Islamic courts play a significant role in Mogadishu. Overzealous application of supposedly Islamic law in the aftermath of the UIC's successful struggle to secure Mogadishu in June 2006 attracted widespread media attention. Women generally have difficulty making their voices heard in the political arena but are currently playing a very active role in civil society organisations, which are flourishing in the absence of government.[13]

2.9. The human rights situation is better in Somaliland and Puntland than in other parts of Somalia. Somaliland and Puntland have constitutions that provide for citizens' rights and have civic institutions that provide a degree of protection to individuals; the human rights situation is in general better in these two regions than elsewhere in the country. There are a number of local and international NGOs engaged in human rights activity currently operating in Somalia. However, security problems complicated the work of these organisations especially in the South. The human rights groups located in Somaliland are able to operate freely but those based in Puntland are shown little tolerance by the political authorities.[14]

2.10. Somali society is characterised by membership of clan families (which are sub-divided into clans and sub-clans) or membership of minority groups. An individual's position depends to a large extent on their clan origins. In general terms, a person should be safe in an area controlled by their clan, and any person, irrespective of clan or ethnic origin, will be safe from general clan-based persecution in Somaliland and Puntland. The chronic and widespread level of underdevelopment in Somalia makes a large portion of the population vulnerable not only to humanitarian crisis, but also to violations of their human rights. Somalis with no clan affiliation, and thus protection, are the most vulnerable to such violations, including predatory acts by criminals and militias, as well economic, political, cultural and social discrimination.[15]

2.11. Societal discrimination against women is widespread and the practice of female genital mutilation (FGM) almost universal. Domestic violence including rape remained a problem. Traditional approaches to dealing with rape tended to ignore the victim's situation and instead communalised the resolution or compensation for rape through a negotiation between members of the perpetrator's and victim's clans thus denying women's access to justice and right to due process.[16]

2.12. There are no legal provisions for the protection of religious freedom. The overwhelming majority of Somalis are Sunni Muslims. Islam has been declared the 'official' religion by some local administrations and there is strong societal pressure to respect Islamic traditions. There have been reports of non-Muslims experiencing societal harassment problems because of their religion, in particular where an attempt has been made to convert

[11] Letter from the Foreign and Commonwealth Office to the Home Office dated 11 October 2007
[12] UN Office for the Coordination of Humanitarian Affairs (OCHA) Situation Report 24 August 2007 http://ochaonline2.un.org/Default.aspx?tabid=5064
[13] COIS Somalia Country Report May 2007 (Human rights; Introduction)
[14] COIS Somalia Country Report May 2007 (History, Constitution, Judiciary, Political affiliation & Human rights Institutions…)
[15] COIS Somalia Country Report May 2007 (Ethnic groups & Annexes C-D)
[16] COIS Somalia Country Report May 2007 (Women)

Muslims. This practice is illegal in Somaliland and Puntland and effectively blocked by informal social consensus elsewhere. [17]

2.13. The rise to prominence of the UIC in 2006 appeared to be largely welcomed by the people of southern Somalia because the courts brought a degree of order. Though some objected to strict interpretations of Islamic law the UIC's control of the Somali capital until late December 2006 reinforced this unprecedented level of order.[18] Since the ousting of the UIC by the TFG supported by Ethiopia and consolidated by the arrival of AU troops in early 2007, the Islamists' influence declined rapidly as their leaders fled and their militias disbanded.[19]

2.14. Although the Transitional Federal Charter provides for an independent judiciary, there is no functioning judicial system for the TFG to administer. However, regional administrations have some functioning courts. In most areas the locally organised judiciary is an inconsistent mixture of traditional and customary justice, Islamic Shari'a law and the pre-1991 penal code. In Somaliland and Puntland, where the pre-1991 penal code still generally applies, an accused person can be assisted by a lawyer and has some appeal rights, even in the Shari'a courts. The right to representation by an attorney and the right to appeal does not exist in most southern/central regions that apply traditional and customary judicial practices or Shari'a law. The death penalty is enforced.[20] Similarly, there is no effective functioning police force. Members of the police force were often direct participants in politically based conflict and owed their positions to other politically active individuals. Reports suggest that police abuses are rarely investigated and that impunity remains a problem.[21]

2.15. Despite the absence of a central government based in the country, there is generally free movement of both people and goods within Somalia, although travel between regions may be dangerous at times as bandits operate and militias mount roadblocks to extort tolls. Security conditions have remained stable in many parts of the country in recent years particularly in the northern parts of the country – Somaliland and Puntland - allowing some refugees to return to their homes there from third countries.[22]

3. Main categories of claims

3.1. This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in Somalia. It also contains any common claims that may raise issues covered by the Asylum Instructions on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the instructions below.

3.1.2 Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Instructions on Assessing the Claim).

3.1.3 If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the applicant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies

[17] COIS Somalia Country Report May 2007 (Freedom of Religion)
[18] COIS Somalia Country Report May 2007 (Freedom of Religion)
[19] COIS Somalia Country Report May 2007 (Security situation)
[20] COIS Somalia Country Report May 2007 (Security situation, Judiciary & Death penalty)
[21] COIS Somalia Country Report May 2007 (Police)
[22] COIS Somalia Country Report May 2007 (Freedom of movement)

for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.

3.1.4 This guidance is not designed to cover issues of credibility. Caseworkers will need to consider credibility issues based on all the information available to them. For guidance on credibility see paragraph 11 of the Asylum Instructions on Assessing the Claim.

3.1.5 All Asylum Instructions can be accessed via the on the Horizon intranet site. The instructions are also published externally on the Home Office internet site at: http://www.ind.homeoffice.gov.uk/ind/en/home/laws___policy/policy_instructions/apis.html

3.2 General country situation in southern and central regions

3.2.1 Some claimants will make an asylum and/or human rights claim based on the security situation in southern and central regions in light of the ousting of the Union of Islamic Courts (UIC) by Transitional Federal Government (TFG) forces in December 2006 and the fighting in Mogadishu which followed. Such claims may also raise the issue of clan affiliation.

3.2.2 ***Treatment.*** In early June 2006 after a bloody four-month battle, militiamen loyal to Mogadishu's network of Islamic courts (UIC) took virtually complete control of the capital. This extended to large swathes of southern Somalia by early July 2006, leading to a major shift in the balance of power across the southern-central region from clan-based fiefdoms to an essentially clan-less religious authority. At this time the TFG controlled a dwindling area around the town of Baidoa while the UIC rapidly expanded its influence in most other southern and central regions in mid-late 2006. [23]

3.2.3 In January 2007, the UIC was ousted following an Ethiopian-backed advance by TFG forces. Fighting in Mogadishu ensued between the TFG and remnants of the UIC and clan-based militias. On 12 March 2007, an improved security situation prompted Somali MPs to vote unanimously for the cabinet to relocate to Mogadishu from Baidoa as AU peacekeepers established their presence in the capital.[24] Moreover, on 26 April, the fighting ended and on that date Prime Minister, Al Ghedi announced that the government and Ethiopian troops were in control of Mogadishu and that the Islamist insurgents and clan militia hostile to the TFG had been defeated.[25]

3.2.4 While the TFG's authority is weak it has, with the assistance of the Ethiopians and now AU peacekeepers (AU peacekeepers were deployed under the terms of a UN Resolution to replace the Ethiopian forces and to support the work of the TFG security forces), prevented a return to the volatile pre-UIC era of rival warlords and militias established on clan lines and dispersed the anti government elements. Following the end of the fighting in Mogadishu and bolstered by the arrival of peacekeepers, the TFG, which represents all clan groups, has gradually enabled an enhanced level of security and free movement in the south. [26] Though the setting of some roadblocks by freelance militias particularly in roads out of Mogadishu is re-emerging, these are generally more interested in extorting money than pursuing violence against individual Somalis.[27] Current information indicates that unlike when the region was dominated by rival clan factions and their associated militias, there is no evidence that Somalis travelling through an area dominated by a different clan would in general face any particular difficulty or risk.[28]

3.2.5 Although the north of Mogadishu is more volatile than the South, in both areas a degree of relative normality has returned, more so in the South but even in areas of the North which

[23] COIS Somalia Country Report May 2007 (Recent developments)
[24] BBC World News 12 March 2007
[25] COIS Somalia Country Report May 2007
[26] COIS Somalia Country Report (Latest news; Recent developments; Security situation)
[27] COIS Fact Finding Mission report : 17 May 2007
[28] COIS Somalia Country Report May 2007 and BIA fact finding mission interview with UN Security officer 27 and 30 April (Freedom of movement, Ethnic groups; Somali clans; General security position for minority groups)

have been more unstable.[29] There do however continue to be isolated attacks precisely targeting TFG and Ethiopian forces, high profile political targets, law enforcement agencies and occasionally Africa Union Forces. There also continue to be casualties either from the insurgent blasts or gunfire in retaliatory action by the targeted forces.[30]

3.2.6 While the humanitarian situation in Mogadishu is poor, there is not such an absence of the basic necessities of life or conditions that would lead to an immediate threat to life or personal dignity. The UN has reported that as at the end of June, out of the 406,000 who had fled Mogadishu during the heavy fighting the number of returnees totalled 126,000.[31] Food, water and shelter are available; some schools have reopened and medical treatment is being provided including in hospitals including Medena and Keysaney.[32]

3.2.7 ***Sufficiency of protection.*** As this category of claimants' fear is of mistreatment on the basis of the general country situation and not particular state or non-state agents, the availability of sufficient state protection is not relevant.

3.2.8 ***Internal relocation.*** As this category of claimants' fear is of mistreatment on the basis of the general country situation and not particular state or non-state agents, the availability of of a viable internal relocation alternative is not relevant.

3.2.9 ***Caselaw.***

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

3.2.10 ***Conclusion.*** A state of civil instability and/or where law and order has sometimes broken down, as has happened in Somalia between late December 2006 and April 2007, does not of itself give rise to a well-founded fear of persecution for a Convention reason. The claimant can only demonstrate a well-founded claim for asylum where they can demonstrate they are at risk of adverse treatment on Convention grounds over and above the risk to life and liberty, which occurs during such instability / insecurity. In addition, a general risk of violence based on the weak control of the region by the TFG does not amount to a well-founded fear of persecution for a Convention reason and so will not in itself be sufficient to amount to an asylum claim.

3.2.11 With the end of the fighting - and there continuing to be no evidence of fatalities/injuries in any significant numbers - there is no longer any general or serious risk that a returnee to Mogadishu would be caught in the cross-fire or killed or seriously injured by indiscriminate bombing or other military action. Although there still continue to a number of small explosions in the city since the fighting stopped, leaving some civilian casualties, these appear to be isolated and targeted incidents and do not demonstrate that there is a real and general risk.

3.2.12 Furthermore, although the humanitarian situation in Mogadishu is poor, there is not such an absence of the basic necessities of life as to cause an immediate threat to life or personal dignity. Many people who fled Mogadishu during the fighting are now returning; food, water and shelter are available; some schools have reopened and medical treatment is being provided including in Medena and Keysaney hospitals.[33]

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

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[29] BIA Fact Finding Mission report June 2007 para 4.02
[30] BIA Fact Finding Mission report June 2007 section 4
[31] UN Office for the Coordination of Humanitarian Affairs (OCHA) Situation report 8 June 2007 http://ochaonline2.un.org/Default.aspx?tabid=5064
[32] BIA Fact Finding Mission Report June 2007 section 3
[33] BIA Fact Finding Mission Report June 2007 section 3

3.3 Members of major clan families or related sub-clans

3.3.1 Some claimants will make an asylum and/or human rights claim based on their fear of mistreatment at the hands of an individual and/or sub-group of a rival clan family due to their membership of a particular clan or sub-clan.

3.3.2 ***Treatment.*** Somali society is characterised by membership of clan families (which are sub-divided into clans and many sub-clans) or membership of minority groups. Clan members are classified as ethnic Somali and minority groups are usually classified as non-ethnic Somali. The clan structure comprises four major “noble” clan-families; Darod, Hawiye, Isaaq and Dir. "Noble" refers to the widespread Somali belief that members of the major clans are descended from a common Somali ancestor, and that the minority clans/groups have a different, usually mixed, parentage. Two further clans, the Digil and Mirifle (also collectively referred to as Rahanweyn), take, in many aspects, an intermediate position between the main Somali clans and the minority groups.[34]

3.3.3 The dominant clan in any particular area has generally excluded and discriminated against other clans and minorities from participation in power in that area. Due to the fluid security situation and absence of a central government, instances of armed inter-clan and intra-clan conflict and serious human rights abuses continue to be reported in many southern and central areas as rival factions compete for control of local resources. As a result of this, there are many thousands of internally displaced persons living outside their traditional home area, particularly where rival clan factions have taken control of their home area. However, most ethnic Somalis (i.e. those belonging to major clans) are able to live safely within territories controlled by their clan. Though not usually targeted, civilians will very often know how to escape or avoid being involved in armed clan conflicts.[35]

3.3.4 ***Sufficiency of protection.*** In the absence of a central Government, most Somalis ensure their personal safety by residing in the 'home areas' of their clan, where they can seek and receive adequate protection from their kinship group.[36] Generally, only those unable to reside in such areas will not be able to obtain sufficient protection from ill treatment/persecution on the basis of clan membership.

3.3.5 ***Internal relocation.*** Those affiliated to major clan families, their immediate clan groups and associated sub clans should be able to safely reside in an area in which their clan is present. Freedom of movement is restricted in some parts of the country due to sporadic clan or sub-clan conflict, especially in southern and central regions. Checkpoints manned by militiamen loyal to one clan or faction or by the TFG or the Ethiopians can inhibit passage, nevertheless internal relocation for major clan affiliates is generally possible. Though there do continue to be security incidents along the main road between Mogadishu International Airport and the city, travel along the road is possible and individuals using it do not generally face any difficulties. TFG checkpoints on the road will make checks to ensure people are not engaged in armed opposition and trying to escape from the authorities but those who can demonstrate that they do not fit into this category should not have any problems.[37] Individuals will also not generally require an escort to travel on the road. However if they do consider an escort to be necessary, it is feasible for them to arrange one with their own clan before or after arrival.[38] Most if not all clans are represented in Mogadishu to some degree or another.[39]

3.3.6 ***Caselaw.***

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

[34] COIS Somalia Country Report May 2007 (Ethnic groups & Annexes C-D)
[35] COIS Somalia Country Report May 2007 (Ethnic Groups)
[36] COIS Somalia Country Report May 2007 (Ethnic groups; Somali clans & Annex C)
[37] BIA Fact Finding Mission report June 2007para 6.06
[38] BIA Fact Finding Mission report June 2007 section 6
[39] COIS Somalia Country Report May 2007 (Freedom of movement, Ethnic groups; Somali clans & Annex C)

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

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

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

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

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

NM and Others (Somalia) CG [2005] UKIAT 00076. Lone women – Ashraf. The Tribunal found that where the claimant, male or female, from Southern Somalia, is not found to be a minority clan member, there is a likely to be a location in southern Somalia in which the majority clan is able to afford protection sufficiently for neither Convention to apply. Although lone females will be at greater risk than males, they will not be able to show that, simply as lone females from the UK, they have no place of clan safety. … A majority clan is characterised as one which has its own militia. The strongly clan and family nature of Somali society makes it reasonably likely that a militia escort could sufficiently protect a returnee from Mogadishu through the road blocks and en route banditry to the clan home area. This is enabled by pre-arranged transportation from the airport. Unwillingness on the part of the claimant to make such an arrangement is irrelevant. … Being a single woman returnee is not of itself a sufficient differentiator.

Gedow and others v SSHD [2006] EWCA Civ 1342 found that it was impossible for Immigration Judges in cases involving the safety of arrival at an airport and of a journey into Mogadishu to deal with all the eventualities at the time of the hearing. The judge might have to make it clear what had to be done by the secretary of state so that an enforced returnee to Somalia did not face a real risk of Art.3 ill-treatment at the point of his return. The judge was then entitled to assume, for the purposes of the hearing before him, that what was required would be done, **GH** v Secretary of State for the Home Department (2005) EWCA Civ 1182 considered. G had shown that there could be real risks associated with the return to the airport and from there to home of a failed asylum seeker even from a majority clan. However, it was for the immigration judge to indicate what would need to be done to obviate the travel risks. A person whose claim to be a member of a minority clan had been disbelieved was unable to arrange for clan militia escorts until he knew where and when he was to be returned, **NM** (2005) UKIAT 00076 considered. Appeal dismissed.

3.3.7 ***Conclusion.*** Large parts of northern Somalia, namely Somaliland and Puntland, are considered generally safe regardless of clan membership. In other parts of Somalia it is unlikely than any Somali belonging to one of the major clan-families – their immediate clan groups or associated sub clans - would be able to demonstrate that they have a well-founded fear of persecution within the terms of the 1951 Convention on the basis of their clan affiliation alone. All clan family groups are represented in Mogadishu, many Somali clans are present in more than one area of Somalia and also in areas beyond Somalia's borders. Moreover, people displaced from their home area may move to other areas populated by their clan. Somalis are increasingly able to both visit and live in cities outside their clan's traditional domain. As emphasised in the cases of *NM and Others* and *DM* above, there will usually be an area in Somalia in which any major clan member can live safely under the protection of their 'home' clan or an associated clan group.

3.3.8 The general reduction in conflict in and around Mogadishu suggests that it is generally possible to travel safely about the city and to the city from the airport. Individuals are still flying into Mogadishu airport where AU troops are present and there has been no reporting of specific or sustained risks experienced by individuals travelling from the airport. If any protective measures are necessary in order to travel from the airport, it is feasible to

arrange such measures before or after arrival with ones own clan. This means that majority clan members are also generally able to travel to a different area of Mogadishu where members of their clan are also represented. The grant of asylum is therefore not likely to be appropriate in such cases.

3.4 Bajunis

3.4.1 Some Somalis will make an asylum and/or human rights claim based on mistreatment at the hands of major clan and sub-clan militias or other clan-based controlling groups in southern/ central Somalia on account of their underclass status as members of the Bajuni minority group.

3.4.2 ***Treatment.*** Somalis with no clan affiliation are the most vulnerable to serious human rights violations, including predatory acts by criminal and militias, as well economic, political, cultural and social discrimination. These groups comprise an estimated two million people or about one third of the Somali population and include the Bajuni.[40]

3.4.3 The Bajuni are a small independent ethnic community of perhaps 3,000 or 4,000 who are predominantly sailors and fishermen. They live in small communities along the Indian Ocean coastline (including Somalia and Kenya) and on some of the larger offshore islands between Kismayo and Mombasa, Kenya.[41]

3.4.4 The small Bajuni population in Somalia suffered considerably at the hands of Somali militia during the civil war in the early 1990s, have lost property and were prevented from pursuing their traditional livelihoods by occupying Somali clans, principally the Marehan. Though Marehan settlers still have effective control of the islands, Bajuni can work for the Marehan as paid labourers. This is an improvement on the period during the 1990s when General Morgan's forces controlled Kismayo and the islands, when the Bajuni were treated by the occupying Somali clans as little more than slave labour. Essentially the plight of the Bajuni is based on the denial of economic access by Somali clans, rather than outright abuse.[42]

3.4.5 Information provided by the Foreign and Commonwealth Office in January 2007 about the fluid country situation following the ousting of the UIC indicates that the risk to personal safety for the vast majority of Somalis, whether affiliated to majority or minority clans, is the same and that individuals are not targeted simply on the basis of their ethnicity. This view of the current situation should not however detract from previously held information which indicates that clan alignment and the associated support networks remain the cornerstone of Somali society. While for the vast majority of Somalis clan status may not in itself risk mistreatment, the Bajuni are not only outside the clan system but also are one of the few non-clan groups who cannot rely on a patron clan's support. As such they continue to be isolated and given their 'lowest of the low' status are vulnerable to discrimination and exclusion wherever they reside. [43]

3.4.6 ***Sufficiency of protection.*** Minority groups, such as the Bajuni, that are politically and economically the weakest and are culturally and ethnically distinct from Somali clan families such as the Bajuni are not able to secure protection from any major clan family or related sub-clan.[44] The Bajuni do not therefore have access to adequate protection from their persecutors.

3.4.7 ***Internal relocation.*** The Bajuni are vulnerable to discrimination and exclusion by major clan and sub-clan groups throughout southern/central Somalia,[45] internal relocation within these regions is therefore not a reasonable option.

3.4.8 ***Caselaw.***

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[40] COIS Somalia Country Report May 2007 (Ethnic groups; General security position for minority groups)
[41] Immigration Refugee Board Canada "Victims and Vulnerable Groups In Southern Somalia" May 1995
[42] COIS Somalia Country Report May 2007 (Ethnic groups: Bajunis)
[43] COIS Somalia Country Report May 2007 (Ethnic groups; General security position for minority groups)
[44] COIS Somalia Country Report May 2007 (Ethnic groups; General security position for minority groups)
[45] COIS Somalia Country Report May 2007 (Ethnic groups; General security position for minority groups)

AJH (Somalia) [2003] UKIAT 00094. Persons of Bajuni or Bravanese ethnicity are likely to face persecution and cannot reasonably relocate, particularly if they are female. This case sets out the test (at paragraph 33 of the determination) for caseworkers assessing the credibility of claims of Bajuni ethnicity but can be applied to all minority group claims. Essentially, what is required in cases involving Somali nationals of Bajuni ethnicity, is assessment of two separate issues (firstly the claimant's ethnicity and secondly their nationality). This assessment will include examination of at least 3 different factors:

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

The assessment must not treat any one of these factors as decisive - caseworkers should always have regard to whether the applicant's personal history explains any discrepancy in the results.

With non-Bajuni minority group claims, caseworkers should substitute the relevant dialect for Kibajuni.

KS (Somalia) CG [2004] UKIAT 00271. The background evidence on Somalia shows that members of certain clans or groups, such as the Bajuni, are likely to be able to demonstrate a risk of persecution on return. For such persons, clan membership will usually be determinative but may not be in cases where there are features and circumstances which indicate that the claimant is not in fact at the same risk as that faced generally by other clan members (for example where a female marries into a majority clan she may have protection from her husband's clan). The decision contains (at paras 40 to 44) further guidance on assessing the credibility of claims of Bajuni ethnicity, looking in particular at the issue of the language(s) spoken by the claimant.

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

3.4.10 Bajunis in Somalia are part of the underclass in Somali society and are subject to political and economic exclusion due mainly to them being culturally and ethnically unconnected to any major clan group. Due to their lack of cultural and ethnic ties to any majority clan or sub clan, they are unable to secure protection from any clan group and are therefore in a vulnerable position wherever they reside. Individual Somali claimants who have demonstrated a reasonable likelihood that they are of Bajuni ethnicity are likely to encounter ill treatment amounting to persecution in Somalia. The grant of asylum in such cases is therefore likely to be appropriate.

3.5 Benadiri (Rer Hamar) or Bravanese

3.5.1 Some claimants will make an asylum and/or human rights claim based on mistreatment at the hands of dominant clan and sub-clan militias or other clan-based controlling groups in southern/central Somalia on account of their underclass status as member of one of the Benadiri (Rer Hamar) or Bravanese minority groups.

3.5.2 ***Treatment.*** Somalis with no clan affiliation are the most vulnerable to serious human rights violations, including predatory acts by criminal and militias, as well as economic, political, cultural and social discrimination. These groups comprise an estimated two million people, or about one third of the Somali population and include the Benadiri (Rer Hamar) and Bravanese.[46]

3.5.3 The Benadiri are an urban people of East African Swahili origin. They all lost property during the war and the majority of Benadiri fled to Kenya. Those who remain live mainly in the coastal cities of Mogadishu, Merka and Brava. The situation of the Benadiri remaining in Somalia is difficult, as they cannot rebuild their businesses in the presence of clan militias. As at March 2004, 90% of the Rer Hamar population in Mogadishu had left the city as a consequence of civil war and lack of security. The majority of Rer Hamar who are still in Mogadishu are older people who live in Hamar Weyn and Shingani districts some of whom had been forced to marry off their daughters to members of the majority clans. Most homes belonging

[46] COIS Somalia Country Report May 2007 (Ethnic groups; General security position for minority groups)

to the Benadiri and Bravanese in Mogadishu had been taken over by members of clan militias, although sometimes the clan occupants allowed them to reside in one room.[47]

3.5.4 The Bravanese are believed to be of mixed Arab, Portuguese and other descent. Long established in the coastal town of Brava, which is controlled by the Habr Gedir, the Bravanese have been particularly disadvantaged and targeted by clan militia since the collapse of central authority in 1991. Most of the Bravanese have now fled from Brava and those who remain face abuses such as forced labour, sexual slavery and general intimidation.[48]

3.5.5 Information provided by the Foreign and Commonwealth Office in January 2007 about the fluid country situation following the ousting of the UIC indicates that the risk to personal safety for the vast majority of Somalis, whether affiliated to majority or minority clans, is the same and that individuals are not targeted simply on the basis of their ethnicity. This view of the current situation should not however detract from previously held information which indicates that clan alignment and the associated support networks remain the cornerstone of Somali society. While for the vast majority of Somalis clan status may not in itself risk mistreatment, the Benadiri or Bravanese are not only outside the clan system and cannot rely on a patron clan's support but also continue to be isolated and given their 'lowest of the low' status are vulnerable to discrimination and exclusion wherever they reside. [49]

3.5.6 ***Sufficiency of protection.*** Minority groups such as the Benadiri (Rer Hamar) and Bravanese based in southern or central Somalia are culturally and ethnically distinct from Somali clan families and are not able to secure protection from any major clan family or related sub-clan.[50] Though the Benadiri originate mainly from southern or central Somalia, a few who have been resident in more secure parts of the country such as Somaliland are able to avail themselves of the protection of a patron clan (see *A (Somalia) [2004] UKIAT 00080*).

3.5.7 ***Internal relocation.*** As the Benadiri (Rer Hamar) and Bravanese are vulnerable to discrimination and exclusion by major clan and sub-clan groups throughout southern and central Somalia , internal relocation within these regions is not a reasonable option.

3.5.8 ***Caselaw.***

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

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

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

A (Somalia) [2004] UKIAT 00080. Benadiri from Somaliland. The Tribunal found that, even if the claimant was a Benadiri, he was not at any real risk of persecution if he was returned to the

[47] COIS Somalia Country Report May 2007 (Ethnic groups; Bravanese and Benadiri)
[48] COIS Somalia Country Report May 2007 (Ethnic groups; Bravanese and Benadiri)
[49] COIS Somalia Country Report May 2007 (Ethnic groups; General security position for minority groups)
[50] COIS Somalia Country Report May 2007 (Ethnic groups; Bravanese and Benadiri)

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

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

3.6 Midgan, Tumal, Yibir or Galgala

3.6.1 Some applicants will make an asylum and/or human rights claim based on mistreatment at the hands of major clan and sub-clan militias or other clan-based controlling groups on account of their lowly status as members of one of the occupational castes: the Midgan, Tumal, Yibir or Galgala.

3.6.2 ***Treatment.*** The Gaboye/Midgan (usually referred to as the Midgan but also known as the Madhiban), Tumal and Yibir (a group said to have Jewish origins) traditionally lived in the areas of the four main nomadic clan families of Darod, Isaaq, Dir and Hawiye in northern and central Somalia though in the last few decades many of them have migrated to the cities. These groups are now scattered throughout the country. They are mainly found in northern and central regions but the Midgan have been able to settle in Puntland. Midgan can trade freely and their position improves at times of stability and recovery, although they are usually unable to own property and livestock. The Midgan, Tumal and Yibir and Galgala have always been placed at the lower end of Somali society and are subject to societal discrimination in urban centres from other clan groups and harassment where no patron clan protection exists, particularly in rural areas.[51]

3.6.3 Information provided by the Foreign and Commonwealth Office in January 2007 about the fluid country situation following the ousting of the UIC indicates that the risk to personal safety for the vast majority of Somalis, whether affiliated to majority or minority clans, is the same and that individuals are not targeted simply on the basis of their ethnicity. This view of the current situation should not however detract from previously held information which indicates that clan alignment and the associated support networks remain the cornerstone of Somali society. While for the vast majority of Somalis, including the Midgan, Tumal and Yibir clan status may not in itself risk mistreatment, the Galgala are not only outside the clan system but also are one of the few non-clan groups who cannot rely on a patron clan's support. As such they continue to be isolated and given their 'lowest of the low' status are vulnerable to discrimination and exclusion wherever they reside. [52]

3.6.4 ***Sufficiency of protection.*** These groups traditionally settle in areas where they can obtain protection from the dominant clan and engage in an economic activity. Most have assimilated into the other Somalia clans with whom they live. Some Gaboye, Tumal and Yibir assimilated into the Isaaq in Somaliland, while others have assimilated into the Darod in Puntland and central regions. Other Gaboye, Tumal and Yibir have assimilated with Hawadle, Murasade and Marehan clans in Galgadud region.[53] Members of groups other

[51] COIS Somalia Country Report May 2007 (Ethnic groups; Midgan, Tumal, Yibil and Galgala & Annexes C-D)
[52] COIS Somalia Country Report May 2007 (Ethnic groups; General security position for minority groups)
[53] COIS Somalia Country Report May 2007 (Ethnic groups; Midgan, Tumal, Yibil and Galgala & Annex D)

than the Galgala are therefore able to seek and receive adequate protection from their patron clans.

3.6.5 ***Internal relocation.*** Those assimilated into major clan families, their clan groups and associated sub clans should be able to safely reside in an area in which their patron clan is present. Freedom of movement is restricted in some parts of the country due to sporadic clan or sub-clan conflict, especially in southern and central regions. More usually, checkpoints manned by militiamen loyal to one clan or faction inhibit passage by other groups. Nevertheless internal relocation for members of occupational castes other than the Galgala is generally possible. Though there do continue to be security incidents along the main road between Mogadishu International Airport and the city, travel along the road is possible and individuals using it do not generally face any difficulties. TFG checkpoints on the road will make checks to ensure people are not engaged in armed opposition and trying to escape from the authorities but those who can demonstrate that they do not fit into this category should not have any problems.[54] Individuals will also not generally require an escort to travel on the road. However if they do consider an escort to be necessary, it is feasible for them to arrange one with their own clan before or after arrival.[55] Most if not all clans are represented in Mogadishu to some degree or another.[56]

3.6.6 ***Caselaw.***

YS and HA (Somalia) CG [2005] 00088. Midgan not generally at risk. The Tribunal found that while being a woman or lone woman increases the level of risk under the Refugee Convention or the ECHR… the question of real risk comes down to whether a Midgan would be able to access protection from a majority clan patron. There is nothing to show that such protection would be denied to a female Midgan where it would be afforded to a male Midgan.

HY (Somalia) [2006] UKAIT 00002. Yibir – *YS and HA* applied. The finding of the IAT in *YS and HA* that a Midgan who had lost the protection of a local patron or patrons, and who had not found alternative protection in the city would be vulnerable to persecution is good law and applies to Yibir as well (para 17). Where the only 'protection' available takes the form of forced labour, if not servitude, the appellant is at risk of inhuman or degrading treatment (para 18). Internal relocation is not an option (para 17).

MA (Somalia) CG [2006] UKAIT 00073. Galgala – Sab clan. The Tribunal found a distinction between the access to protection for the Midgan, Tumal and Yibir on one hand and the Galgala on the other. Unlike for the other groups, the evidence does not indicate that the Galgala can avail themselves of the protection of patron clan groups or return to a safe 'home' area. The appeal was allowed on 1951 Convention and Article 3 ECHR grounds.

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

3.6.8 It is not clear however that members of the Galgala group are able either to reside safely in a home area or avail themselves of the protection of a patron clan group in the same way that the Midgan, Tumal and Yibir are. Consequently individuals affiliated to this group are likely to encounter treatment in breach of the 1951 Convention and should be granted asylum.

[54] BIA Fact Finding Mission report June 2007para 6.06
[55] BIA Fact Finding Mission report June 2007 section 6
[56] COIS Somalia Country Report May 2007 (Freedom of movement, Ethnic groups; Somali clans & Annex C)

3.7 Female Genital Mutilation (FGM)

3.7.1 Some claimants may make asylum and/or human rights claims on the basis that they would be forcibly required by family/ clan members to undergo Female Genital Mutilation (FGM) and/ or that FGM will be forced upon their children if they were to return to Somalia.

3.7.2 ***Treatment****:* The practice of FGM is widespread throughout Somalia. There have been estimates that up to 98% of women have undergone FGM which according to the United Nations Children's Fund (UNICEF) is primarily performed on girls aged 4-11[57]. The majority of women are subjected to infibulation commonly referred to as "pharaonic circumcision", the most severe form of FGM. The less radical type of FGM sometimes called "sunna" is practised mainly in the coastal towns of Mogadishu, Brava, Merca and Kismayo.[58] In Puntland and Somaliland FGM is illegal; however, the law is not enforced.[59]

3.7.3 Many Somalis mistakenly view the FGM procedure as a religious obligation. The concept of family honour is also involved. FGM is carried out to ensure virginity and because virginity and family honour are seen as related, it is believed that a family's honour will remain in tact if daughters undergo the procedure. Women who do not undergo the procedure may be thought of as having loose morals or will provide less bridalwealth for their families.[60]

3.7.4 The avoidance of FGM is dependent on whether a girl is from the town or the countryside. If a family lives in a major city it is possible to avoid FGM so long as the parents agree (even if the rest of the family and/ or clan do not support the idea). It has also been reported that there is a tendency towards Somali men being more easily convinced not to have their daughters circumcised.[61]

3.7.5 Despite the fact that the practice of FGM is entrenched in Somali culture and custom, NGOs have made intensive efforts to educate the population about the dangers of the practice particularly those NGOs working with women's or health issues. For example, the United Nations Development Fund for Women (UNIFEM) has worked together with local NGOs in Jilib and Mogadishu.[62] However, there are no reliable statistics to measure the success of their programs.

3.7.6 UNIFEM has also indicated that a mother can protect her daughter from FGM if she has her husband's support and he has some standing in the community to counter any opposition from the rest of the family. If the husband does not support his wife's decision, then his wife does have the option to leave the community with the child.[63]

3.7.7 ***Sufficiency of protection:*** Though illegal in Somaliland and Puntland, the law on FGM in these areas is not enforced. The procedure is also widely practised in the rest of Somalia where it is legal. FGM is generally considered a cultural issue in which the authorities do not interfere and therefore individuals may not be able to access sufficiency of protection.

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[57] UNICEF advocacy paper: Eradication of Female Genital Mutilation in Somalia http://www.unicef.org/somalia/cpp_136.html

[58] USSD Somalia: Report on Female Genital Mutilation (FGM) or Female Genital Cutting (FCM) – June 2001 http://www.asylumlaw.org/docs/somalia/usdos01_fgm_Somalia.pdf

[59] Somalia COIR (Women; FGM) – 8 May 2007

[60] USSD Somalia: Report on Female Genital Mutilation (FGM) or Female Genital Cutting (FCM) – June 2001

[61] Report on the Human Rights and Security in Central and Southern Somalia: Joint British-Nordic Fact-Finding Mission to Nairobi 7-21 January 2004, published 17 March 2004. http://www.unhcr.org/home/RSDCOI/405b2d804.pdf

[62] Report on the Human Rights and Security in Central and Southern Somalia: Joint British-Nordic Fact-Finding Mission to Nairobi 7-21 January 2004, published 17 March 2004. http://www.unhcr.org/home/RSDCOI/405b2d804.pdf

[63] Report on the Human Rights and Security in Central and Southern Somalia: Joint British-Nordic Fact-Finding Mission to Nairobi 7-21 January 2004, published 17 March 2004. http://www.unhcr.org/home/RSDCOI/405b2d804.pdf

3.7.8 ***Internal relocation:*** Internal relocation to escape a localised threat of FGM from members of a family/ clan is an option. Those women affiliated to major clan families, their immediate clan groups and associated sub clans should be able to safely reside in an area in which their clan is present. Freedom of movement is restricted in some parts of the country due to sporadic clan or sub-clan conflict, especially in southern and central regions. Checkpoints manned by militiamen loyal to one clan or faction or by the TFG or the Ethiopians can inhibit passage, nevertheless internal relocation for major clan affiliates is generally possible.

3.7.9 Though there do continue to be security incidents along the main road between Mogadishu International Airport and the city, travel along the road is possible and individuals using it do not generally face any difficulties. TFG checkpoints on the road will make checks to ensure people are not engaged in armed opposition and trying to escape from the authorities but those who can demonstrate that they do not fit into this category should not have any problems.[64] Individuals will also not generally require an escort to travel on the road. However if they do consider an escort to be necessary, it is feasible for them to arrange one with their own clan before or after arrival.[65] Most if not all clans are represented in Mogadishu to some degree or another.[66]

3.7.10 Large parts of northern Somalia, namely Somaliland and Puntland, are considered generally safe regardless of clan membership. However, the authorities controlling the Somaliland and Puntland regions have made it clear that they would only admit to the areas they control those who originate from that territory or those who have close affiliations to the territory through clan membership. In the case of majority clan affiliates, this means those associated with the Majerteen in Puntland and the Isaaq in Somaliland.[67]

3.7.11 However, each case must be considered on its individual merits. Some women relocating within Somalia to escape an individualised threat of FGM or to escape so that their daughters do not have to undergo the procedure may encounter a lack of acceptance by others in a new environment as well as a lack of accommodation etc which may make internal relocation unduly harsh.

3.7.12 ***Conclusion:*** Though illegal in Somaliland and Puntland, FGM remains widely practised in these areas and the law is not enforced. FGM is also widely practised in the rest of Somalia where it has not been made illegal. There are a number of NGOs working to promote women's rights and campaign against FGM. However, there is no reliable information to indicate the success of these campaigns.

3.7.13 It is evident that not all Somali females would face being ostracised from their community if they chose not to undergo FGM either for themselves or their daughters, for example, a mother can protect her daughter from being circumcised if she has her husband's support and he has some standing in the community to counter any opposition from the rest of the family. Internal relocation may also be a viable option for some to escape a localised threat of them/ their daughter having to undergo the procedure. However, each case must be considered on its individual merits. Much will depend on the ability of the woman to live independently of her family and the availability of other family members who might be able to offer protection.

3.7.14 f it is considered that an individual could successfully internally relocate individually and/or with their daughters in order to avoid a threat of FGM, a grant of asylum or Humanitarian protection will not be appropriate. Women who have not undergone the procedure and who can demonstrate that they are at risk of such mistreatment and could not escape the risk by internal relocation should be granted asylum.

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[64] BIA Fact Finding Mission report June 2007para 6.06
[65] BIA Fact Finding Mission report June 2007 section 6
[66] COIS Somalia Country Report May 2007 (Freedom of movement, Ethnic groups; Somali clans & Annex C)
[67] COIS Somalia Country Report May 2007 (Ethnic groups; Somali clans & Annex C)

3.8 Prison conditions

3.8.1 Applicants may claim that they cannot return to Somalia due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in Somalia are so poor as to amount to torture or inhuman treatment or punishment.

3.8.2 The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of Humanitarian Protection. If imprisonment would be for a Refugee Convention reason or in cases where for a Convention reason a prison sentence is extended above the norm, the claim should be considered as a whole but it is not necessary for prison conditions to breach Article 3 in order to justify a grant of asylum.

3.8.3 ***Consideration.*** Prison conditions remained harsh and life threatening in 2006. The main Somaliland prison in Hargeisa designed for 150 inmates, held over 700 prisoners. The UNIE [UN Independent Expert on Human Rights in Somalia] during his 2005 visit stated that, in general, Somaliland prisons lacked funding and management expertise. Overcrowding, poor sanitary conditions, a lack of access to adequate health care and inadequate food and water supply persisted in prisons throughout the country. Tuberculosis, HIV/AIDS, and pneumonia were widespread. Abuse by guards reportedly was common in many prisons. The detainees' clans generally were required to pay the costs of detention. In many areas, prisoners were able to receive food from family members or from relief agencies.[68]

3.8.4 Convicted juveniles continued to be kept in jail cells with adult criminals. The UNHCR independent expert noted in his September 2006 report that prisons in the areas that he as able to visit remained poor.[69]

3.8.5 ***Conclusion.*** Whilst prison conditions in Somalia are poor and taking into account overcrowding, poor sanitary conditions, a lack of access to adequate health care, an absence of education and vocational training, abuse by guards and widespread tuberculosis, conditions are unlikely to reach the Article 3 threshold. Therefore even where claimants can demonstrate a real risk of imprisonment on return to Somalia a grant of Humanitarian Protection will not generally be appropriate. However, the individual factors of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3, relevant factors being the likely length of detention the likely type of detention facility and the individual's age and state of health. Where in an individual case treatment does reach the Article 3 threshold a grant of Humanitarian Protection will be appropriate.

4. Discretionary Leave

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

4.1.2 With particular reference to Somalia the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the Asylum Instructions on Discretionary Leave and on Article 8 ECHR.

[68] COIS Somalia Country Report May 2007 (Prison conditions)
[69] COIS Somalia Country Report May 2007 (Prison conditions)

4.2. Minors claiming in their own right

4.2.1 Minors claiming in their own right who have not been granted asylum or HP can only be returned where there are adequate reception, care and support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, care and support arrangements in place in Somalia.

4.2.2 Minors claiming in their own right without a family to return to, or where there are no adequate reception, care and support arrangements, should if they do not qualify for leave on any more favourable grounds be granted Discretionary Leave for a period as set out in the relevant Asylum Instructions.

4.3. Medical treatment

4.3.1 Applicants may claim they cannot return to Somalia due to a lack of specific medical treatment. See the IDI on Medical Treatment, which sets out in detail the requirements for Article 3 and/or Article 8 to be engaged.

4.3.2 According to Medecins Sans Frontiers (MSF) in January 2004 (and reaffirmed in January 2006) the overall level of healthcare and possibilities for treatment in central and southern Somalia were very poor. MSF refers to a lack of basic medical training amongst the personnel (doctors and particularly nurses) operating at the limited number of hospitals and clinics in the region. It was estimated that up to 90% of the doctors and health staff in hospitals is insufficiently trained. For those with sufficient funding to pay for treatment, primary healthcare was available in all regions. MSF indicated that women and children had a better chance of receiving treatment on the grounds that they are less likely to be the target of militias. The actual situation does vary within different parts of the country although the few health workers who remain tend to be based in the more secure urban centres.[70]

4.3.3 In Mogadishu there are two public hospitals (Medina and Keysane) with facilities to perform certain surgical procedures. Public hospitals in Galkayo (Mudug) and Kismayo (Lower Juba) serve enormous areas. These hospitals were beset with insecurity, lack of funding, equipment, qualified staff and drugs. The only other hospitals in southern/central regions - in Belet Weyne (Hiran) and Baidoa (Bay and Bakool) - have been closed for some years. Aid agencies have attempted to fill the gap in areas where health services and structures have all but collapsed. They struggle to provide health care in remote areas, where reaching the patients is a major problem. The Somali private health sector has grown considerably in the absence of an effective public sector. Of the population who get any care at all, about two thirds of them get it from the private health sector.[71]

4.3.4 Mental health care provision is provided by NGOs who assist in the provision of services to mental patients and street children and training for primary health care personnel. There are only three centres for psychiatry including the mental hospital in Berbera and the general psychiatric wards in Hargeisa and Mogadishu. There is no private psychiatric inpatient facility though there are a few private clinics in Mogadishu and Hargeisa.[72]

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

5. Returns

5.1. Factors that affect the practicality of return such as the difficulty or otherwise of, where necessary, obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the

[70] COIS Somalia Country Report May 2007 (Medical issues; Overview)
[71] COIS Somalia Country Report May 2007 (Medical issues; Overview, Hospitals, Provision of hospitals care…)
[72] COIS Somalia Country Report May 2007 (Medical issues; Mental Health Care)

Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.

5.2. There is no policy precluding the return of failed Somali asylum seekers to any region of Somalia. Those without any legal basis of stay in the UK may also return voluntarily to any region of Somalia. There are scheduled air services to a number of destinations in Somalia – Mogadishu, Bosasso, Hargeisa, Berbera, Burao and Galcaiyo. Returns to Somaliland are conducted under the terms of a confidential Memorandum of Understanding (MoU) between the UK and the Somaliland authorities which provides for the return of those individuals who have no legal basis to remain in the United Kingdom but who have a right of return to Somaliland.

5.3. In its position paper of November 2005, UNHCR recommended that asylum-seekers originating from southern and central Somalia are in need of international protection and, excepting exclusion grounds, should be granted, if not refugee status then complementary forms of protection. UNHCR also re-iterated its call upon all governments to refrain from any forced returns to southern and central Somalia. [73] UNHCR's paper provides a broad assessment of the situation in Somalia and we do not dispute that it presents an accurate overview of the general humanitarian situation and the serious social and security problems inherent in a country without a central government. However, asylum and human rights claims are not decided on the basis of the general situation - they are based on the circumstances of the particular individual and the risk to that individual. We do not therefore accept UNHCR's conclusion, based on their overview of the general situation that it is unsafe for all persons who have been found not to be in need of some form of international protection to return to Somalia.

5.4. ***Caselaw.***

NM and Others (Somalia) CG [2005] UKIAT 00076. Risk on return for major clan member. The Tribunal found that where the claimant, male or female, from Southern Somalia, is not found to be a minority clan member, there is a likely to be a location in southern Somalia in which the majority clan is able to afford protection sufficiently for neither Convention to apply. Although lone females will be at greater risk than males, they will not be able to show that, simply as lone females from the UK, they have no place of clan safety. … A majority clan is characterised as one which has its own militia. The strongly clan and family nature of Somali society makes it reasonably likely that a militia escort could sufficiently protect a returnee from Mogadishu through the road blocks and en route banditry to the clan home area. This is enabled by pre-arranged transportation from the airport. Unwillingness on the part of the claimant to make such an arrangement is irrelevant. … Being a single woman returnee is not of itself a sufficient differentiator.

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

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

5.5. Somali nationals may return voluntarily to any region of Somalia at any time by way of the Voluntary Assisted Return and Reintegration Programme run by the International

[73] COIS Somalia Country Report May 2007 (UNHCR position on the return of rejected asylum seekers)

Organization for Migration (IOM) and co-funded by the European Refugee Fund. Under these arrangements IOM are able to assist with returns to Mogadishu, Hargeisa, Bosasso and Galcaiyo. IOM will provide advice and help with obtaining any travel documents and booking flights, as well as organising reintegration assistance in Somalia. The programme was established in 2001, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Somali nationals wishing to avail themselves of this opportunity for assisted return to Somalia should be put in contact with the IOM offices in London on 0800 783 2332 or www.iomlondon.org.

6. List of source documents

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Asylum and Appeals Policy Directorate
12 October 2007