

OPERATIONAL GUIDANCE NOTE

SOMALIA

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1 Introduction

- 1.1.** This document provides UKBA case owners with guidance on the nature and handling of the most common types of claims received from nationals/residents of Somalia, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Case owners must refer to the relevant Asylum Instructions for further details of the policy on these areas.
- 1.2.** Case owners *must not* base decisions on the country of origin information in this guidance; it is included to provide context only and does not purport to be comprehensive. The conclusions in this guidance are based on the totality of the available evidence, not just the brief extracts contained herein, and case owners must likewise take into account all available evidence. It is therefore essential that this guidance is read in conjunction with the relevant COI service country of origin information and any other relevant information.

COI Service information is published on Horizon and on the internet 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, case owners 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.

2. Country assessment

2.1 Case owners should refer to the relevant COI Service country of origin information material. An overview of the country situation including headline facts and figures about the populations, capital city, currency as well as geography, recent history and current politics can also be found in the relevant FCO country profile at:

<http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/>

2.2 An overview of the human rights situation in certain countries can also be found in the FCO Annual Report on Human Rights which examines developments in countries where human rights issues are of greatest concern:

<http://centralcontent/fco.gov.uk/resources/en/pdf/human-rightsreports/humanrights-report-2009>

3. Main categories of claims

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

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

3.3 If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the claimant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.

3.4 All Asylum Instructions can be accessed on the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:

<http://www.ukba.homeoffice.gov.uk/documents/asylumpolicyinstructions/>

3.5 Credibility

3.5.1 This guidance is **not** designed to cover issues of credibility. Case owners will need to consider credibility issues based on all the information available to them. For guidance on credibility see para 11 of the Asylum Instructions on 'Considering the Asylum Claim' and Assessing Credibility in Asylum and Human Rights claims'. Case owners must also ensure that each asylum application has been checked against previous UK visa applications. Where an asylum application has been biometrically matched to a previous visa application, details should already be in the Home Office file. In all other cases, the case

owner should satisfy themselves through CRS database checks that there is no match to anon-biometric visa. Asylum applications matches to visas should be investigated prior to the asylum interview, including obtaining the Visa Application Form (VAF) from the visa post that processed the application.

3.6 General country situation in southern and central regions

3.6.1 Some claimants will make an asylum and/or human rights claim based on the security situation in Somalia, in particular the security situation in southern and central regions.

3.6.2 *Treatment.* Fighting by TFG troops, allied militias, and AMISOM forces against anti-government forces in southern and central Somalia increased in 2009 and resulted in widespread human rights abuses including the killing of thousands of civilians, the displacement of more than one million and widespread property damage, particularly in Mogadishu. Roadside bombings decreased but suicide bombings increased.¹ However, a fall in clashes between government troops and insurgents has led to a substantial drop in the numbers of civilians killed in fighting in Mogadishu in 2009. Rebels have focused more on attacking government targets and African Union (AU) peacekeepers with suicide bombs and mortar shells. The Mogadishu-based Elman Peace and Human Rights Organisation states that 1,739 civilians were killed in fighting in 2009, down from 7,574 in 2008 and 8,636 in 2007. At least 4,911 civilians were wounded and 3,900 families displaced by clashes in 2009.²

3.6.3 While Mogadishu remains the focus of the insurgency, fighting has occurred in other parts of the country, especially in Beledweyne and Kismayo, as well as in Gedo and Bakool regions. The overall deterioration in the human rights situation includes Somaliland and Puntland. The northern regions of Galgaduud and Mudug remain tense and tensions between the regional authorities of Puntland and Somaliland (over border issues) continue. There are reports of population displacements due to violence from Jowhar to Harardhere. Fighting between Hizbul Islam and ASWJ around the central towns of Dhusamareb and Beletweyne displaced more than 25,000 people at the beginning of 2010. The political situation in Puntland remains generally calm despite violent incidents linked to inter-clan fighting, along with abductions and assassination. A continuous influx of new arrivals of IDPs from South Central, in addition to piracy and human trafficking remain challenging for the stability of Puntland.³ The Puntland authorities have made significant achievements in reorganising police and security forces and shown commitment to rule of law and democracy but its treatment of new arrivals it considers a security threat has caused some concern.⁴

3.6.4 Al-Shabaab and Hizbul Islam are both offshoots of the UIC but differ in outlook. The main threat is posed by al-Shabab which has been designated a terrorist group by the US, UK, Canada and Australia. Hizbul Islam is more moderate in its ideology and concerned with local rather than international issues. It has stated that it will stop fighting if all 'foreign forces' leave Somalia, including AMISOM. Al-Shabaab has confirmed the presence of foreign fighters within its ranks and has stated that it is working with Al-Qaida to remove the government of Somalia. It has recently experienced an influx of jihadists from Afghanistan, Pakistan and the Gulf countries who are reportedly taking over from Somali nationalist jihadists. This new strategy is likely to replace local clan affiliated leaders which might deepen the split within the extremist Islamist movement. Most estimates place the total number of al-Shabaab fighters in the range of 2,500-5,000. Its leadership comprises people

¹ USSD 2009

² http://www.elmanpeace.org/news-2009-Jan-26/18/civilian_deaths_in_somalia_fall-in2009_group.aspx

³ UN Report of Independent Expert on the Human Rights situation in Somalia 8 March 2010 <http://www.reliefweb.int/rw/rwb.nsf/db900SID/SNAA-83F7NS?OpenDocument> and UNHCR eligibility guidelines 5 May 2010 <http://www.unhcr.org/refworld/docid/4be3b9142.html>

⁴ COI report 2010

from almost all Somali clans which make it less prone to the clan rivalry that besets its rivals. However, the movement faces growing resistance from clan and moderate Islamist groups including Hizbul Islam. Fighting with Hizbul Islam in Kismayo and tensions in Mogadishu could lead to the end of their alliance.^{5 6 7}

- 3.6.5** Al-Shabaab governs with local administrations: region-by-region and city-by-city. It reportedly raises money by taxing international aid organisations, collecting *zakat* from citizens, levies on the international *khat* trade, receiving remittances from abroad and financial support from Eritrea.⁸ It provides government services to its constituents, enforces a strict interpretation of shari'a law, and maintains its grip on power by using violence and intimidation. The group also conducts terror operations, including suicide bombings, against its perceived enemies and views itself as part of the global jihad movement.⁹ Human Rights Watch reported in April 2010 that al-Shabaab has brought greater stability than many parts of Somalia have known for years. Even critics have credited the group with bringing peace and order to communities that had been plagued by crime and insecurity since the collapse of the Somali state. The group are said to have wiped out banditry and freelance militias but that stability had often come at a high cost to the local population, especially women.¹⁰
- 3.6.6** Al-Shabaab currently controls much of southern and central Somalia, including large portions of Mogadishu. The TFG has maintained control of a few areas in the south east of the city, government installations, the Presidential palace and strategic locations such as the airport and seaport. Al-Shabaab controls large portions of Mogadishu including the north and north-east parts of the city, the main stadium and the main market.^{11 12} It controls nearly all of Middle and Lower Jubba regions, Gedo region, Bay region, Bakool region, and parts of Lower Shabelle region. This includes control of the key port cities of Kismayo and Marka and the Kenya border town of Diif. It also wields significant influence in Middle Shabelle and Hiraan region. In some parts of the country (i.e. Mogadishu), it works closely with Hizbul Islam, and in other parts of the country (i.e. Kismayo and Diif) it has battled Hizbul Islam for territory.¹³ Hizbul Islam controls Beledweyne and administers Hiraan region as well as Afgoi district near Mogadishu. The third Islamist group, Ahlu Sunna wa al Jama'a (ASWJ), tends to align itself with the governments, both local and national. It has worked in cooperation with the TFG and with the Galmudug Administration, which spans the Mudug and Galguduud regions.¹⁴
- 3.6.7** The human rights situation has deteriorated particularly in areas controlled by al-Shabaab and allied extremist groups. Al-Shabaab and other armed groups have continued to violate women's rights in southern and central Somalia. Women face arbitrary detention, restriction of movement and other forms of abuse for failure to obey orders, including non-observance

⁵ COI Country Report 2010

⁶ BBC News 'Behind Somalia's Islamist Rivalry' 1 October 2009
<http://news.bbc.co.uk/1/hi/world/africa/8284958.stm>

⁷ UN Report of Independent Expert on the Human Rights situation in Somalia 8 March 2010
<http://www.reliefweb.int/rw/rwb.nsf/db900SID/SNAA-83F7NS?OpenDocument>

⁸ COI report 2010 and AEI Critical Threats 'Operation Briefer: the Upcoming Battle for Mogadishu 1.04.10
<http://www.criticalthreats.org/somalia/operation-briefer-upcoming-battle-mogadishu-april-1-2010>

⁹ AEI Critical Threats 'The Terror Threat from Somalia; The Internationalization of al-Shabab' 12.02.10
<http://www.criticalthreats.org/somalia/terror-threat-somalia-internationalization-al-shabaab-feb-12-2010>

¹⁰ <http://www.hrw.org/en/reports/2010/04/13/harsh-war-harsh-peace>

¹¹ USSD 2009

¹² AEI Critical Threats 'Somalia Conflict Maps: Islamist and Political', 12 February 2010
<http://www.criticalthreats.org/somalia/somalia-conflict-maps-islamist-and-political>

¹³ COI report 2010 and AEI Critical Threats 'Operation Briefer: the Upcoming Battle for Mogadishu 1.04.10

¹⁴ AEI Critical Threats 'Somalia Conflict Maps: Islamist and Political', 12 February 2010

of dress codes. There is a rising pattern of inhuman and degrading treatment, including stoning, amputations, floggings and corporal punishment. Men too are subjected to inhuman and cruel treatment for their illicit relationship with women and other offences such as 'spying'. Journalists have been repeatedly subjected to threats and short-term arbitrary detentions, particularly in Baidoa and Kismayo. Al-Shabaab has increasingly targeted civil society groups, peace activists, media and human rights organisations. Humanitarian assistance has been severely hampered by the prevailing insecurity and threats specifically targeting humanitarian agencies. In southern and central Somalia there is evidence that children are being exposed to recruitment into armed forces by all parties to the conflict.¹⁵

- 3.6.8** AMISOM troops guarding Mogadishu have themselves frequently been targeted. The worst incident of this kind occurred in September 2009 when the Deputy Force Commander and at least 17 peacekeepers were killed in coordinated suicide attacks on AMISOM troops.¹⁶ In October, on two separate occasions, insurgent groups launched mortar attacks on the aircraft transporting President Sharif. On 3 December, a terrorist attack was launched during a graduation ceremony for medical students being held at a hotel in Mogadishu. Reports indicate that at least 23 people were killed, including three cabinet ministers as well as graduating students, family members and journalists.¹⁷ On 1 May, a bomb blast in a mosque in Bakara market, Mogadishu's main market, killed at least 30 people including al-Shabaab members and wounded 70 others. According to witnesses, a high-ranking member of al-Shabaab was the target.¹⁸
- 3.6.9** The TFG's respect for human rights improved in 2009 and it was not responsible for politically motivated killings, executions or disappearances. Incremental improvements in human rights awareness were taking place in some areas of the country. Allegations against TFG security forces decreased and its police and prison personnel were generally responsive on human rights problems.¹⁹
- 3.6.10** Rising threats and attacks on humanitarian operations, as well as the imposition of demands from armed groups, have made it virtually impossible for the World Food Programme (WFP) to continue reaching people in need in southern Somalia. Inflammatory statements by al-Shabaab against relief organisations, threats against humanitarian staff, explicit rejection of foreign food aid and demands for fees have all worsened. Nevertheless, efforts are being strengthened to sustain critical food aid operations in southern and central Somalia. WFP is continuing to provide life saving food distributions in the rest of the country, including Mogadishu, reaching more than two-thirds of the people it has been targeting.²⁰ From November 2007 to May 2010, SAACID, an indigenous Somali NGO, delivered 48,887,994 meals to the most vulnerable within Mogadishu City.²¹
- 3.6.11** Humanitarian assistance for Mogadishu, Afgooye and critical drought stricken regions in southern and central Somalia will be prioritised. By November 2009, the total number of internally displaced persons reached 1.55 million, 93% concentrated in southern and central areas, including 524,000 in the Afgooye corridor.²² Hizbul Islam partly controls the Afgoye Corridor and neighbouring areas. Although the security situation is difficult along the Afgoye Corridor, nonetheless a relatively high amount of relief work has been carried out in the camps in which committees elected by IDPs have been established. Cooperation

¹⁵ USSD 2009 and COI report 2010

¹⁶ UN Report of Independent Expert on the Human Rights situation in Somalia 8 March 2010
<http://www.reliefweb.int/rw/rwb.nsf/db900SID/SNAA-83F7NS?OpenDocument>

¹⁷ UN Report of Independent Expert on the Human Rights situation in Somalia 8 March 2010

¹⁸ <http://www1.voanews.com/english/news/Bombs-Kill-30-at-Mogadishu-Mosque--92581964.html>

¹⁹ USSD 2009

²⁰ COI report 2010

²¹ http://www.saacid.org/Emergency_Relief.html

²² UN Report of Independent Expert on the Human Rights situation in Somalia 8 March 2010

between NGOs and the committees works well. The camp committees also prevent the activities of so-called *gatekeepers*, extortionists who demand payment from camp residents and aid organisations.²³

- 3.6.12 *Actors of protection.*** Case owners must refer to the Asylum Policy Instruction on Assessing the Claim. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Case owners should also take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.
- 3.6.13** 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 or other protection is not relevant.
- 3.6.14 *Internal relocation.*** Case owners must refer to the Asylum Policy Instructions on both Internal Relocation and Gender and apply the test set out in paragraph 3390 of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.
- 3.6.15** The UNHCR Eligibility Guidelines (May 2010) conclude that where the examination of an Internal Flight Argument/Internal Relocation Argument is a requirement under domestic law, it should be examined on a case-by-case basis, taking into consideration the specific circumstances of the asylum-seeker within the UNHCR guidelines.²⁴
- 3.6.16** In accordance with those guidelines, the UK very carefully considers the appropriateness of internal relocation on a case by case basis taking full account of the individual circumstances of the particular claimant and the specific risk to that individual. In general, if an applicant who faces a real risk of ill-treatment/persecution in their home area can relocate to another part of Somalia where they would not be at real risk, whether from state or non-state actors, and it would not be unduly harsh to expect them to do so, then asylum or humanitarian protection should be refused. There may be some whose home area is Mogadishu, for example, but for whom internal relocation to other areas may be viable. An individual may be able to enlist the support of family or clan or otherwise survive economically in areas other than Mogadishu provided he would be of no adverse interest to al-Shabaab, or whichever group is in control of the proposed area of relocation. In line with usual practice, if case owners propose internal flight, they will need to consider the suitability of the proposed area and whether this would be accessible to the returnee. When considering the reasonableness or otherwise of internal relocation, case owners should refer to the Asylum Instruction 'Internal Relocation' for further guidance.

²³ Landinfo report June 2009 http://www.landinfo.no/asset/1061/1/1061_1.pdf

²⁴ UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Somalia 5 May 2010 <http://www.unhcr.org/refworld/docid/4be3b9142.html>

- 3.6.17** Throughout 2009, al-Shabaab has continued to consolidate its control in large parts of central and southern Somalia. There are many parts of central and southern Somalia where there is no ongoing fighting because territorial control has been established. In the areas now fully under al-Shabaab control, the human rights situation is poor but there are low levels of generalised violence. In areas controlled by the TFG, the human rights position is less problematic but there are likely to be high levels of generalised violence due to continued challenges by insurgents.
- 3.6.18** Checkpoints operated by the TFG have decreased and there were no reports of armed clan factions operating checkpoints in 2009. Al-Shabaab has established checkpoints at the exit/entry routes of the towns under its control for security reasons. It checks goods, searches people and ensures that its strict Islamic codes are enforced, but does not collect money. There were no reports of checkpoints between towns or within towns, as was common in previous years with the exception of Mogadishu where there are checkpoints in the city.^{25 26}
- 3.6.19** There are several checkpoints on the route from Mogadishu towards the Central Regions and some precautions may be necessary particularly during militia fightings. During overland trips clan protection is not required unless ongoing animosities between two rival clans are involved. The transporter is most of the time the guarantor of the safety of the passengers because he is familiar with the route, militias and all the checkpoints. Within south central and Puntland, people mostly travel on buses and minibuses.²⁷
- 3.6.20** Restrictions on movement have reduced significantly as compared to the situation considered by the AIT in *AM* where illegal checkpoints had proliferated to excessive levels. Al-Shabaab has reportedly eradicated extortion, robbery and murder from bandits in areas it controls. There is no evidence that those not of adverse interest to the TFG, al-Shabaab or groups such as Hizbul Islam or ASWJ who have a presence in particular areas, would be unable to pass through checkpoints safely. There may be some security incidents whilst travelling in Somalia and, although individuals will not generally need an escort, if they consider an escort necessary, it is feasible for them to arrange one either before or after arrival.
- 3.6.21** Somaliland and Puntland, are in general relatively safe but the authorities in these regions will only admit 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. In Somaliland taxis and 4x4 vehicles can easily travel from Hargeisa, Burao, Lasanod and Garowe. The main transportation between Somaliland and South Central is by lorry. People travel by air between Mogadishu and Hargeisa.²⁸
- 3.6.22** Given the generally lower levels of fighting and the relative ease of travel within many areas of Somalia, the risks of travel are likely to be less problematic than those considered by the AIT. It will be feasible for many to return to their home areas from Mogadishu airport as most areas are more accessible than previously. Mogadishu airport continues to function normally.²⁹ There are scheduled air services to a number of destinations in Somalia – Mogadishu, Bosasso, Hargeisa, Berbera, Burao and Galcaiyo.³⁰ Asylum claims are unlikely

²⁵ USSD 2009

²⁶ <http://news.bbc.co.uk/1/hi/8326174.stm>

²⁷ FCO letter 5 May 2010

²⁸ FCO letter 5 May 2010

²⁹ <http://www1.voanews.com/english/news/africa/Aden-Adde-International-Airport-in-Mogadishu-Relatively-Safe-85827947.html>

³⁰ <http://www.mapsofworld.com/international-airports/africa/somalia.html>

to succeed unless the applicant can demonstrate why they are unable to return to their home areas.

3.6.23 *Case law.*

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.

AM & AM (armed conflict: risk categories) Somalia CG [2008] UKAIT 00091. This case considered safety of return to Somalia, in particular, routes of return to and via Mogadishu and whether an internal armed conflict existed in Somalia with reference to Article 15 (c) of the Qualification Directive. The AIT found that:

- An internal armed conflict existed in Central and Southern Somalia. The AIT reiterated that its approach to considering Article 15 (c) was the same as in KH Iraq and (with one exception) HH & others (Mogadishu: armed conflict: risk) Somalia CG [2008] UKAIT 00022.
- The situation in central and southern Somalia did not generally reach the threshold where civilians per se or Somali civilian IDPs per se could be said to face a real risk of persecution or serious harm or treatment proscribed by Article 3 ECHR.
- Return to Mogadishu for most persons would amount to a breach of Article 3 ECHR/ Article 15 (b) of the Qualification Directive (para 179). Such persons would soon be forced to leave Mogadishu but, in order for any Article 3/ Article 15 (b) or Article 15(c) claim to succeed, would need to show that they had no viable relocation alternative.
- An individual will not generally be able to show that the situation in their home area is unsafe if they do not live in Mogadishu. Evidence that an area outside of Mogadishu was unsafe would need to show that there was a consistent pattern of indiscriminate violence giving rise to a serious and individual threat. Only then could an international/ Article 3 protection need be established (para 184).
- The evidence does not show that a person having to relocate from their home area including from Mogadishu will necessarily become an IDP or that there is a reasonable likelihood of them becoming one. A sizeable number of people from Mogadishu have made their way to areas of Southern Somalia where they have traditional clan connections (para 188). Risk and reasonableness of relocation will depend on a variety of circumstances (para 189). If a person was required to live in an IDP camp for a substantial amount of time, it is likely that internal relocation would be unreasonable. However this must be looked at on a case by case basis (para 190).
- Consideration of travel en route from Mogadishu airport was not an implicit part of any immigration decision. Whilst there has been an increase in the number of roadblocks/ checkpoints, onward travel from Mogadishu airport does not put someone at risk of Article 3 mistreatment (para 195).
- Whilst consideration as to whether a returnees' ability to pre arrange an armed militia escort is outside of the remit of the AIT, pre arrangement of an armed militia escort is not contrary to Orders in Council or UN law (para 66).
- Because of recent events, clan or sub clan dynamics/ structures had altered but had not ceased to exist as the primary entity to which individuals turn for protection. Clan protection had devolved down to sub-units; clan based or sub-clan based armed militias continued to operate and in certain areas of Somalia, in particular, Kismayo, conflicts were described as inter-clan. In addition, the situation for minority clans in Mogadishu was more precarious than for the great majority of residents.
- Whilst there was a worsening of the humanitarian situation in Somalia, civilians did not appear to face a real risk of denial of basic food and shelter and other bare necessities of life. Though aid agencies could meet with obstructions and dangers in delivering aid to IDPs a significant percentage of those in need were reached.

PLEASE SEE COURT OF APPEAL FINDINGS IN HH (Somalia) & Others [1-3 March 2010] Civ... BELOW

ECJ Elgafaji 17 February 2009. The ECJ issued a judgment concerning the interpretation and application of Article 15(c) Qualification Directive. The judgment clarified two key issues: that an assessment of a claim under Article 15(c) was distinct from an assessment of a claim under

Article 3 and secondly that 'individual threat' did not require that a person be individually targeted.

QD (Iraq) v Secretary of State for the Home Department [2009] EWCA Civ620 (24 June 2009)

The Court of Appeal provided further domestic guidance on *Elgafaji* and the test to be applied:

“Is there in a country of a material part of it such a high level of indiscriminate violence that substantial grounds exist for believing that an applicant, solely by being present there, faces a real risk which threatens his life of person?”

It clarified that the word “exceptional” is used by the ECJ to stress that not every armed conflict or violent situation will attract the protection of Article 15c. The reference to ‘threat’ does not dilute the need for there to be a real risk. The phrase “situations of international or internal armed conflict” is broad enough to include any situation of indiscriminate violence which reaches the level described in *Elgafaji*. There is no requirement that the armed conflict itself must be “exceptional” but there must be an intensity of indiscriminate violence sufficient to meet the test in *Elgafaji*.

HH (Somalia) & Others [2010] EWCA Civ 426

The Court of Appeal considered the cases of HH, AM, J and MA concerning return to Somalia and made the following findings:

- **HH** - The AIT had made errors in its application of Article 15c Qualification Directive but these errors were not material and accordingly the appeal of *HH* was rejected. The decision that it is safe to return *HH* is now obsolete in light of the later conditions described in *AM* and *AM* and should not be relied on.
- **MA** - This appeal was upheld but turned on its individual facts and does not have wider application.
- **AM** and **J** - These individuals' arguments were that the AIT failed to consider the safety of the route and return to the areas of Somalia where they were considered to be safe. They argued not only that (1) where the route and manner of return are known or can be implied, the First Tier Tribunal must consider whether the applicant would be put at risk if returned by that route (as in their cases), but further argued that (2) the Qualification and Procedures Directives read together require that issues of safety during return should always be considered as part of the decision on entitlement to protection made by the SSHD.
- The Court agreed with submission (1). Its finding of general application which is now binding in UK law is that **in any case in which it can be shown either directly or by implication what route and method of return is envisaged, the First Tier Tribunal is required by law to consider and determine any challenge to the safety of that route or method.** In the present cases, the route and method of return was known, and so should have been considered. The appeals were therefore allowed.
- The Court did not consider it necessary to make a definitive ruling on submission (2), but did express the view that *AM* and *J* were right that the Directives read together required that the issues of safety during return (as opposed to technical obstacles to return such as documentation issues/availability of flights) should be considered as part of the decision on entitlement to protection. In the Court's view, the Tribunal must always consider that question whenever the applicant puts it in issue. However this is not a binding statement and the possibility of future argument on this point (including to the ECJ) is left open.
- *AM* was remitted to the Tribunal for it to be re-evaluated in light of the law as it now stands. This will mean taking into account safety issues arising from the implicit method of return, and also the current interpretation of Article 15c set out by the European Court of Justice and Court of Appeal in *Elgafaji* and *QD* respectively.

3.6.24 Conclusion. Case owners must assess the credibility of the applicant and the evidence they submit in accordance with the relevant Asylum Instructions (see para 3.2 – 3.5 above). A state of civil instability and/or where law and order has sometimes broken down does not

of itself give rise to a well-founded fear of persecution for a Convention reason. The claimant can only demonstrate a well-founded claim for asylum where they can demonstrate they are at risk of adverse treatment on Convention grounds over and above the risk to life and liberty, which occurs during such instability / insecurity.

- 3.6.25** Although, the general humanitarian situation in southern and central Somalia is poor, it is not so serious as to cause, in itself, a breach of Article 3 ECHR. Aid agencies are subject to obstructions and dangers in delivering aid to IDPs but most of those in need continue to be reached and efforts are being strengthened to sustain critical food aid operations in southern and central Somalia. However, each case must be considered on its individual merits and case owners will need to consider whether the particular circumstances of the individual are such that the Article 3 threshold is met.
- 3.6.26** In its position paper of 5 May, UNHCR considers that conditions in southern and central Somalia constitute indiscriminate violence in a situation of internal armed conflict within the meaning of Article 15(c) of the EU Qualification Directive in that any individual present would be at risk of serious harm. In addition UNHCR considers that no reliable safety zones exist in southern and central Somalia given the unpredictable evolution of the conflict. No internal flight alternative is available in any part of southern and central Somalia.³¹
- 3.6.27** However, the UK courts have found that although there is internal armed conflict in southern and central Somalia, it is only in Mogadishu that the level of indiscriminate violence arising from the conflict reaches a level of severity which would place most individuals at risk (with the exception of those with close connections with powerful actors in the city – such as prominent businessmen or senior figures in the insurgency or in powerful criminal gangs) if they stayed in Mogadishu for any length of time. Each case must be considered under Article 15c of the EU Qualification Directive/Immigration Rule 339C to ascertain whether the individual claimant would personally be at risk of indiscriminate violence. However for a claim to succeed on Article 15c grounds, applicants would need to show that there is no internal relocation option open to them outside of Mogadishu.

3.7 Al-Shabaab

- 3.7.1** Some claimants will make an asylum and/or human rights claim based on their fear of or mistreatment at the hands of al-Shabaab.
- 3.7.2 *Treatment*** Al-Shabaab governs with local administrations: region-by-region and city-by-city. It reportedly raises money by taxing international aid organisations, collecting *zakat* from citizens, levies on the international *khat* trade, receiving remittances from abroad and financial support from Eritrea.³² It provides government services to its constituents, enforces a strict interpretation of shari'a law, and maintains its grip on power by using violence and intimidation. The group also conducts terror operations, including suicide bombings, against its perceived enemies and views itself as part of the global jihad movement.³³ Human Rights Watch reported in April 2010 that al-Shabaab has brought greater stability than many parts of Somalia have known for years. Even critics have credited the group with bringing peace and order to communities that had been plagued by crime and insecurity since the collapse of the Somali state. The group are said to have wiped out banditry and freelance militias but that stability had often come at a high cost to the local population, especially women.³⁴

³¹ COI Somalia Country Report February 2009 (UNHCR position on the return of rejected asylum seekers)

³² COI report 2010 and AEI Critical Threats 'Operation Briefer: the Upcoming Battle for Mogadishu 1.04.10 <http://www.criticalthreats.org/somalia/operation-briefer-upcoming-battle-mogadishu-april-1-2010>

³³ AEI Critical Threats 'The Terror Threat from Somalia; The Internationalization of al-Shabab' 12.02.10 <http://www.criticalthreats.org/somalia/terror-threat-somalia-internationalization-al-shabaab-feb-12-2010>

³⁴ <http://www.hrw.org/en/reports/2010/04/13/harsh-war-harsh-peace>

- 3.7.3** Al-Shabaab currently controls much of southern and central Somalia, including large portions of Mogadishu. The TFG has maintained control of a few areas in the south east of the city, government installations, the Presidential palace and strategic locations such as the airport and seaport. Al-Shabaab controls large portions of Mogadishu including the north and north-east parts of the city, the main stadium and the main market.^{35 36} It controls nearly all of Middle and Lower Jubba regions, Gedo region, Bay region, Bakool region, and parts of Lower Shabelle region. This includes control of the key port cities of Kismayo and Marka and the Kenya border town of Diif. It also wields significant influence in Middle Shabelle and Hiraaan region. In some parts of the country (i.e. Mogadishu), it works closely with Hizbul Islam, and in other parts of the country (i.e. Kismayo and Diif) it has battled Hizbul Islam for territory.³⁷ Hizbul Islam controls Beledweyne and administers Hiraaan region as well as Afgoi district near Mogadishu. The third Islamist group, Ahlu Sunna wa al Jama'a (ASWJ), tends to align itself with the governments, both local and national. It has worked in cooperation with the TFG and with the Galmudug Administration, which spans the Mudug and Galguduud regions.³⁸
- 3.7.4** The human rights situation has deteriorated particularly in areas controlled by al Shabaab and allied extremist groups. Al-Shabaab and other armed groups have continued to violate women's rights in southern and central Somalia. Women face arbitrary detention, restriction of movement and other forms of abuse for failure to obey orders, including non-observance of dress codes. There is a rising pattern of inhuman and degrading treatment, including stoning, amputations, floggings and corporal punishment. Men too are subjected to inhuman and cruel treatment for their illicit relationship with women. Journalists have been repeatedly subjected to threats and short-term arbitrary detentions, particularly in Baidoa and Kismayo. Al-Shabaab has increasingly targeted civil society groups, peace activists, media and human rights organisations. Humanitarian assistance has been severely hampered by the prevailing insecurity and threats specifically targeting humanitarian agencies. In southern and central Somalia there is evidence that children are being exposed to recruitment into armed forces by all parties to the conflict.³⁹
- 3.7.5 *Actors of protection.*** Case owners must refer to the Asylum Policy Instruction on Assessing the Claim. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Case owners should also take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.
- 3.7.6** Where al-Shabaab is the *de facto* governing authority in a particular area and the claimed fear is of al-Shabaab, individuals will not be able to seek their protection.
- 3.7.7 *Internal relocation*** Case owners must refer to the Asylum Policy Instructions on both Internal Relocation and Gender and apply the test set out in paragraph 339O of the Immigration Rules. It is important to note that internal relocation can be relevant in both

³⁵ USSD 2009

³⁶ 'Critical Threats, Somalia Conflict Maps: Islamist and Political', 12 February 2010

³⁷ COI report 2010 and AEI Critical Threats 'Operation Briefer: the Upcoming Battle for Mogadishu 1.04.10 <http://www.criticalthreats.org/somalia/operation-briefer-upcoming-battle-mogadishu-april-1-2010>

³⁸ 'Critical Threats, Somalia Conflict Maps: Islamist and Political', 12 February 2010 <http://www.criticalthreats.org/somalia/somalia-conflict-maps-islamist-and-political>

³⁹ USSD 2009 and COI report 2010

cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.

- 3.7.8** The UNHCR Eligibility Guidelines (May 2010) conclude that where the examination of an IFA/IRA is a requirement under domestic law, it should be examined on a case-by-case basis, taking into consideration the specific circumstances of the asylum-seeker within the UNHCR guidelines.⁴⁰
- 3.7.9** In accordance with those guidelines, the UK very carefully considers the appropriateness of internal relocation on a case by case basis taking full account of the individual circumstances of the particular claimant and the specific risk to that individual. In general, if an applicant who faces a real risk of ill-treatment/persecution in their home area can relocate to another part of Somalia where they would not be at real risk, whether from state or non-state actors, and it would not be unduly harsh to expect them to do so, then asylum or humanitarian protection should be refused.
- 3.7.10** There may be some whose home area is Mogadishu, for example, but for whom internal relocation to other areas may be viable. An individual may be able to enlist the support of family or clan or otherwise survive economically in areas other than Mogadishu provided he would be of no adverse interest to al-Shabaab, or whichever group is in control of the proposed area of relocation. In line with usual practice, if case owners propose internal flight, they will need to consider the suitability of the proposed area and whether this would be accessible to the returnee. When considering the reasonableness or otherwise of internal relocation, case owners should refer to the Asylum Instruction 'Internal Relocation' for further guidance.
- 3.7.11** Throughout 2009, al-Shabaab has continued to consolidate its control in large parts of central and southern Somalia. There are many parts of central and southern Somalia where there is no ongoing fighting because territorial control has been established. In the areas now fully under al-Shabaab control, the human rights situation is poor but there are low levels of generalised violence. In areas controlled by the TFG, the human rights position is less problematic but there are likely to be high levels of generalised violence due to continued challenges by insurgents.
- 3.7.12** Checkpoints operated by the TFG have decreased and there were no reports of armed clan factions operating checkpoints in 2009. Al-Shabaab has established checkpoints at the exit/entry routes of the towns under its control for security reasons. It checks goods, searches people and ensures that its strict Islamic codes are enforced, but does not collect money. There were no reports of checkpoints between towns or within towns, as was common in previous years with the exception of Mogadishu where there are checkpoints in the city.^{41 42}
- 3.7.13** There are several checkpoints on the route from Mogadishu towards the Central Regions and some precautions may be necessary particularly during militia fightings. During overland trips clan protection is not required unless ongoing animosities between two rival

⁴⁰ UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Somalia 5 May 2010 <http://www.unhcr.org/refworld/docid/4be3b9142.html>

⁴¹ USSD 2009

⁴² <http://news.bbc.co.uk/1/hi/8326174.stm>

clans are involved. The transporter is most of the time the guarantor of the safety of the passengers because he is familiar with the route, militias and all the checkpoints. Within south central and Puntland, people mostly travel on buses and minibuses.⁴³

- 3.7.14** Restrictions on movement have reduced significantly as compared to the situation considered by the AIT in *AM* where illegal checkpoints had proliferated to excessive levels. Al-Shabaab has reportedly eradicated extortion, robbery and murder from bandits in areas it controls. There is no evidence that those not of adverse interest to the TFG, al-Shabaab or groups such as Hizb Islam or ASWJ who have a presence in particular areas, would be unable to pass through checkpoints safely. There may be some security incidents whilst travelling in Somalia and, although individuals will not generally need an escort, if they consider an escort necessary, it is feasible for them to arrange one either before or after arrival.
- 3.7.15** Somaliland and Puntland, are in general relatively safe but the authorities in these regions will only admit 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. In Somaliland taxis and 4x4 vehicles can easily travel from Hargeisa, Burao, Lasanod and Garowe. The main transportation between Somaliland and South Central is by lorry. People travel by air between Mogadishu and Hargeisa.⁴⁴
- 3.7.16** Given the generally lower levels of fighting and the relative ease of travel within many areas of Somalia, the risks of travel are likely to be less problematic than those considered by the AIT. It will be feasible for many to return to their home areas from Mogadishu airport as most areas are more accessible than previously. Mogadishu airport continues to function normally.⁴⁵ There are scheduled air services to a number of destinations in Somalia – Mogadishu, Bosasso, Hargeisa, Berbera, Burao and Galcaio.⁴⁶ Asylum claims are unlikely to succeed unless the applicant can demonstrate why they are unable to return to their home areas.

3.7.17 Caselaw.

See also (at 3.6.20):

AM & AM (armed conflict: risk categories) Somalia CG [2008] UKAIT 00091

HH (Somalia) & Others [2010] EWCA Civ 426

- 3.7.18 Conclusion** Case owners must assess the credibility of the applicant and the evidence they submit in accordance with the relevant Asylum Instructions (see para 3.2 – 3.5 above). Al-Shabaab governs locally in areas throughout southern and central Somalia. Case owners should consider each claim on its particular merits and, in particular, whether the applicant is likely to be known to and/or of serious ongoing adverse interest to al-Shabaab locally or more widely depending on the level or type of alleged misdemeanour or ideological differences. For a claim to succeed on this basis an applicant who is only of local interest would need to demonstrate why they are unable to relocate internally elsewhere in Somalia.

3.8 Members of major clans or their sub-clans

⁴³ FCO letter 5 May 2010

⁴⁴ FCO letter 5 May 2010

⁴⁵ <http://www1.voanews.com/english/news/africa/Aden-Adde-International-Airport-in-Mogadishu-Relatively-Safe-85827947.html>

⁴⁶ <http://www.mapsofworld.com/international-airports/africa/somalia.html>

- 3.8.1** 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.
- 3.8.2** *Treatment.*
- 3.8.3** The clan is the single most important element that has defined the identity and social relations of Somalis for centuries. Most Somalis identify themselves in terms of their lineage or clan. Historically, it was the basis that structured law and order and social activities within and between the various clans. While in the past, clan politics and rivalry between various warlords fuelled and entrenched the conflict, in recent times the conflict has increasingly taken the shape of a conflict between those that allegedly advance different forms of Islam.⁴⁷ A 2008 International Crisis Group report stated that the classical clan system was fraying. Clan elders were being targeted in the violence then sweeping the country.⁴⁸ Nevertheless clan systems still remain intact.⁴⁹
- 3.8.4** Clan families are sub-divided into clans and many sub-clans. 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 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.⁵⁰
- 3.8.5** More than 85% of the population share a common ethnic heritage, religion and nomad-influenced culture. The UN's Independent Expert estimates that minority groups constitute approximately 22% of the population. In most areas members of groups other than the predominant clan were excluded from effective participation in governing institutions and were subject to discrimination in employment, judicial proceedings and access to public services.⁵¹
- 3.8.6** Minority groups and low-caste clans include the Bantu (the largest minority), the Benadiri, rer Hamar, Brawenese, Swahili, Tumul, Yibir, Yazxar, Madhiban, Hawrarsame, Muse Dheryo and Faqayaqub. Intermarriage between minority groups and mainstream clans was restricted. Minority groups have no armed militias and continue to be disproportionately subject to killings, torture, rape, kidnapping for ransom and looting of land and property with impunity by faction militias and majority clan members. Many minority communities live in deep poverty and suffer from numerous forms of discrimination and exclusion.⁵²
- 3.8.7** Individual security has traditionally been dependent on the clan. This situation has not changed significantly in modern times and the clan remains the safety net of the Somali population. Vulnerability and protection are closely linked to a clan's strength. However weak clans or groups have traditionally been able to seek protection from and affiliation with the dominant clans in a specific area. Although clans are still important, affiliation to a dominant clan does not necessarily provide protection. Clan loyalty is superseded by political, ideological and international conditions. A clan's ability to provide protection is contingent on the clan's military strength. In the current situation, in which al-Shabaab and other groups control large parts of southern Somalia, protection from one's own clan in, for example, an al-Shabaab controlled area is not realistic. Al-Shabaab has the support of

⁴⁷ Institute for Security Studies 01 Sep 2009: ISS Paper 198: <http://www.issafrica.org/pgcontent.php?UID=8647>

⁴⁸ IGC 'To move beyond the failed state' http://www.unhcr.no/Pdf/protect/Somalia_nov_2005.pdf

⁴⁹ Austrian Centre for Country of Origin & Asylum Research and Documentation (ACCORD): Clans in Somalia published December 2009 http://www.unhcr.no/Pdf/protect/Somalia_nov_2005.pdf

⁵⁰ ACCORD 'Clans in Somalia' December 2009

⁵¹ USSD 2009

⁵² USSD 2009

various clans and minority groups in the areas it controls. Numerous dominant clans in many districts are therefore currently subordinate to al-Shabaab and must, among other things, abide by al-Shabaab's enforcement of Sharia law.⁵³

- 3.8.8 *Actors of protection.*** Case owners must refer to the Asylum Policy Instruction on Assessing the Claim. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Case owners should also take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.
- 3.8.9** Recent reports suggest that clan structures are beginning to fracture and that the situation is complicated and unclear with regard to whether a person will find safety or protection in a clan's traditional home area. However, clan protection is still relevant but mainly in relation to ordinary crime. Clans continue to be important in relation to where a person flees. Those leaving conflict areas still tend to go to their clan areas and the protection issue nowadays is primarily linked to the situation in the arrival areas. With regard to minorities, the UN's Independent Expert has stated that conditions for minorities are difficult. However, since clan affiliation is not a criterion for social status and protection in the view of the Islamist groups, al-Shabaab in particular represents something positive to minorities. Strict law enforcement in areas controlled by this group also prevents the crime that for years has affected these groups in particular. Consequently in some regions the minorities support al-Shabaab. Some minorities who are forced to leave their homes will endeavour to establish a client relationship to a host clan in their new place of residence.⁵⁴
- 3.8.10 *Internal relocation*** Case owners must refer to the Asylum Policy Instructions on both Internal Relocation and Gender and apply the test set out in paragraph 3390 of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.
- 3.8.11** The UNHCR Eligibility Guidelines (May 2010) conclude that where the examination of an IFA/IRA is a requirement under domestic law, it should be examined on a case-by-case basis, taking into consideration the specific circumstances of the asylum-seeker within the UNHCR guidelines.⁵⁵
- 3.8.12** In accordance with those guidelines, the UK very carefully considers the appropriateness of internal relocation on a case by case basis taking full account of the individual circumstances of the particular claimant and the specific risk to that individual. In general, if an applicant who faces a real risk of ill-treatment/persecution in their home area can relocate to another part of Somalia where they would not be at real risk, whether from state

⁵³ COI report May 2010

⁵⁴ COI report May 2010

⁵⁵ UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Somalia 5 May 2010 <http://www.unhcr.org/refworld/docid/4be3b9142.html>

or non-state actors, and it would not be unduly harsh to expect them to do so, then asylum or humanitarian protection should be refused. There may be some whose home area is Mogadishu, for example, but for whom internal relocation to other areas may be viable. An individual may be able to enlist the support of family or clan or otherwise survive economically in areas other than Mogadishu provided he would be of no adverse interest to al-Shabaab, or whichever group is in control of the proposed area of relocation. In line with usual practice, if case owners propose internal flight, they will need to consider the suitability of the proposed area and whether this would be accessible to the returnee. When considering the reasonableness or otherwise of internal relocation, case owners should refer to the Asylum Instruction 'Internal Relocation' for further guidance.

- 3.8.13** There are many parts of central and southern Somalia where there is no ongoing fighting because territorial control has been established. Checkpoints operated by the TFG have decreased and there were no reports of armed clan factions operating checkpoints in 2009. Al-Shabaab has established checkpoints at the exit/entry routes of the towns under its control for security reasons. It checks goods, searches people and ensures that its strict Islamic codes are enforced, but does not collect money. There were no reports of checkpoints between towns or within towns, as was common in previous years with the exception of Mogadishu where there are checkpoints in the city.^{56 57}
- 3.8.13** Restrictions on movement have reduced significantly as compared to the situation considered by the AIT in *AM* where illegal checkpoints had proliferated to excessive levels. Al-Shabaab has reportedly eradicated extortion, robbery and murder from bandits in areas it controls. There is no evidence that those not of adverse interest to the TFG, al-Shabaab or groups such as Hizb Islam or ASWJ who have a presence in particular areas, would be unable to pass through checkpoints safely. There may be some security incidents whilst travelling in Somalia and, although individuals will not generally need an escort, if they consider an escort necessary, it is feasible for them to arrange one either before or after arrival.
- 3.8.14** Somaliland and Puntland, are in general relatively safe but the authorities in these regions will only admit 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.
- 3.8.15** Given the generally lower levels of fighting and the relative ease of travel within many areas of Somalia, the risks of travel are likely to be less problematic than those considered by the AIT. It will be feasible for many to return to their home areas from Mogadishu airport as most areas are more accessible than previously. Mogadishu airport continues to function normally.⁵⁸ There are scheduled air services to a number of destinations in Somalia – Mogadishu, Bosasso, Hargeisa, Berbera, Burao and Galcaio.⁵⁹ Asylum claims are unlikely to succeed unless the applicant can demonstrate why they are unable to return to their home areas.

3.8.16 Case law.

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

⁵⁶ USSD 2009

⁵⁷ <http://news.bbc.co.uk/1/hi/8326174.stm>

⁵⁸ <http://www1.voanews.com/english/news/africa/Aden-Adde-International-Airport-in-Mogadishu-Relatively-Safe-85827947.html>

⁵⁹ <http://www.mapsofworld.com/international-airports/africa/somalia.html>

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.

See also (at 3.6.20):

AM & AM (armed conflict: risk categories) Somalia CG [2008] UKAIT 00091

HH (Somalia) & Others [2010] EWCA Civ 426

- 3.8.17 Conclusion.** Case owners must assess the credibility of the applicant and the evidence they submit in accordance with the relevant Asylum Instructions (see para 3.2 – 3.5 above). Large parts of northern Somalia, namely Somaliland and Puntland, are in general relatively 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 ill-treatment on return on the basis of their clan affiliation alone.
- 3.8.18** With regard to southern Somalia, the courts have found that clan support networks are still in existence and can be relied upon for support and assistance. Where the claimant, male or female, from southern Somalia, is not found to be a minority clan member, there is likely to be a location in southern Somalia in which the majority clan is able to afford protection sufficiently for neither the Refugee Convention nor the ECHR to apply on the basis of the claimant's clan affiliation alone
- 3.9 Bajunis**
- 3.9.1** 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.
- 3.9.2 Treatment.** More than 85% of the population share a common ethnic heritage, religion and nomad-influenced culture. The UN's Independent Expert estimates that minority groups constitute approximately 22% of the population, which include the Bajuni. In most areas members of groups other than the predominant clan were excluded from effective participation in governing institutions and were subject to discrimination in employment, judicial proceedings and access to public services.⁶⁰ Minority groups are disproportionately subject to killings, torture, rape, kidnapping for ransom and looting of land and property with impunity by faction militias and majority clan members. Many minority communities live in deep poverty and suffer from numerous forms of discrimination and exclusion.⁶¹
- 3.9.3** 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

⁶⁰ USSD 2009

⁶¹ USSD 2009

Ocean coastline (including Somalia and Kenya) and on some of the larger offshore islands between Kismayo and Mombasa, Kenya.⁶² They live in Kismayo and the islands of Jula, Madoga, Satarani, Raskamboni, Bungabo, Dudey, Koyoma and Jovay (Bajuni Islands).⁶³

- 3.9.4** The small Bajuni population in Somalia suffered considerably at the hands of Somali militia, principally Marehan militia who tried to force them off the islands. Though Marehan settlers still have effective control of the islands, Bajuni can work for the Marehan as paid labourers. This is an improvement on the period during the 1990s when General Morgan's forces controlled Kismayo and the islands, when the Bajuni were treated by the occupying Somali clans as little more than slave labour. Essentially the plight of the Bajuni is based on the denial of economic access by Somali clans, rather than outright abuse.⁶⁴ Approximately 2,000 Bajuni voluntarily repatriated to Kismayo and islands from Jomvu refugee camp in Kenya in 1997 following Kenya's decision to close all 3 refugee camps. They have no patron clans.⁶⁵
- 3.9.5** Weak clans or groups have traditionally been able to seek protection from and affiliation with the dominant clans in a specific area. Although clans are still important, affiliation to a dominant clan does not necessarily provide protection. A clan's ability to provide protection is contingent on the clan's military strength. In the current situation, in which al-Shabaab and other groups control large parts of southern Somalia (including Kismayo), protection from one's own clan in, for example, an al-Shabaab controlled area is not realistic. Al-Shabaab has the support of various clans and minority groups in the areas it controls. Numerous dominant clans in many districts are therefore currently subordinate to al-Shabaab and must, among other things, abide by al-Shabaab's enforcement of Sharia law.⁶⁶
- 3.9.6** The UN's Independent Expert has stated that conditions for minorities are difficult. However, since clan affiliation is not a criterion for social status and protection in the view of the Islamist groups, al-Shabaab in particular represents something positive to minorities. Strict law enforcement in areas controlled by this group also prevents the crime that for years has affected these groups in particular. Consequently in some regions the minorities support al-Shabaab.⁶⁷
- 3.9.7 *Actors of protection.*** Case owners must refer to the Asylum Policy Instruction on Assessing the Claim. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Case owners should also take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.
- 3.9.8** Members of minority groups are able in some circumstances to secure protection in some areas. For example, Midgan and Bantu groups will endeavour to establish a relationship to a host clan and other groups establish protective relationships through marriage or making payments.⁶⁸ Al-Shabaab seized control of Kismayo in October 2009 after fighting with Hizbul

⁶² COI report 2010

⁶³ <http://www.madhibaan.org/in-depth/in-depth-a-study.htm>

⁶⁴ COI Somalia Country Report 2010

⁶⁵ <http://www.madhibaan.org/in-depth/in-depth-a-study.htm>

⁶⁶ COI report May 2010

⁶⁷ COI report May 2010

⁶⁸ COI report May 2010

Islam⁶⁹ and currently controls the islands which is likely to change the position of minorities in that area.

- 3.9.9 *Internal relocation*** Case owners must refer to the Asylum Policy Instructions on both Internal Relocation and Gender and apply the test set out in paragraph 3390 of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.
- 3.9.10** The UNHCR Eligibility Guidelines (May 2010) conclude that where the examination of an IFA/IRA is a requirement under domestic law, it should be examined on a case-by-case basis, taking into consideration the specific circumstances of the asylum-seeker within the UNHCR guidelines.⁷⁰
- 3.9.11** In accordance with those guidelines, the UK very carefully considers the appropriateness of internal relocation on a case by case basis taking full account of the individual circumstances of the particular claimant and the specific risk to that individual. In general, if an applicant who faces a real risk of ill-treatment/persecution in their home area can relocate to another part of Somalia where they would not be at real risk, whether from state or non-state actors, and it would not be unduly harsh to expect them to do so, then asylum or humanitarian protection should be refused. There may be some whose home area is Mogadishu, for example, but for whom internal relocation to other areas may be viable. An individual may be able to enlist the support of family or clan or otherwise survive economically in areas other than Mogadishu provided he would be of no adverse interest to al shabaab, or whichever group is in control of the proposed area of relocation. In line with usual practice, if case owners propose internal flight, they will need to consider the suitability of the proposed area and whether this would be accessible to the returnee. When considering the reasonableness or otherwise of internal relocation, case owners should refer to the Asylum Instruction 'Internal Relocation' for further guidance.
- 3.9.12** There are many parts of central and southern Somalia where there is no ongoing fighting because territorial control has been established. Checkpoints operated by the TFG have decreased and there were no reports of armed clan factions operating checkpoints in 2009. Al-Shabaab has established checkpoints at the exit/entry routes of the towns under its control for security reasons. It checks goods, searches people and ensures that its strict Islamic codes are enforced, but does not collect money. There were no reports of checkpoints between towns or within towns, as was common in previous years with the exception of Mogadishu where there are checkpoints in the city.^{71 72}
- 3.9.13** Restrictions on movement have reduced significantly as compared to the situation considered by the AIT in AM where illegal checkpoints had proliferated to excessive levels. Al-Shabaab has reportedly eradicated extortion, robbery and murder from bandits in areas it controls. There is no evidence that those not of adverse interest to the TFG, al-Shabaab or groups such as Hizbul Islam or ASWJ who have a presence in particular areas, would be

⁶⁹ <http://news.bbc.co.uk/1/hi/world/africa/8286449.stm>

⁷⁰ UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Somalia 5 May 2010 <http://www.unhcr.org/refworld/docid/4be3b9142.html>

⁷¹ USSD 2009

⁷² <http://news.bbc.co.uk/1/hi/8326174.stm>

unable to pass through checkpoints safely. There may be some security incidents whilst travelling in Somalia and, although individuals will not generally need an escort, if they consider an escort necessary, it is feasible for them to arrange one either before or after arrival.

- 3.9.14** Somaliland and Puntland, are in general relatively safe but the authorities in these regions will only admit 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.
- 3.9.15** Given the generally lower levels of fighting and the relative ease of travel within many areas of Somalia, the risks of travel are likely to be less problematic than those considered by the AIT. It will be feasible for many to return to their home areas from Mogadishu airport as most areas are more accessible than previously. Mogadishu airport continues to function normally.⁷³ There are scheduled air services to a number of destinations in Somalia – Mogadishu, Bosasso, Hargeisa, Berbera, Burao and Galcayo.⁷⁴ Asylum claims are unlikely to succeed unless the applicant can demonstrate why they are unable to return to their home areas.

3.9.16 Caselaw.

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

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

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

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

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

See also (at 3.6.20):

AM & AM (armed conflict: risk categories) Somalia CG [2008] UKAIT 00091

HH (Somalia) & Others [2010] EWCA Civ 426

- 3.9.17 Conclusion.** Case owners must assess the credibility of the applicant and the evidence they submit in accordance with the relevant Asylum Instructions (see para 3.2 – 3.5 above). The Bajuni do not only originate from Somalia but also other countries along the Indian

⁷³ <http://www1.voanews.com/english/news/africa/Aden-Adde-International-Airport-in-Mogadishu-Relatively-Safe-85827947.html>

⁷⁴ <http://www.mapsofworld.com/international-airports/africa/somalia.html>

Ocean coast, notably Kenya.⁷⁵ Case owners should therefore pay particular attention to establish both the claimant's nationality as well as ethnicity.

3.9.18 For the vast majority of Somalis clan status should not in itself risk mistreatment and some members of minority groups are able in some circumstances to secure protection from major or sub related clans in some areas. Clan support networks in Somalia are still in existence and can be relied upon for support and assistance. While the Bajuni have historically been vulnerable to discrimination and social exclusion, the courts have found that it may not be appropriate to assume that a finding of minority group status in southern Somalia is itself sufficient to entitle a person to international protection, particularly where a person's credibility is otherwise lacking. Each case should be given careful and detailed consideration on its individual circumstances. For those Bajuni claimants who have demonstrated a reasonable likelihood that they have encountered or will encounter on return ill treatment amounting to persecution a grant of asylum will be appropriate.

3.10 Benadiri (Rer Hamar) or Bravanese

3.10.1 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.

3.10.2 *Treatment.* More than 85% of the population share a common ethnic heritage, religion and nomad-influenced culture. The UN's Independent Expert estimates that minority groups constitute approximately 22% of the population, which include the Benadir. In most areas members of groups other than the predominant clan were excluded from effective participation in governing institutions and were subject to discrimination in employment, judicial proceedings and access to public services.⁷⁶ Minority groups are disproportionately subject to killings, torture, rape, kidnapping for ransom and looting of land and property with impunity by faction militias and majority clan members. Many minority communities live in deep poverty and suffer from numerous forms of discrimination and exclusion.⁷⁷

3.10.3 The Benadiri is an umbrella term for a number of minority groups from the coastal area roughly between Mogadishu and Kismayo who share an urban culture and are of mixed origin. They are also known as Reer Hamar or Reer Brava and there are many sub-groups including the Ashraf. Before the war, they lived in the Hamar Weyne, Shingani and Bondere districts of Mogadishu but now live in all districts. Benadiri intermarry but 'light-skinned' Benadiri do not marry 'black-skinned' Benadiri. They are an urban and educated people who work almost exclusively in commercial occupations. Some are medical doctors, businessmen, bankers, engineers or economists. They were among the wealthiest which caused resentment and they suffered particularly badly during the war as they were targeted by looters who considered them rich. Many Benadiri women were raped or forced into marriage.⁷⁸

3.10.4 A December 2009 report states that the Rer Hamar are 'not without power' and manage to play a part in the political game with the major clans. They are no longer subject to the kind of targeted violence committed with impunity by the major warring clans that was the case during the early civil war years when they were targeted partly due to their influence and positions in the past Somali government and because they lost any protection with the collapse of rule of law in 1990. This does not mean that they are no longer subject to discrimination but rather that there are now mitigating factors to their benefit. For example, they now hold political positions within the transitional government and a number of key positions with the regional administration of Benadir and local government of Mogadishu.⁷⁹

⁷⁵ Landinfo Topical Note 'Somalia: The Bajuni Islands 16 February 2010 <http://www.landinfo.no/id/168.0>

⁷⁶ USSD 2009

⁷⁷ USSD 2009

⁷⁸ COI Somalia Country Report 2010

⁷⁹ ACCORD 'Clans in Somalia' December 2009 http://www.unhcr.no/Pdf/protect/Somalia_nov_2005.pdf

- 3.10.5** Some have established relations with ‘noble’ clans such as the Hawiye Abgal and Habr Gedir through marriage. The Benadiri in Merka have learned to compromise and negotiate with the stronger clans through which they have received a level of protection. They may find it easy to move elsewhere in Somalia, buy property or achieve clan protection there. However, that is likely to vary from place to place and may also depend on what the individual can contribute. Rer Hamar business people in Mogadishu may be employing armed protection as do all other Somali business people.⁸⁰
- 3.10.6** The Asharaf are frequently categorised as a minority who most often live integrated with the people they have settled with, the Digil-Mirifle or Benadiri, and are usually protected by the group they live with. They are not targeted as a minority as such but may suffer the same problems as their ‘host’ clans – thus Benadiri Asharaf were targeted with the Benadiri people during the early civil war (1990-1992). At present the Digil-Mirifle/Asharaf may be targeted by al-Shabaab partly because al-Shabaab does not recognise their religious status and partly because they oppose the Shariff Hassan who was the driving force in the 2008 Djibouti agreement with President Sheikh Shariff.⁸¹
- 3.10.7** Weak clans or groups have traditionally been able to seek protection from and affiliation with the dominant clans in a specific area. Although clans are still important, affiliation to a dominant clan does not necessarily provide protection. A clan’s ability to provide protection is contingent on the clan’s military strength. In the current situation, in which al-Shabaab and other groups control large parts of southern Somalia, protection from one’s own clan in, for example, an al-Shabaab controlled area is not realistic. Al-Shabaab has the support of various clans and minority groups in the areas it controls. Numerous dominant clans in many districts are therefore currently subordinate to al-Shabaab and must, among other things, abide by al-Shabaab’s enforcement of Sharia law.⁸²
- 3.10.8** The UN’s Independent Expert has stated that conditions for minorities are difficult. However, since clan affiliation is not a criterion for social status and protection in the view of the Islamist groups, al-Shabaab in particular represents something positive to minorities. Strict law enforcement in areas controlled by this group also prevents the crime that for years has affected these groups in particular. Consequently in some regions the minorities support al-Shabaab.⁸³
- 3.10.9 *Actors of protection.*** Case owners must refer to the Asylum Policy Instruction on Assessing the Claim. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Case owners should also take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.
- 3.10.10** The Benadir are no longer subject to the targeted violence they suffered during the civil war. Although some discrimination may remain, they nevertheless play a role in politics, have established relationships with dominant clans, have inter-married and established businesses. Many have achieved a level of ‘legal’ protection. Likelihood of effective protection will need to be assessed on a case by case basis.
- 3.10.11 *Internal relocation*** Case owners must refer to the Asylum Policy Instructions on both Internal Relocation and Gender and apply the test set out in paragraph 3390 of the

⁸⁰ ACCORD ‘Clans in Somalia’ December 2009 http://www.unhcr.no/Pdf/protect/Somalia_nov_2005.pdf

⁸¹ ACCORD ‘Clans in Somalia’ December 2009

⁸² COI report May 2010

⁸³ COI report May 2010

Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.

- 3.10.12** The UNHCR Eligibility Guidelines (May 2010) conclude that where the examination of an IFA/IRA is a requirement under domestic law, it should be examined on a case-by-case basis, taking into consideration the specific circumstances of the asylum-seeker within the UNHCR guidelines.⁸⁴
- 3.10.13** In accordance with those guidelines, the UK very carefully considers the appropriateness of internal relocation on a case by case basis taking full account of the individual circumstances of the particular claimant and the specific risk to that individual. In general, if an applicant who faces a real risk of ill-treatment/persecution in their home area can relocate to another part of Somalia where they would not be at real risk, whether from state or non-state actors, and it would not be unduly harsh to expect them to do so, then asylum or humanitarian protection should be refused. There may be some whose home area is Mogadishu, for example, but for whom internal relocation to other areas may be viable. An individual may be able to enlist the support of family or clan or otherwise survive economically in areas other than Mogadishu provided he would be of no adverse interest to al shabaab, or whichever group is in control of the proposed area of relocation. In line with usual practice, if case owners propose internal flight, they will need to consider the suitability of the proposed area and whether this would be accessible to the returnee. When considering the reasonableness or otherwise of internal relocation, case owners should refer to the Asylum Instruction 'Internal Relocation' for further guidance.
- 3.10.14** There are many parts of central and southern Somalia where there is no ongoing fighting because territorial control has been established. Checkpoints operated by the TFG have decreased and there were no reports of armed clan factions operating checkpoints in 2009. Al-Shabaab has established checkpoints at the exit/entry routes of the towns under its control for security reasons. It checks goods, searches people and ensures that its strict Islamic codes are enforced, but does not collect money. There were no reports of checkpoints between towns or within towns, as was common in previous years with the exception of Mogadishu where there are checkpoints in the city.^{85 86}
- 3.10.15** Restrictions on movement have reduced significantly as compared to the situation considered by the AIT in *AM* where illegal checkpoints had proliferated to excessive levels. Al-Shabaab has reportedly eradicated extortion, robbery and murder from bandits in areas it controls. There is no evidence that those not of adverse interest to the TFG, al-Shabaab or groups such as Hizbul Islam or ASWJ who have a presence in particular areas, would be unable to pass through checkpoints safely. There may be some security incidents whilst travelling in Somalia and, although individuals will not generally need an escort, if they consider an escort necessary, it is feasible for them to arrange one either before or after arrival.
- 3.10.16** Somaliland and Puntland, are in general relatively safe but the authorities in these regions will only admit those who originate from that territory or those who have close affiliations to

⁸⁴ UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Somalia 5 May 2010 <http://www.unhcr.org/refworld/docid/4be3b9142.html>

⁸⁵ USSD 2009

⁸⁶ <http://news.bbc.co.uk/1/hi/8326174.stm>

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.

3.10.17 Given the generally lower levels of fighting and the relative ease of travel within many areas of Somalia, the risks of travel are likely to be less problematic than those considered by the AIT. It will be feasible for many to return to their home areas from Mogadishu airport as most areas are more accessible than previously. Mogadishu airport continues to function normally.⁸⁷ There are scheduled air services to a number of destinations in Somalia – Mogadishu, Bosasso, Hargeisa, Berbera, Burao and Galcaiyoo.⁸⁸ Asylum claims are unlikely to succeed unless the applicant can demonstrate why they are unable to return to their home areas.

3.10.18 Case law.

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

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

A (Somalia) [2004] UKIAT 00080. Benadiri from Somaliland. The Tribunal found that, even if the claimant was a Benadiri, he was not at any real risk of persecution if he was returned to the Somaliland part of Somalia (which is where he had come from). The claimant had lived there without encountering persecution, and had established a family network there. The Tribunal recognised that the claimant was in an unusual position as he would not be returning to the areas where Benadiri usually live (i.e. between Mogadishu and Kismayo) but to another part of the country, which was not an option open to most people of his ethnicity.

See also (at 3.6.20):

AM & AM (armed conflict: risk categories) Somalia CG [2008] UKAIT 00091 (see paragraph 166)

HH (Somalia) & Others [2010] EWCA Civ 426 (see paragraphs 286 and 305-306)

3.10.19 Conclusion. Case owners must assess the credibility of the applicant and the evidence they submit in accordance with the relevant Asylum Instructions (see para 3.2 – 3.5 above). For the vast majority of Somalis clan status should not in itself give rise to a risk of mistreatment, and some members of minority groups including the Benadiri are able to secure protection from major or sub related clans in some areas. The Benadiri are no longer subject to the targeted violence they suffered previously. Although some discrimination may remain, they nevertheless play a role in politics, have established relationships with dominant clans, have inter-married and established businesses. Many have achieved a level of ‘legal’ protection. Internal relocation might also be possible for members of the Benadiri. They may find it easy to move elsewhere in Somalia, buy property or achieve clan protection there. However, that is likely to vary from place to place and may also depend on what the individual can contribute.

⁸⁷ <http://www1.voanews.com/english/news/africa/Aden-Adde-International-Airport-in-Mogadishu-Relatively-Safe-85827947.html>

⁸⁸ <http://www.mapsofworld.com/international-airports/africa/somalia.html>

3.10.20 Case owners should consider each case carefully on its individual merits. Some Benadiri will be entitled to refugee status based on their personal circumstances and experiences.

3.11 Midgan, Tumal, Yibir or Galgala

3.11.1 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.

3.11.2 *Treatment.* The Gaboye, Tumal, Yibir and Galgala are ethnically associated with the Samale, which forms a dominant clan in Somalia. However, cultural stigma and traditions have excluded them as outcastes from the Samale clan. They engage in the activities of blacksmithing and shoemaking, as well as being hunters/gatherers. They live mainly in central and northern Somalia⁸⁹ although they are also found scattered in southern Somalia.⁹⁰

3.11.3 Most of the minority groups have assimilated into other Somalia clans with whom they live. For example, the Galgala have assimilated into the Abgal in Jowhar and Mogadishu. However, they identify themselves as Nuh Mohamud, a sub clan of the Majerten clan. Some Gaboye, Tumal and Yibir assimilated into the Isak in Somaliland, while others yet have assimilated into the Darod in Puntland and central regions. There are also other Gaboye, Tumal and Yibir who assimilated with Hawadle, Murasade and Marehan clans in Galgaduud region.⁹¹

3.11.4 With the exception of the Bantu, Rerhamar, Bravanese, Bajuni and Eyle who have distinct "non-Somali" physical appearance, all other minorities have physical appearances similar to that of the dominant clans, as well as having ethnic and cultural similarities. What distinguish the assimilated minorities are their distinct economic livelihoods.⁹²

3.11.5 The Yibr live along the coast in Mogadishu. They are often claimed to be descendants of early Hebrews who settled in the Horn of Africa. With the presence of radical Islamic groups like al-Shabaab with strong anti-Jewish attitudes, the Yibr have been increasingly suspected by Somalis with a radical Islamic orientation. Therefore members of the Yibr may be targeted in south central Somalia despite the fact that they are Muslims today.⁹³

3.11.6 *Actors of protection.* Case owners must refer to the Asylum Policy Instruction on Assessing the Claim. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Case owners should also take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.

3.11.7 Members of 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

⁸⁹ <http://www.madhibaan.org/in-depth/in-depth-a-study.htm>

⁹⁰ ACCORD 'Clans in Somalia' December 2009

⁹¹ <http://www.madhibaan.org/in-depth/in-depth-a-study.htm>

⁹² <http://www.madhibaan.org/in-depth/in-depth-a-study.htm>

⁹³ ACCORD 'Clans in Somalia' December 2009

Somalia clans with whom they live. Members of these groups are therefore able to seek and receive adequate protection from their patron clans.

- 3.11.8 *Internal relocation*** Case owners must refer to the Asylum Policy Instructions on both Internal Relocation and Gender and apply the test set out in paragraph 339O of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.
- 3.11.9** The UNHCR Eligibility Guidelines (May 2010) conclude that where the examination of an IFA/IRA is a requirement under domestic law, it should be examined on a case-by-case basis, taking into consideration the specific circumstances of the asylum-seeker within the UNHCR guidelines.⁹⁴
- 3.11.10** In accordance with those guidelines, the UK very carefully considers the appropriateness of internal relocation on a case by case basis taking full account of the individual circumstances of the particular claimant and the specific risk to that individual. In general, if an applicant who faces a real risk of ill-treatment/persecution in their home area can relocate to another part of Somalia where they would not be at real risk, whether from state or non-state actors, and it would not be unduly harsh to expect them to do so, then asylum or humanitarian protection should be refused. There may be some whose home area is Mogadishu, for example, but for whom internal relocation to other areas may be viable. An individual may be able to enlist the support of family or clan or otherwise survive economically in areas other than Mogadishu provided he would be of no adverse interest to al shabaab, or whichever group is in control of the proposed area of relocation. In line with usual practice, if case owners propose internal flight, they will need to consider the suitability of the proposed area and whether this would be accessible to the returnee. When considering the reasonableness or otherwise of internal relocation, case owners should refer to the Asylum Instruction 'Internal Relocation' for further guidance.
- 3.11.11** There are many parts of central and southern Somalia where there is no ongoing fighting because territorial control has been established. Checkpoints operated by the TFG have decreased and there were no reports of armed clan factions operating checkpoints in 2009. Al-Shabaab has established checkpoints at the exit/entry routes of the towns under its control for security reasons. It checks goods, searches people and ensures that its strict Islamic codes are enforced, but does not collect money. There were no reports of checkpoints between towns or within towns, as was common in previous years with the exception of Mogadishu where there are checkpoints in the city.^{95 96}
- 3.11.12** Restrictions on movement have reduced significantly as compared to the situation considered by the AIT in *AM* where illegal checkpoints had proliferated to excessive levels. Al-Shabaab has reportedly eradicated extortion, robbery and murder from bandits in areas it controls. There is no evidence that those not of adverse interest to the TFG, al-Shabaab or groups such as Hizbul Islam or ASWJ who have a presence in particular areas, would be unable to pass through checkpoints safely. There may be some security incidents whilst travelling in Somalia and, although individuals will not generally need an escort, if they

⁹⁴ UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Somalia 5 May 2010 <http://www.unhcr.org/refworld/docid/4be3b9142.html>

⁹⁵ USSD 2009

⁹⁶ <http://news.bbc.co.uk/1/hi/8326174.stm>

consider an escort necessary, it is feasible for them to arrange one either before or after arrival.

3.11.13 Somaliland and Puntland, are in general relatively safe but the authorities in these regions will only admit 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.

3.11.14 Given the generally lower levels of fighting and the relative ease of travel within many areas of Somalia, the risks of travel are likely to be less problematic than those considered by the AIT. It will be feasible for many to return to their home areas from Mogadishu airport as most areas are more accessible than previously. Mogadishu airport continues to function normally.⁹⁷ There are scheduled air services to a number of destinations in Somalia – Mogadishu, Bosasso, Hargeisa, Berbera, Burao and Galcaayo.⁹⁸ Asylum claims are unlikely to succeed unless the applicant can demonstrate why they are unable to return to their home areas.

3.11.15 Case/law.

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

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

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

See also (at 3.6.20):

AM & AM (armed conflict: risk categories) Somalia CG [2008] UKAIT 00091

HH (Somalia) & Others [2010] EWCA Civ 426

3.11.16 Conclusion. Case owners must assess the credibility of the applicant and the evidence they submit in accordance with the relevant Asylum Instructions (see para 3.2 – 3.5 above). Members of the Midgan, Tumul Yibir or Galgala groups have assimilated into major clan or sub-clan groups. While they may from time to time encounter discrimination and harassment from other clan groups due to their lowly social status, they may avail themselves of the protection of their patron clan or relocate to another region where their patron clan is represented. It is unlikely that such a claimant would encounter ill treatment amounting to persecution within the terms of the 1951 Convention. The grant of asylum in such cases is therefore not likely to be appropriate.

3.12 Female Genital Mutilation (FGM)

⁹⁷ <http://www.mapsofworld.com/international-airports/africa/somalia.html>

⁹⁸ <http://www1.voanews.com/english/news/africa/Aden-Adde-International-Airport-in-Mogadishu-Relatively-Safe-85827947.html>

- 3.12.1** 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.
- 3.12.2 *Treatment:*** The practice of FGM is widespread throughout Somalia. Some sources say that between 80 and 98% of Somali women have undergone FGM. The US State Department records that as many as 98% of women have undergone FGM; the majority were subjected to infibulations, the most severe form of FGM. In Somaliland and Puntland, FGM is illegal, but the law is not enforced. UN agencies and NGOs have tried to educate the population about the dangers of FGM but there were no reliable statistics to measure the success of their programmes. Some sources claim to have observed a transition from infibulations to *sunna* (excising of part of the female genitals) in recent years but it is difficult to ascertain with any degree of certainty how extensively patterns might have changed. It was emphasised that it is extremely difficult to change the attitude towards FGM and providing education and information to young girls might be the only way to make any impact on this issue.⁹⁹
- 3.12.3** The age when FGM is performed is in later childhood; usually between the ages of five and eight. There is societal pressure on families to perform FGM. In Somalia, genital mutilation is not a rite of passage that marks the transition from child to adult. The practice is linked to tradition and notions about purity, virginity and control of unwanted sexuality.¹⁰⁰ Although many women understand that the practice is harmful, they still believe that the custom should be preserved. There is pressure on mothers (and other female family members) in societies where religion, tradition, ideals of purity, fear of stigmatisation and absence of networks beyond the family or clan, plays a pervasive role. Whereas pressure is administered primarily by women, overall attitude towards FGM is strongly influenced by the requirements and ideals held by men and wider society towards virginity. Fear of exclusion from marriage and family contributes to the pressure.¹⁰¹
- 3.12.4** 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.¹⁰² And, according to a LandInfo report, the younger generation of men between 15 and 26 do not regard FGM as a prerequisite for marriage and the fact that some men comply with the decisions women make, means that it should be possible for mothers to oppose FGM.
- 3.12.5** 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 Mogadishu¹⁰³ and the National Committee Against FGM and Save Somali Women and Children have also taken forward activities in various parts of the country.^{104 105} However, there are no reliable statistics to measure the success of their programs.

⁹⁹ USSD 2009

¹⁰⁰ Landinfo – Female genital mutilation in Sudan and Somalia December 2008
<http://www.unhcr.org/refworld/country,,LANDINFO,,SDN,456d621e2,498085871c,0.html>

¹⁰¹ Landinfo – Female genital mutilation in Sudan and Somalia December 2008

¹⁰² 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>

¹⁰³ 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>

¹⁰⁴ Landinfo – Female genital mutilation in Sudan and Somalia December 2008

¹⁰⁵ http://www.newsfromafrica.org/newsfromafrica/articles/art_3744.html

- 3.12.6** 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.¹⁰⁶
- 3.12.7** Education and discussion about FGM has been organised on occasion in southern central Somalia; for example, a two day symposium held in Mogadishu in February 2007 organised by Save Somali Women and Children (SSWC). An IRIN article date 7 April 2008 noted that local organisations such as We are Women Activists (WAWA) in Bossasso, were developing in Puntland to support women objectors and to lobby for FGM's eradication. The article added that Puntland officials said they were encouraging civil society organisations to fight FGM and making it part of the fight for human rights and women's rights.¹⁰⁷ In January 2010 residents of Abud Wag district, Galgadud region staged a wide demonstration against FGM.¹⁰⁸
- 3.12.8 *Actors of protection.*** Case owners must refer to the Asylum Policy Instruction on Assessing the Claim. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Case owners should also take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.
- 3.12.9** Though illegal in Somaliland and Puntland, the law on FGM in these areas is not enforced. The procedure is also widely practised in the rest of Somalia where it is legal. FGM is generally considered a cultural issue in which the authorities do not interfere and therefore individuals may not be able to access sufficiency of protection.
- 3.12.10 *Internal relocation*** Case owners must refer to the Asylum Policy Instructions on both Internal Relocation and Gender and apply the test set out in paragraph 3390 of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.
- 3.12.11** The UNHCR Eligibility Guidelines (May 2010) conclude that where the examination of an IFA/IRA is a requirement under domestic law, it should be examined on a case-by-case basis, taking into consideration the specific circumstances of the asylum-seeker within the UNHCR guidelines.¹⁰⁹

¹⁰⁶ 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>

¹⁰⁷ COI report 2010

¹⁰⁸ http://www.somaliweyn.org/pages/news/Jan_10/31Jan13.html

¹⁰⁹ UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Somalia 5 May 2010 <http://www.unhcr.org/refworld/docid/4be3b9142.html>

- 3.12.12** In accordance with those guidelines, the UK very carefully considers the appropriateness of internal relocation on a case by case basis taking full account of the individual circumstances of the particular claimant and the specific risk to that individual. In general, if an applicant who faces a real risk of ill-treatment/persecution in their home area can relocate to another part of Somalia where they would not be at real risk, whether from state or non-state actors, and it would not be unduly harsh to expect them to do so, then asylum or humanitarian protection should be refused. There may be some whose home area is Mogadishu, for example, but for whom internal relocation to other areas may be viable. An individual may be able to enlist the support of family or clan or otherwise survive economically in areas other than Mogadishu provided he would be of no adverse interest to al Shabaab, or whichever group is in control of the proposed area of relocation. In line with usual practice, if case owners propose internal flight, they will need to consider the suitability of the proposed area and whether this would be accessible to the returnee. When considering the reasonableness or otherwise of internal relocation, case owners should refer to the Asylum Instruction 'Internal Relocation' for further guidance.
- 3.12.13** There are many parts of central and southern Somalia where there is no ongoing fighting because territorial control has been established. Checkpoints operated by the TFG have decreased and there were no reports of armed clan factions operating checkpoints in 2009. Al-Shabaab has established checkpoints at the exit/entry routes of the towns under its control for security reasons. It checks goods, searches people and ensures that its strict Islamic codes are enforced, but does not collect money. There were no reports of checkpoints between towns or within towns, as was common in previous years with the exception of Mogadishu where there are checkpoints in the city.^{110 111}
- 3.12.14** Restrictions on movement have reduced significantly as compared to the situation considered by the AIT in AM where illegal checkpoints had proliferated to excessive levels. Al-Shabaab has reportedly eradicated extortion, robbery and murder from bandits in areas it controls. There is no evidence that those not of adverse interest to the TFG, al-Shabaab or groups such as Hizb Islam or ASWJ who have a presence in particular areas, would be unable to pass through checkpoints safely. There may be some security incidents whilst travelling in Somalia and, although individuals will not generally need an escort, if they consider an escort necessary, it is feasible for them to arrange one either before or after arrival.
- 3.12.15** Somaliland and Puntland, are in general relatively safe but the authorities in these regions will only admit 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.
- 3.12.16** Given the generally lower levels of fighting and the relative ease of travel within many areas of Somalia, the risks of travel are likely to be less problematic than those considered by the AIT. It will be feasible for many to return to their home areas from Mogadishu airport as most areas are more accessible than previously. Mogadishu airport continues to function normally.¹¹² There are scheduled air services to a number of destinations in Somalia – Mogadishu, Bosasso, Hargeisa, Berbera, Burao and Galcayo.¹¹³ Asylum claims are unlikely to succeed unless the applicant can demonstrate why they are unable to return to their home areas.

3.12.17 Caselaw.

¹¹⁰ USSD 2009

¹¹¹ <http://news.bbc.co.uk/1/hi/8326174.stm>

¹¹² <http://www1.voanews.com/english/news/africa/Aden-Adde-International-Airport-in-Mogadishu-Relatively-Safe-85827947.html>

¹¹³ <http://www.mapsofworld.com/international-airports/africa/somalia.html>

See (at 3.6.20):

AM & AM (armed conflict: risk categories) Somalia CG [2008] UKAIT 00091

HH (Somalia) & Others [2010] EWCA Civ 426

- 3.12.18 Conclusion:** Case owners must assess the credibility of the applicant and the evidence they submit in accordance with the relevant Asylum Instructions (see para 3.2 – 3.5 above). 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.
- 3.12.19** If it is considered that an individual could successfully internally relocate individually and/or with their daughters in order to avoid a threat of FGM, a grant of asylum or Humanitarian protection will not be appropriate. Women who have not undergone the procedure and who can demonstrate that they are at risk of such mistreatment and could not escape the risk by internal relocation should be considered members of a particular social group and granted asylum.
- 3.13 Prison conditions**
- 3.13.1** 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.
- 3.13.2** 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.
- 3.13.3 Consideration.** Prison conditions remained harsh and life threatening in all regions of the country in 2009. Overcrowding, poor sanitary conditions, lack of access to health care, and inadequate food and water supply persisted in prisons throughout the country. Tuberculosis, HIV/AIDS, and pneumonia were widespread. Abuse by guards was common. Detainees' families and clans generally were expected to pay the costs of detention. In many areas prisoners depended on food received from family members or from relief agencies.¹¹⁴
- 3.13.4** According to Mogadishu-based human rights organisations, TFG prison conditions improved in 2009 and wardens were generally responsive on human rights problems. There were far fewer prisoners and detainees held in TFG prisons than in previous years. There were an estimated 400 prisoners held at Mogadishu central prison, the only TFG-operated prison during the year. The reduction was largely due to a reconciliation policy that did not emphasise arrests and a lack of capacity to detain those who sought to undermine or attack the government. United Nations Development Program (UNDP) Somalia supported local partners to institute judicial and rule of law reforms. Through such initiatives as the UNDP-supported Police Advisory Committee, authorities released more than 5,000 prisoners in the previous two years.¹¹⁵
- 3.13.5** Unlike in previous years, there were no reports of TFG-allied militias operating detention centres. Anti-government groups, extremist elements and clan leaders reportedly continued

¹¹⁴ COI Somalia Country Report 2010

¹¹⁵ COI Somalia Country Report 2010

to operate detention centres in which conditions were harsh and guards frequently abused detainees. Al-Shabaab and affiliated extremist armed groups operated dilapidated detention centres in areas under their control. Thousands of prisoners were incarcerated in inhumane conditions for relatively minor offences such as smoking, listening to music and not wearing a hijab.¹¹⁶

- 3.13.6** The Puntland and Somaliland administrations permitted prison visits by independent monitors. Conditions at Puntland's Garowe central prison were described as 'terribly bad' due to lack of capacity rather than intentional abuse. A project of Somaliland and the UNDP resulted in the formation of an independent prisoner monitoring committee. The UNDP also extensively trained the prison custodial corps on a variety of human rights problems. There were no visits by the International Committee of the Red Cross to prisons in Somaliland or in the rest of the country during 2009. However a prisons conditions management committee organised by the UNDP and composed of medical doctors, government officials and civil society representatives continued to visit prisons in Somaliland. During 2009 the UNDP managed a programme to improve Somaliland prisons by building new facilities and assisting in training wardens and judicial officials.¹¹⁷
- 3.13.7 Conclusion.** Whilst prison conditions in Somalia are poor and taking into account overcrowding, poor sanitary conditions, a lack of access to adequate health care, an absence of education and vocational training, abuse by guards and widespread tuberculosis, HIV/AIDS and pneumonia, conditions are unlikely to reach the Article 3 threshold. Therefore even where claimants can demonstrate a real risk of imprisonment on return to Somalia a grant of Humanitarian Protection will not generally be appropriate. However, the individual factors of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3, relevant factors being the likely length of detention the likely type of detention facility and the individual's age and state of health. Where in an individual case treatment does reach the Article 3 threshold a grant of Humanitarian Protection will be appropriate.

4 Discretionary Leave

- 4.1** Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See API on Discretionary Leave) Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the Asylum Instructions on Article 8 ECHR.
- 4.2** With particular reference to Somalia the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the Asylum Instructions on Discretionary Leave and on Article 8 ECHR.
- 4.3 Minors claiming in their own right**
- 4.3.1** Minors claiming in their own right who have not been granted asylum or HP can only be returned where there are adequate reception, care and support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, care and support arrangements in place in Somalia.
- 4.3.2** Minors claiming in their own right without a family to return to, or where there are no adequate reception, care and support arrangements, should if they do not qualify for leave on any more favourable grounds be granted Discretionary Leave for a period as set out in the relevant Asylum Instructions.

¹¹⁶ COI Somalia Country Report 2010

¹¹⁷ COI Somalia Country Report 2010

4.4 Medical treatment

- 4.4.1** Applicants may claim they cannot return to Somalia due to a lack of specific medical treatment. See the IDI on Medical Treatment, which sets out in detail the requirements for Article 3 and/or Article 8 to be engaged.
- 4.4.2** Médecins Sans Frontières (MSF) reported that in 2009 the Somali population continued to fall victim to indiscriminate violence, while severe drought plagued parts of the country. Millions of people urgently require health care, yet the enormous gap between the needs of Somalis and the humanitarian response on the ground continues to widen. Ongoing abductions and killings of international and Somali aid workers is thwarting the efforts of humanitarian organisations to respond, and the public health-care system remains in near total collapse. There was a general lack of access to basic lifesaving medical care countrywide. In July 2009 MSF closed activities in its paediatric hospital and 3 other health clinics in northern Mogadishu.¹¹⁸
- 4.4.3** Another major challenge is the lack of qualified medical staff as so many have fled the violence and no medical universities are open (apart from Benadir University which has a functioning Faculty of Medicine). In December 2008 there was a graduation of 20 doctors from Benadir University in Mogadishu, the first graduating class in two decades. However bombing of the graduation ceremony killed 23 people, mostly graduates and wounding more than 50 others.¹¹⁹
- 4.4.4** The lack of free medical care throughout the country has exacerbated the health issues people face as a result of chronic poverty and this year's severe drought. Although little reliable data is available at the national level, healthcare indicators in Somalia are around the worst in terms of immunisations, maternal mortality, malnutrition and access to basic health care services. MSD is providing medical care in 9 projects in Somalia. In the first 6 months of 2009 MSF provided 376,000 outpatient consultations, including 164,000 for children under five. More than 22,000 women received antenatal care consultations and more than 13,300 people were admitted as inpatients to MSF supported hospitals and health clinics. There were 3,300 surgical operations, 1975 of which were injuries due to violence. Teams treated more than 1,400 patients for malaria and started 660 people on tuberculosis treatment. Nearly 15,000 people suffering from malnutrition were provided with food and medical care and 126,700 vaccinations were given.¹²⁰
- 4.4.5** The World Health Organisation reported in January 2009 that the "Somali Young Doctors' Association is providing mobile health services to IDP in Mogadishu, after a brief halt due to colleagues being lost in the December suicide bombing in Mogadishu."¹²¹
- 4.4.6** The International Red Cross has adapted its operations from community projects to major relief operations. It was reported that in June 2009 there were around 650 wounded persons receiving treatment at Mogadishu's three main hospitals operated by ICRC, MSF and the Somali Red Crescent Society. 37 hospitals and clinics had been closed due to fighting and the remaining medical facilities operated with great difficulty as various military factions commandeered facilities and services.¹²²
- 4.4.7** Where a case owner 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

¹¹⁸ COI report 2010

¹¹⁹ COI report 2010

¹²⁰ COI report 2010

¹²¹ COI report 2010

¹²² COI report 2010

- 5.1** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining returns documentation should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.
- 5.2** There is no policy precluding the return of failed Somali asylum seekers to any region of Somalia. Those without any legal basis of stay in the UK may also return voluntarily to any region of Somalia. There are scheduled air services to a number of destinations in Somalia – Mogadishu, Bosasso, Hargeisa, Berbera, Burao and Galcaio. Returns to Somaliland are conducted under the terms of a confidential Memorandum of Understanding (MoU) between the UK and the Somaliland authorities which provides for the return of those individuals who have no legal basis to remain in the United Kingdom but who have a right of return to Somaliland. Returns to Somaliland are generally via Dubai.
- 5.3** There are many parts of central and southern Somalia where there is no ongoing fighting because territorial control has been established. Checkpoints operated by the TFG have decreased and there were no reports of armed clan factions operating checkpoints in 2009. Al-Shabaab has established checkpoints at the exit/entry routes of the towns under its control for security reasons. It checks goods, searches people and ensures that its strict Islamic codes are enforced, but does not collect money. There were no reports in 2009 of checkpoints between towns or within towns, as was common in previous years with the exception of Mogadishu where there are checkpoints in the city.^{123 124}
- 5.4** Restrictions on movement have reduced significantly as compared to the situation considered by the AIT in *AM* where illegal checkpoints had proliferated to excessive levels. Al-Shabaab has reportedly eradicated extortion, robbery and murder from bandits in areas it controls. There is no evidence that those not of adverse interest to the TFG, al-Shabaab or groups such as Hizbul Islam or ASWJ who have a presence in particular areas, would be unable to pass through checkpoints safely. There may be some security incidents whilst travelling in Somalia and, although individuals will not generally need an escort, if they consider an escort necessary, it is feasible for them to arrange one either before or after arrival.
- 5.5** Somaliland and Puntland, are in general relatively safe but the authorities in these regions will only admit 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.
- 5.6** In the case of *HH (Somalia) & Others [2010] EWCA Civ 426* the Court of Appeal found that in any case in which it can be shown either directly or by implication what route and method of return is envisaged, the First Tier Tribunal is required by law to consider and determine any challenge to the safety of that route or method. Where internal relocation is suggested, case owners should consider accessibility of the intended place of relocation from Mogadishu. Where return is to a home area other than Mogadishu, case owners should carefully consider any concerns expressed by the applicant regarding safety of the onward route of return but if this is not raised by the applicant at the decision stage, case owners and/or presenting officers should be prepared to deal with any challenge on this issue made by the applicant in the courts.
- 5.7** Somali nationals may return voluntarily to any region of Somalia at any time. They may, for example: (a) leave the UK by themselves, where the applicant makes their own arrangements to leave the UK, (b) leave the UK through the voluntary departure procedure, arranged through the UK Border Agency, or (c) leave the UK under one of the Assisted

¹²³ USSD 2009

¹²⁴ <http://news.bbc.co.uk/1/hi/8326174.stm>

Voluntary Return (AVR) schemes. The Voluntary Assisted Return and Reintegration Programme (VARRP) currently returns via Somaliland and Puntland. It is implemented on behalf of the UK Border Agency by the International Organization for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining any travel document, booking flights, airport assistance both on departure and arrival including the provision of a £500 relocation grant on departure for immediate resettlement needs, as well as organising reintegration assistance delivered in kind in Somalia. The programme was established in 1999, and is open to those who have sought asylum at any stage in the process or with certain forms of related temporary status in the UK. 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 0800 783 2332 or www.iomlondon.org.

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