

OPERATIONAL GUIDANCE NOTE

SOMALIA

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1 Introduction

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

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

- 1.3.** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the Asylum Instructions on Article 8 ECHR. If, following consideration, a claim is to be refused, 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.

Source documents

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

2. **Country assessment**

- 2.1.** Since the fall of President Siad Barre in January 1991, Somalia has been without a functioning central government. During the 1990s, the country was in a perpetual state of civil war with rival clan warlords and their associated militias engaged in armed conflicts over control of various regions. The most serious outbreaks of clan violence were in southern and central regions.¹ A Transitional Federal Government (TFG) was formed in 2004 following the conclusion of a 2 year reconciliation process. Its Parliament was based in Baidoa with the Presidency and most of the TFG in Mogadishu. A self declared Republic of Somaliland continues to operate in the northwest of the country as does the semi autonomous State of Puntland in the northeast.
- 2.2.** Between 24 December and early January 2007, militiamen loyal to Mogadishu's network of Islamic courts (UIC) who had taken control over 8 of Somalia's 18 administrative regions in July 2006 were dislodged by the military forces of the TFG and Ethiopia. Remnants of the UIC were also pursued in Southern Somalia by the same forces.² After the fall of the UIC, the semblance of order and security that the UIC had created in Mogadishu began to deteriorate. Roadblocks and checkpoints returned, together with banditry and violence despite the efforts of the TFG to improve security in the capital.³ The fall of the UIC also brought to the fore some of the inter and intra clan rivalries that had been suppressed during the conflict and serious clan related fighting ensued⁴.
- 2.3.** Since March 2008, insurgent forces have made territorial gains in southern/ central Somalia fighting to oust TFG control of the area. The three main groups involved in the insurgency are: al Shabaab ("the Youth") the most active group in terms of recruitment; the multiclan group of the former Union of Islamic Courts (UIC) leaders who style themselves as 'Al-Muqawamah' (the Resistance) that are nominally loyal to Sheikh Sharif Sheikh Ahmed disliking of Ethiopia's intervention in Somalia and wary of Al-Shabaab's more militant tendencies; and, clan militia mainly from the Hawiye clan.
- 2.4.** Territorial gains by insurgent forces have included: Kismayo in August 2008; Jowhar in September 2008; Merka in November 2008 and Baidoa in January 2009. Backed by Ethiopian forces, the TFG fought insurgent groups in open battles in Mogadishu throughout 2008. However, following the withdrawal of the Ethiopian forces in January 2009, the TFG were unable to sustain insurgent attacks alone leaving the UIC Islamists to reassume power in central/southern Somalia.⁵
- 2.5.** In early 2009, the newly constituted government forces forming a moderate Islamist government came to power incorporating the former TFG armed forces. Sheikh Sharif Ahmed was elected as president on 31 January 2009. He has called for national unity and to bring Islamist factions together.⁶ Omar Abdirashi Ali Sharmake was appointed prime minister on 14 February 2009⁷ and announced his new cabinet on 20 February 2009.⁸
- 2.6.** An African Union peacekeeping mission deployed to Mogadishu in March 2007 has been left isolated by events in Mogadishu. An advisory committee to the new government announced on 20 February that AMISOM should leave Mogadishu within 20 days and Al Shabaab launched a major offensive against AMISOM on 22 February 2009 killing 11 Burundian troops. However, AMISOM remains the main security force at Mogadishu International Airport, the seaport and at strategic crossroads on key road connections.⁹

¹ COIS Somalia Country Report February 2009 (History & Constitution)

² COIS Somalia Country Report February 2009 (History)

³ COIS Somalia Country Report February 2009 (History)

⁴ COIS Somalia Country Report February 2009 (History)

⁵ COIS Somalia Country Report February 2009

⁶ COI Request 9 February 2009

⁷ Garowe online – 14 February 2009

⁸ Shabelle online – 20 February 2009

⁹ COIS Somalia Country Report February 2009 (Latest News)

- 2.7.** The security situation in northern Somalia remains better than in southern and central Somalia. Somaliland and Puntland did however continue to dispute their border in the Sool and Sanag regions.¹⁰ Somaliland has officially indicated its desire to secede from Somalia, but no country has recognized it as a separate State. Puntland has stated its desire to remain a part of Somalia as an autonomous region, but it has significant security problems, including piracy and kidnapping, as well as the border dispute with 'Somaliland'.¹¹
- 2.8.** The human rights situation in Somalia is defined by the absence of effective state institutions. Somalis enjoy substantial freedoms - of association, expression, movement – but live largely without the protection of the state, access to security or institutional rule of law. Institutions are however emerging in some parts of the country¹² for example, in Somaliland and Puntland which have constitutions that provide for citizens' rights and civic institutions and where the human rights situation is in general better.¹³
- 2.9.** Human rights abuses in Somalia during 2008 have included: unlawful and politically motivated killings; kidnapping, torture, rape and beatings; harsh and life threatening prison conditions; and, arbitrary arrest and detention. In part due to the absence of functioning institutions, perpetrators of abuses were rarely punished¹⁴ Societal discrimination against women in Somalia was also widespread and the practice of female genital mutilation (FGM) almost universal. Domestic violence including rape remained a problem. Traditional approaches to dealing with rape tended to ignore the victim's situation and often involved a resolution of the crime between members of the perpetrator's and victim's clans thus denying women's access to justice and right to due process.¹⁵
- 2.10.** There are no legal provisions for the protection of religious freedom. The overwhelming majority of Somalis are Sunni Muslims and there is strong societal pressure to respect Islamic traditions. There have been reports of non-Muslims experiencing societal harassment problems because of their religion, in particular where an attempt has been made to convert Muslims. Societal pressure against conversion is such that there has also been anecdotal evidence that people were sometimes even killed.¹⁶
- 2.11.** A number of local and international NGOs engaged in human rights activity do currently operate in Somalia investigating and publishing their findings on human rights cases. However, attacks and incidences of harassment against humanitarian, religious and NGO workers have resulted in deaths.¹⁷ In October 2008, Amnesty International reported that humanitarian workers no longer enjoyed the limited protection they previously held based on their status in the community as impartial distributors of food and emergency services, or as advocates of peace and human rights. Amnesty said that attacks against humanitarian workers had become one of the defining features of the conflict in Somalia during 2008, with the significant increase in attacks targeting this group resembling a similar earlier rise in attacks targeting journalists.¹⁸ Between January and November 2008, 25 humanitarian workers were killed in Somalia and at least 24 NGO staff were kidnapped. For example, in June 2008, the head of the UNHCR office was kidnapped and held for two months.¹⁹
- 2.12.** Independent journalists also reporting on human rights violations have been the subject of serious exactions. For example, according to Human Rights Watch, at least 2 journalists were killed in 2008 bringing the total number of journalists killed since 2007 to 10²⁰ Anti government groups continued to harass journalists threatening to kill them if they did not report on anti government attacks conducted by Al-Shabaab. Journalists were also

¹⁰ COIS Somalia Country Report February 2009 (Security Situation)

¹¹ AllAfrica – 27 November 2008 - <http://allafrica.com/stories/200811280149.html>

¹² COIS Somalia Country Report February 2009 (Human rights; Introduction)

¹³ USSD Somalia 2008

¹⁴ USSD Somalia 2008

¹⁵ COIS Somalia Country Report February 2009 (Women)

¹⁶ COIS Somalia Country Report February 2009 (Freedom of Religion)

¹⁷ USSD Somalia 2008 (Section 18)

¹⁸ COIS Somalia Country Report February 2009 (International Human Rights Organisations)

¹⁹ Human Rights Watch World Report 2008

²⁰ Human Rights Watch World Report 2008

harassed by TFG forces if they were critical of the government administration.²¹ Human rights groups located in Somaliland are able to operate freely but those based in Puntland are shown little tolerance by the political authorities²²

- 2.13.** Despite the overall deteriorated human rights situation in Somalia, in his March 2008 report, the UN Independent Expert on Human Rights in Somalia (UNIE) noted that there were very small yet incremental changes in terms of human rights awareness and knowledge taking place in small areas.²³
- 2.14.** Somali society is traditionally characterised by membership of clan families (which are sub-divided into clans and sub-clans) or membership of minority groups. An individual's position depends to a large extent on their clan origins. In general terms, a person should be safe in an area controlled by their clan, and any person, irrespective of clan or ethnic origin, will be safe from general clan-based persecution in Somaliland and Puntland. The chronic and widespread level of underdevelopment in Somalia makes a large portion of the population vulnerable not only to humanitarian crisis, but also to violations of their human rights. Somalis with no clan affiliation, and thus protection, are the most vulnerable to such violations, including predatory acts by criminals and militias, as well economic, political, cultural and social discrimination.²⁴
- 2.15.** Although the Transitional Federal Charter provides for an independent judiciary, there is no functioning judicial system to administer. However, regional administrations have some functioning courts. In most areas the locally organised judiciary is an inconsistent mixture of traditional and customary justice, Islamic Shari'a law and the pre-1991 penal code. In Somaliland and Puntland, where the pre-1991 penal code still generally applies, an accused person can be assisted by a lawyer and has some appeal rights, even in the Shari'a courts. The right to representation by an attorney and the right to appeal does not exist in most southern/central regions that apply traditional and customary judicial practices or Shari'a law. The death penalty is enforced.²⁵ Similarly, there is no effective functioning police force. Members of the police force were often direct participants in politically based conflict and owed their positions to other politically active individuals. Reports suggest that police abuses are rarely investigated and that impunity remains a problem.²⁶
- 2.16** Despite the absence of a central government based in the country, there is generally free movement of both people and goods within Somalia. The Transitional Federal Charter of the Somali Republic (TFC) and the Puntland Charter both provide for freedom of movement within the country though this right was restricted in some parts of the country.²⁷ Travel on some roads outside Mogadishu can sometimes be problematic. Amnesty noted in May 2008 that there were multiple checkpoints and roadblocks on the roads outside of Mogadishu. According to the USSD, these were operated by government militias and armed clans factions who may sometimes inhibit passage of travellers by exposing them to looting, extortion, rape and harassment.²⁸ USSD reported that the number of checkpoints had increased to over 400 in central/ southern Somalia during 2008. However, according to the IGC's December 2008 report, Islamist insurgent groups have been keen to portray themselves as eradicating criminal roadblocks and extortion by dismantling illegal checkpoints.²⁹

Humanitarian situation

- 2.17** According to the UNHCR, the total displacement from Mogadishu up to end November 2008 was estimated to be 250,000 people. However, as at 18 January 2009, UNHCR reported that over 30000 IDPs had returned to Mogadishu from the Shabelles, Mudug, Hiraan, the

²¹ USSD 2008

²² USSD Somalia 2008 (Section 18)

²³ USSD Somalia 2008

²⁴ COIS Somalia Country Report February 2009 (Background information)

²⁵ COIS Somalia Country Report February 2009 (Judiciary & Death penalty & Police)

²⁶ COIS Somalia Country Report February 2009 (Police)

²⁷ USSD Somalia 2008

²⁸ COIS Somalia Country Report February 2009

²⁹ COIS Somalia Country Report February 2009

Afgooye corridor and within Mogadishu among other places. In addition international aid is getting into the area. The World Food Programme (WFP) dispatched 52080 metric tonnes of assorted food commodities out of the 57000 metric tonnes needed in Somalia for January and February to feed 2.5 million people. And in December 2008, UNICEF and WHO launched the largest ever life saving health campaign for women and children of child bearing age across the country with a package of preventative health care.³⁰

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 claimant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the claimant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.
- 3.4** This guidance is **not** designed to cover issues of credibility. Case owners will need to consider credibility issues based on all the information available to them. (For guidance on credibility see the Asylum Instructions on 'Considering the Asylum' and 'Assessing Credibility in Asylum and Human Rights Claims'.
- 3.5** All Asylum Instructions can be accessed on the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:
- <http://www.ukba.homeoffice.gov.uk/documents/asylumpolicyinstructions/>
- 3.6 General country situation in southern and central regions**
- 3.6.1** Some claimants will make an asylum and/or human rights claim based on the security situation in Somalia, in particular the security situation in southern and central regions. Such claims may also raise the issue of clan affiliation.
- 3.6.2 *Treatment.*** Between 24 December and early January 2007, militiamen loyal to Mogadishu's network of Islamic courts (UIC) who had taken control over 8 of Somalia's 18 administrative regions in July 2006 were dislodged by the military forces of the TFG and Ethiopia. Remnants of the UIC were also pursued in Southern Somalia by the same forces.³¹ After the fall of the UIC, the semblance of order and security that the UIC had created in Mogadishu began to deteriorate. Roadblocks and checkpoints returned, together with

³⁰ UN OCHA Report January 2009; 6-13 February 2009 and 13-20 February 2009

³¹ COIS Somalia Country Report February 2009 (History)

banditry and violence despite the efforts of the TFG to improve security in the capital.³² The fall of the UIC also brought to the fore some of the inter and intra clan rivalries that had been suppressed during the conflict and serious clan related fighting ensued³³.

- 3.6.3** Since March 2008, insurgent forces have made territorial gains in southern/ central Somalia fighting to oust TFG control of the area. The three main groups involved in the insurgency are: al Shabaab (“the Youth”) the most active group in terms of recruitment; the multiclan group of the former Union of Islamic Courts (UIC) leaders who style themselves as ‘Al-Muqawamah’ (the Resistance) that are nominally loyal to Sheikh Sharif Sheikh Ahmed disliking of Ethiopia’s intervention in Somalia and wary of Al-Shabaab’s more militant tendencies; and, clan militia mainly from the Hawiye clan.
- 3.6.4** Territorial gains by insurgent forces have included: Kismayo in August 2008; Jowhar in September 2008; Merka in November 2008 and Baidoa in January 2009. Backed by Ethiopian forces, the TFG fought insurgent groups in open battles in Mogadishu throughout 2008. However, following the withdrawal of the Ethiopian forces in January 2009, the TFG were unable to sustain insurgent attacks alone leaving the UIC Islamists to reassume power in central/southern Somalia.³⁴
- 3.6.5** The security situation in northern Somalia remains better than in southern and central Somalia. Somaliland and Puntland did however continue to dispute their border in the Sool and Sanag regions.³⁵ Somaliland has officially indicated its desire to secede from Somalia, but no country has recognized it as a separate State. Puntland has stated its desire to remain a part of Somalia as an autonomous region, but it has significant security problems, including piracy and kidnapping, as well as the border dispute with ‘Somaliland’.³⁶
- 3.6.6** Roads outside Mogadishu are sometimes problematic. Amnesty noted in May 2008 that there were multiple checkpoints and roadblocks on the roads outside of Mogadishu. According to the USSD, these were operated by government militias and armed clans factions who may sometimes inhibit passage of travellers by exposing them to looting, extortion, rape and harassment. USSD reported that the number of checkpoints had increased to over 400 in central/ southern Somalia during 2008.³⁷ However, according to the IGC’s December 2008 report, Islamist insurgent groups have been keen to portray themselves as eradicating criminal roadblocks and extortion by dismantling illegal checkpoints.³⁸
- 3.6.7** While the humanitarian situation in Somalia is poor, there is not such an absence of the basic necessities of life or conditions that would lead to an immediate threat to life or personal dignity. According to the UNHCR, the total displacement from Mogadishu up to end November 2008 was estimated to be 250,000 people. However, as at 18 January 2009, UNHCR reported that over 30000 IDPs had returned to Mogadishu from the Shabelles, Mudug, Hiraan, the Afgooye corridor and within Mogadishu among other places. In addition international aid is getting into the area. The World Food Programme (WFP) dispatched 52080 metric tonnes of assorted food commodities out of the 57000 metric tonnes needed in Somalia for January and February to feed 2.5 million people. And in December 2008, UNICEF and WHO launched the largest ever life saving health campaign for women and children of child bearing age across the country with a package of preventative health care.³⁹

³² COIS Somalia Country Report February 2009 (History)

³³ COIS Somalia Country Report February 2009 (History)

³⁴ COIS Somalia Country Report February 2009

³⁵ COIS Somalia Country Report February 2009 (Security Situation)

³⁶ AllAfrica – 27 November 2008 - <http://allafrica.com/stories/200811280149.html>

³⁷ COIS Somalia Country Report February 2009

³⁸ COIS Somalia Country Report February 2009

³⁹ UN OCHA Report January 2009; 6-13 February 2009 and 13-20 February 2009

- 3.6.8 Sufficiency of protection.** As this category of claimants' fear is of mistreatment on the basis of the general country situation and not particular state or non-state agents, the availability of sufficient state protection is not relevant.
- 3.6.9 Internal relocation.** The AIT in the case of AM & MM has found that a situation of generalised violence exists in Mogadishu and that those staying in Mogadishu for any length of time face a real risk of a mistreatment contrary to Article 3 ECHR. However, the AIT in the case of AM and MM also said those claiming a real risk of mistreatment in Mogadishu would need to be able to show that there is no viable internal relocation option available to them to avoid such mistreatment. Those affiliated to major clan families, their immediate clan groups and associated sub clans should therefore be able to reside safely in an area outside of Mogadishu in which their clan is present. There may also be some circumstances where a member of a minority clan could internally relocate outside of Mogadishu and avail themselves of the support a majority clan.
- 3.6.10** Freedom of movement is restricted in some parts of the country due to sporadic clan or sub-clan conflict, especially in southern and central regions. Checkpoints manned by clan militiamen or government forces can inhibit passage. For further information on checkpoints see section 2.16. Somalis are generally able to pass through government checkpoints on the road that make a charge for safe passage⁴⁰ as well as checks to ensure people are not engaged in armed opposition and trying to escape from the authorities but those who can demonstrate that they do not fit into this category should not have any problems.⁴¹ In addition, though there do continue to be security incidents along the main road between Mogadishu International Airport and the city, travel along the road is possible and individuals using it do not generally face any difficulties. Individuals will also not generally require an escort to travel on the road. However if they do consider an escort to be necessary, it is feasible for them to arrange one with their own clan before or after arrival.⁴²
- 3.6.11** Large parts of northern Somalia, namely Somaliland and Puntland, are considered generally safe regardless of clan membership. However, the authorities controlling the Somaliland and Puntland regions have made it clear that they would only admit to the areas they control those who originate from that territory or those who have close affiliations to the territory through clan membership. In the case of majority clan affiliates, this means those associated with the Majerteen in Puntland and the Isaaq in Somaliland.⁴³
- 3.6.12** If an applicant who faces a real risk of ill-treatment/persecution in their home area would be able to 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. For those resident in Mogadishu, careful consideration must be given to whether internal relocation outside of Mogadishu would be an effective way to avoid a real risk of ill-treatment/persecution on account of the situation of generalised violence there.

3.6.13 Caselaw.

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

HH & others (Mogadishu: armed conflict: risk) Somalia CG [2008] UKAIT 00022. This case considered the issue of internal armed conflict in Somalia with reference to Article 15(c) of the Qualification Directive. The AIT found that there is an internal armed conflict confined to Mogadishu and its immediate environs but that there is not such indiscriminate risk of violence as to place the citizens of Mogadishu at individual risk of serious harm. The AIT said that unless there are

⁴⁰ COIS Somalia Country Report February 2009 (Checkpoints)

⁴¹ BIA Fact Finding Mission report June 2007 para 6.06

⁴² BIA Fact Finding Mission report June 2007 section 6

⁴³ COIS Somalia Country Report February 2009 (Ethnic groups; Somali clans & Annex C)

substantial grounds for believing that on return to Somalia a person is at real risk of Article 2 or 3 harm it is unlikely that they would satisfy article 15(c). Even if an international or internal armed conflict had been found to exist, it did not mean that a claimant would automatically succeed under article 15(c) or its domestic counterpart (para 334).

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

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).
- A person having to relocate from their home area including from Mogadishu will not 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 look 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.

ECJ Elgafaji 17 February 2009. The ECJ in this case found that Article 15(c) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, in conjunction with Article 2(e) thereof must be interpreted as meaning that:

- the existence of serious and individual threat to the life or person of an applicant for subsidiary protection is not subject to the condition that that applicant adduce evidence that he is specifically targeted by reason of factors particular to his personal circumstances;
- the existence of such a threat can exceptionally be considered to be established where the degree of indiscriminate violence characterising the armed conflict taking place – assessed by the competent national authorities before which an application for subsidiary protection is made, or by the courts of a Member State to which a decision refusing such an application is referred – reaches such a high level that substantial grounds are shown for believing that a civilian returned to the relevant country or as the case may be, to the relevant region, would, solely on account of his presence on the territory of that country or region, face a real risk of being subject to that threat.

3.6.14 Conclusion. A state of civil instability and/or where law and order has sometimes broken down does not of itself give rise to a well-founded fear of persecution for a Convention reason. The claimant can only demonstrate a well-founded claim for asylum where they can demonstrate they are at risk of adverse treatment on Convention grounds over and above the risk to life and liberty, which occurs during such instability / insecurity.

3.6.15 Where those seeking protection in the United Kingdom fall outside the scope of the Refugee Convention, they may seek humanitarian protection under immigration rule 339C which implemented the provisions with respect to subsidiary protection in articles 2(e) and 15(c) of the EU Qualification Directive

3.6.16 On 17 February 2009 the European Court of Justice (ECJ) issued a judgment in the case of *Elgafaji v NL* (Case C-465/07) concerning Article 15(c) which clarifies the test for whether Article 15c applies in particular cases. The ECJ found that Article 15c of the Qualification Directive provides protection that is supplementary to that provided by Article 3 of ECHR if in a country or part of a country that is in a state of internal or international armed conflict, indiscriminate violence: *“reaches such a high level that substantial grounds are shown for believing that a civilian, returned to the relevant country or, as the case may be, to the relevant region, would, solely on account of his presence in the territory of that country or region, face a real risk of being subject to the serious threat referred to in Article 15(c) of the Directive”*.

3.6.17 The European Court of Justice emphasised that, in order for someone to qualify for protection on the basis of indiscriminate violence, the level of violence would need to be so high that **anyone**, irrespective of his or her personal circumstances, returned to the country or part of a country in question, would be at risk “solely on account of his presence in the territory of that country or region”. The ECJ recognised that such a high level of indiscriminate violence will be ‘exceptional’. The judgement whether levels of indiscriminate violence in a particular country or part of a country reach such a high level is one for the authorities and the courts of members states.

3.6.18 The AIT found in the country guidance case of AM & MM found that, for the purposes of Article 15c of the Qualification Directive, a state of internal armed conflict exists in central and southern Somalia. The Tribunal also found however that outside of Mogadishu the level of indiscriminate violence was not such that all civilians are at individual risk solely on account of being present in that region.

3.6.19 With regard to Mogadishu, the Tribunal found that 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 – the level of indiscriminate violence is such that individuals would be at risk of generalised violence on return to Mogadishu and, if they stayed in Mogadishu for any length of time, a real risk of a mistreatment contrary to Article 3 ECHR. It is necessary to consider each case under Article 15 (c) of the Qualification Directive to ascertain whether the individual claimant would personally be at real risk from indiscriminate violence. If they would be, a grant of humanitarian protection may be appropriate. However, in order for a claim for humanitarian protection to succeed on

those grounds an individual would need to show that there was not a viable relocation option open to them outside of Mogadishu.

3.6.20 Furthermore, as also highlighted in the case of AM & MM, although the humanitarian situation in Mogadishu and in central and southern Somalia is poor, there is not such an absence of the basic necessities of life as to cause an immediate threat to life or personal dignity. Food, water and shelter are available and there is access to international humanitarian aid.

3.7 Members of major clan families or related sub-clans

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

3.7.2 *Treatment.* Somali society is characterised by membership of clan families (which are sub-divided into clans and many sub-clans) or membership of minority groups. Clan members are classified as ethnic Somali and minority groups are usually classified as non-ethnic Somali. The clan structure comprises four major "noble" clan-families; Darod, Hawiye, Isaaq and Dir. "Noble" refers to the widespread Somali belief that members of the major clans are descended from a common Somali ancestor, and that the minority clans/groups have a different, usually mixed, parentage. Two further clans, the Digil and Mirifle (also collectively referred to as Rahanweyn), take, in many aspects, an intermediate position between the main Somali clans and the minority groups.⁴⁴

3.7.3 The dominant clan in any particular area has previously excluded and discriminated against other clans and minorities from participation in power in that area. However, following the expulsion of the UIC from Mogadishu and the intervention of the Ethiopians, the situation in has moved away from the previous pattern of majority clan warlords preying on minority clans and fighting with other majority clans.⁴⁵ It has been reported that during the last three to four years, individuals from majority clans have not been targeted solely on account of their clan affiliation.⁴⁶ As long as a person is living in the traditional area of the clan he or she would enjoy the protection of that clan.⁴⁷

3.7.4 Information provided by the Foreign and Commonwealth Office in May 2008 about the fluid country situation following the ousting of the UIC indicates that the risk to personal safety for the vast majority of Somalis, whether affiliated to majority or minority clans, is the same and that there is little detectable difference between some individual circumstances.⁴⁸

3.7.5 In its December 2008 report, the International Crisis Group stated that large swathes of the country are reverting back to a clan style of government and that even during the worst inter-clan feuds, clan elders have always been respected and played a recognised conflict mediation role. Any erosion of the power of clan elders does not mean that they do not wield influence.⁴⁹

3.7.6 *Sufficiency of protection.* Both SAACID and UNHCR have recently reported that clan structures are beginning to fracture under the current economic stress 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.⁵⁰ However, taking into account all the objective information in the round most Somalis continue to ensure their personal safety by residing in the 'home areas' of their clan, where they can seek and receive adequate protection from their kinship group.⁵¹ According to the Danish Fact Finding Mission of August 2007, in principle, anyone can enjoy protection by his or her own clan as long as a person is living inside the traditional area of the

⁴⁴ COIS Somalia Country Report October 2008 (Ethnic groups & Annexes C-D)

⁴⁵ HH and others – AIT judgment

⁴⁶ Danish Fact Finding Mission Report – 14-27 March 2007

⁴⁷ Danish Fact Finding Mission Report – 14-27 March 2007

⁴⁸ COIS Somali Country Report February 2009 (Ethnic groups)

⁴⁹ COIS Somali Country Report February 2009

⁵⁰ COIS Somalia Country Report February 2009 (Ethnic groups)

⁵¹ COIS Somalia Country Report February 2009 (Ethnic groups; Somali clans & Annex C)

clan he or she enjoys the protection of that clan.⁵² Generally, only those unable to reside in such areas will not be able to obtain sufficient protection from ill treatment/persecution on the basis of clan membership.

- 3.7.7 Internal relocation.** The AIT in the case of AM & MM has found that a situation of generalised violence exists in Mogadishu and that those staying in Mogadishu for any length of time face a real risk of a mistreatment contrary to Article 3 ECHR. However, the AIT in the case of AM and MM also said those claiming a real risk of mistreatment in Mogadishu would need to be able to show that there is no viable internal relocation option available to them to avoid such mistreatment. Those affiliated to major clan families, their immediate clan groups and associated sub clans should therefore be able to reside safely in an area outside of Mogadishu in which their clan is present. There may also be some circumstances where a member of a minority clan could internally relocate outside of Mogadishu and avail themselves of the support a majority clan.
- 3.7.8** Freedom of movement is restricted in some parts of the country due to sporadic clan or sub-clan conflict, especially in southern and central regions. Checkpoints manned by clan militiamen or government forces can inhibit passage. For further information on checkpoints see section 2.16. Somalis are generally able to pass through government checkpoints on the road that make a charge for safe passage⁵³ as well as checks to ensure people are not engaged in armed opposition and trying to escape from the authorities but those who can demonstrate that they do not fit into this category should not have any problems.⁵⁴ In addition, though there do continue to be security incidents along the main road between Mogadishu International Airport and the city, travel along the road is possible and individuals using it do not generally face any difficulties. Individuals will also not generally require an escort to travel on the road. However if they do consider an escort to be necessary, it is feasible for them to arrange one with their own clan before or after arrival.⁵⁵
- 3.7.9** Large parts of northern Somalia, namely Somaliland and Puntland, are considered generally safe regardless of clan membership. However, the authorities controlling the Somaliland and Puntland regions have made it clear that they would only admit to the areas they control those who originate from that territory or those who have close affiliations to the territory through clan membership. In the case of majority clan affiliates, this means those associated with the Majerteen in Puntland and the Isaaq in Somaliland.⁵⁶
- 3.7.10** If an applicant who faces a real risk of ill-treatment/persecution in their home area would be able to 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. For those resident in Mogadishu, careful consideration must be given to whether internal relocation outside of Mogadishu would be an effective way to avoid a real risk of ill-treatment/persecution on account of the situation of generalised violence there.

3.7.11 Caselaw.

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

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

AE (Somalia) [2004] UKIAT 00281. On the material available to it, the Tribunal was not satisfied that the Bimaal clan was able to draw upon effective protection in Mogadishu or in Marka. Although

⁵² COIS Somalia Country Report February 2009 (Ethnic groups; Somali clans & Annex C)

⁵³ COIS Somalia Country Report February 2009 (Checkpoints)

⁵⁴ BIA Fact Finding Mission report June 2007 para 6.06

⁵⁵ BIA Fact Finding Mission report June 2007 section 6

⁵⁶ COIS Somalia Country Report February 2009 (Ethnic groups; Somali clans & Annex C)

the Dir afforded effective protection to clan members in the north of Somalia, they offered no protection to the Bimaal in southern Somalia.

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

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

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

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

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

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).

- A person having to relocate from their home area including from Mogadishu will not 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 look 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.

3.7.12 Conclusion. Large parts of northern Somalia, namely Somaliland and Puntland, are considered generally safe regardless of clan membership. In other parts of Somalia it is unlikely than any Somali belonging to one of the major clan-families – their immediate clan groups or associated sub clans - would be able to demonstrate that they have a well-founded fear of persecution within the terms of the 1951 Convention on the basis of their clan affiliation alone. Those individuals who come from Mogadishu would, in line with the case of AM & MM need to demonstrate that there is no viable relocation alternative outside of Mogadishu. However, many Somali clans are present in more than one area of Somalia and also in areas beyond Somalia's borders. Moreover, people displaced from their home area may move to other areas populated by their clan. Somalis are increasingly able to both visit and live in cities outside their clan's traditional domain. As emphasised in the cases of *NM and Others, DM, HH and others* and AM & MM there will usually be an area in Somalia in which any major clan member can live safely under the protection of their 'home' clan or an associated clan group.

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

3.8 Bajunis

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

3.8.2 Treatment. Somalis with no clan affiliation are the most vulnerable to serious human rights violations, including predatory acts by criminal and militias, as well economic, political,

cultural and social discrimination. These groups comprise an estimated 22% of the Somali population and include the Bajuni.⁵⁷

- 3.8.3** The Bajuni are a small independent ethnic community of perhaps 3,000 or 4,000 who are predominantly sailors and fishermen. They live in small communities along the Indian Ocean coastline (including Somalia and Kenya) and on some of the larger offshore islands between Kismayo and Mombasa, Kenya.⁵⁸
- 3.8.4** The small Bajuni population in Somalia suffered considerably at the hands of Somali militia, principally Marehan militia who tried to force them off the islands. Though Marehan settlers still have effective control of the islands, Bajuni can work for the Marehan as paid labourers. This is an improvement on the period during the 1990s when General Morgan's forces controlled Kismayo and the islands, when the Bajuni were treated by the occupying Somali clans as little more than slave labour. Essentially the plight of the Bajuni is based on the denial of economic access by Somali clans, rather than outright abuse.⁵⁹
- 3.8.5** Information provided by the Foreign and Commonwealth Office in May 2008 about the fluid country situation following the ousting of the UIC indicates that the risk to personal safety for the vast majority of Somalis, whether affiliated to majority or minority clans, is the same and that there is little detectable difference between some individual circumstances.⁶⁰
- 3.8.6** In its December 2008 report, the International Crisis Group stated that large swathes of the country are reverting back to a clan style of government and that even during the worst inter-clan feuds, clan elders have always been respected and played a recognised conflict mediation role. Any erosion of the power of clan elders does not mean that they do not wield influence.⁶¹
- 3.8.7** **Sufficiency of protection.** Both SAACID and UNHCR have recently reported that clan structures are beginning to fracture under the current economic stress 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.⁶² Members of minority groups are able in some circumstances to secure protection from major or sub related clans in some areas (refer *HH & others Somalia CG [2008] UKAIT 00022*) and clan dynamics/ structures also still exist as the primary entity to which individuals turn for protection (*AM and MM Somalia CG [2008]*). However, minority groups, such as the Bajuni, that are politically and economically the weakest and are culturally and ethnically distinct from Somali clan families are generally not able to secure protection from any major clan family or related sub-clan.⁶³
- 3.8.8** **Internal relocation.** For further information on internal relocation see section 2.16. In some circumstances internal relocation might be possible for members of the Bajuni. However, the Bajuni are vulnerable to discrimination and exclusion by major clan and sub-clan groups throughout southern/central Somalia,⁶⁴ and internal relocation within these regions is generally not a reasonable option.
- 3.8.9** **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:

⁵⁷ USSD –Somalia 2008

⁵⁸ Immigration Refugee Board Canada "Victims and Vulnerable Groups In Southern Somalia" May 1995

⁵⁹ COIS Somalia Country Report October 2008 (Ethnic groups: Bajunis)

⁶⁰ COIS Somali Country Report February 2009 (Ethnic groups)

⁶¹ COIS Somali Country Report February 2009

⁶² COIS Somalia Country Report February 2009 (Ethnic groups)

⁶³ COIS Somalia Country Report February 2009 (Ethnic groups; General security position for minority groups)

⁶⁴ COIS Somalia Country Report February 2009 (Ethnic groups; General security position for minority groups)

- 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.

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

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).
- A person having to relocate from their home area including from Mogadishu will not 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 look 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.

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

3.8.11 For the vast majority of Somalis clan status should not in itself risk mistreatment and some members of minority groups are able in some circumstances to secure protection from major or sub related clans in some areas (refer *HH & others Somalia CG [2008] UKAIT 00022*). Clan dynamics/ structures also still exist as the primary entity to which individuals turn for protection (*AM and MM Somalia CG [2008]*). However, the Bajuni are generally one of the minority groups unable to rely on a patron clans support and vulnerable to discrimination and social exclusion due mainly to them being culturally and ethnically unconnected to any major clan group.⁶⁵ For those Bajuni claimants who have demonstrated a reasonable likelihood that they have encountered ill treatment amounting to persecution a grant of asylum is therefore likely to be appropriate.

3.9 Benadiri (Rer Hamar) or Bravanese

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

3.9.2 Treatment. Somalis with no clan affiliation are the most vulnerable to serious human rights violations, including predatory acts by criminal and militias, as well as economic, political, cultural and social discrimination. These groups comprise an estimated two million people, or about one third of the Somali population and include the Benadiri (Rer Hamar) and Bravanese.⁶⁶

3.9.3 The Benadiri are an urban people of East African Swahili origin. They all lost property during the war and the majority of Benadiri fled to Kenya. Those who remain live mainly in the coastal cities of Mogadishu, Merka and Brava. The situation of the Benadiri remaining in Somalia is difficult, as they cannot rebuild their businesses in the presence of clan militias. As at March 2004, 90% of the Rer Hamar population in Mogadishu had left the city as a consequence of civil war and lack of security. The majority of Rer Hamar who are still in Mogadishu are older people who live in Hamar Weyn and Shingani districts some of whom had been forced to marry off their daughters to members of the majority clans. Most homes belonging to the Benadiri and Bravanese in Mogadishu had been taken over by members of clan militias, although sometimes the clan occupants allowed them to reside in one room.⁶⁷

3.9.4 The Bravanese are believed to be of mixed Arab, Portuguese and other descent. Long established in the coastal town of Brava, which is controlled by the Habr Gedir, the Bravanese have been particularly disadvantaged and targeted by clan militia since the collapse of central authority in 1991. Most of the Bravanese have now fled from Brava and those who remain face abuses such as forced labour, sexual slavery and general intimidation.⁶⁸

⁶⁵ COIS Somalia Country Report February 2009 (Ethnic groups; General security position for minority groups)

⁶⁶ COIS Somalia Country Report February 2009 (Ethnic groups; General security position for minority groups)

⁶⁷ COIS Somalia Country Report February 2009 (Ethnic groups; Bravanese and Benadiri)

⁶⁸ COIS Somalia Country Report February 2009 (Ethnic groups; Bravanese and Benadiri)

- 3.9.5** Information provided by the Foreign and Commonwealth Office in May 2008 about the fluid country situation following the ousting of the UIC indicates that the risk to personal safety for the vast majority of Somalis, whether affiliated to majority or minority clans, is the same and that there is little detectable difference between some individual circumstances.⁶⁹
- 3.9.6** In its December 2008 report, the International Crisis Group stated that large swathes of the country are reverting back to a clan style of government and that even during the worst inter-clan feuds, clan elders have always been respected and played a recognised conflict mediation role. Any erosion of the power of clan elders does not mean that they do not wield influence.⁷⁰
- 3.9.7** **Sufficiency of protection.** Both SAACID and UNHCR have recently reported that clan structures are beginning to fracture under the current economic stress 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.⁷¹ Members of the Benadiri who have been resident in more secure parts of the country such as Somaliland are able to avail themselves of the protection of a patron clan (see *A (Somalia) [2004] UKIAT 00080*). In addition, some members of the Ashraf have been able to live in Southern Somalia under the protection of the majority clan in their geographic community (*HH & others Somalia CG [2008] UKAIT 00022*) and clan dynamics/ structures also still exist as the primary entity to which individuals turn for protection (*AM and MM Somalia CG [2008]*). However, minority groups such as the Benadiri (Rer Hamar) and Bravanese based in southern or central Somalia are culturally and ethnically distinct from Somali clan families and are not generally able to secure protection from any major clan family or related sub-clan.⁷²
- 3.9.8** **Internal relocation.** For further information on internal relocation see section 2.16. In some circumstances internal relocation might be possible for members of the Benadiri (Rer Hamar) and Bravanese. However, the Benadiri (Rer Hamar) and Bravanese are vulnerable to discrimination and exclusion by major clan and sub-clan groups throughout southern/central Somalia,⁷³ and internal relocation within these regions is generally not a reasonable option.
- 3.9.9** **Caselaw.**
- AJH (Somalia) [2003] UKIAT 00094.** Persons of Bajuni or Bravanese ethnicity are likely to face persecution and cannot reasonably relocate, particularly if they are female. This case sets out the test for caseworkers assessing the credibility of claims of Bajuni ethnicity but can be applied to all minority group claims.
- MN (Somalia CG) [2004] UKIAT 00224.** The Tribunal clarified that there are three distinct groups using the name "Tunni". There are "Town Tunnis" who live near Brava and who are perceived as Bravanese, "country" Tunnis who live away from Brava and who are associated with the Digil clan and the "Tunni Torre who are "a negroid group federated to the Tunni of Brava as vassals". Because the Town Tunnis are perceived as Bravanese they are treated as such. Therefore a decision-maker assessing the risks faced by a Town Tunni should assess them as if the claimant were Bravanese. This is a country guidance case and on this point must be followed unless there is clear evidence that Dr. Luling (who gave expert evidence on this issue) is wrong. The Tribunal emphasised that not every Town Tunni or Bravanese necessarily risks persecution in the event of return, however such a risk existed in the case of MN. [Note: see also *M (Somalia)* at paragraph 3.6.5 above on "country" Tunnis associated with the Digil clan.
- A (Somalia) [2004] UKIAT 00080.** Benadiri from Somaliland. The Tribunal found that, even if the claimant was a Benadiri, he was not at any real risk of persecution if he was returned to the Somaliland part of Somalia (which is where he had come from). The claimant had lived there without encountering persecution, and had established a family network there. The Tribunal recognised that the claimant was in an unusual position as he would not be returning to the areas where Benadiri usually live (i.e. between Mogadishu and Kismayo) but to another part of the country, which was not an option open to most people of his ethnicity.

⁶⁹ COIS Somali Country Report February 2009 (Ethnic groups)

⁷⁰ COIS Somali Country Report February 2009

⁷¹ COIS Somalia Country Report February 2009 (Ethnic groups)

⁷² COIS Somalia Country Report February 2009 (Ethnic groups; Bravanese and Benadiri)

⁷³ COIS Somalia Country Report February 2009 (Ethnic groups; General security position for minority groups)

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

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).
- A person having to relocate from their home area including from Mogadishu will not 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 look 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.

3.9.10 Conclusion. For the vast majority of Somalis clan status should not in itself risk mistreatment, and some members of minority groups including the Benadiri are able in some circumstances to secure protection from major or sub related clans in some areas as evidenced in *A (Somalia) [2004] UKIAT 00080* (see above) where the AIT found that Benediri who have been resident in more secure parts of the country such as Somaliland would not face a real risk of persecution or treatment in breach of the ECHR. In addition, in *HH & others Somalia CG [2008] UKAIT 00022* (see above) the AIT found that some members of the Ashraf (a Benadiri sub group) have been able to live in southern Somalia under the protection of the majority clan in their geographic community. Furthermore, clan dynamics/ structures still exist as the primary entity to which individuals turn for protection

(*AM and MM Somalia CG [2008]*). However, the Benadiri or Bravanese are generally one of the minority groups unable to rely on a patron clans support and vulnerable to discrimination and social exclusion due mainly to them being culturally and ethnically unconnected to any major clan group.⁷⁴ For those Benadiri/ Bravanese claimants who have demonstrated a reasonable likelihood that they have encountered ill treatment amounting to persecution a grant of asylum is therefore likely to be appropriate.

3.10 Midgan, Tumul, Yibir or Galgala

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

3.10.2 *Treatment.* The Gaboye/Midgan (usually referred to as the Midgan but also known as the Madhiban), Tumul and Yibir (a group said to have Jewish origins) traditionally lived in the areas of the four main nomadic clan families of Darod, Isaaq, Dir and Hawiye in northern and central Somalia though in the last few decades many of them have migrated to the cities. These groups are now scattered throughout the country. They are mainly found in northern and central regions but the Midgan have been able to settle in Puntland. Midgan can trade freely and their position improves at times of stability and recovery, although they are usually unable to own property and livestock. The Midgan, Tumul and Yibir and Galgala have always been placed at the lower end of Somali society and are subject to societal discrimination in urban centres from other clan groups and harassment where no patron clan protection exists, particularly in rural areas.⁷⁵

3.10.3 Information provided by the Foreign and Commonwealth Office in May 2008 about the fluid country situation following the ousting of the UIC indicates that the risk to personal safety for the vast majority of Somalis, whether affiliated to majority or minority clans, is the same and that there is little detectable difference between some individual circumstances.⁷⁶

3.10.4 In its December 2008 report, the International Crisis Group stated that large swathes of the country are reverting back to a clan style of government and that even during the worst inter-clan feuds, clan elders have always been respected and played a recognised conflict mediation role. Any erosion of the power of clan elders does not mean that they do not wield influence.⁷⁷

3.10.5 *Sufficiency of protection.* Both SAACID and UNHCR have recently reported that clan structures are beginning to fracture under the current economic stress 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.⁷⁸ However, taking into account all the objective information in the round, 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 Somalia clans with whom they live. Some Gaboye, Tumul and Yibir assimilated into the Isaaq in Somaliland, while others have assimilated into the Darod in Puntland and central regions. Other Gaboye, Tumul and Yibir have assimilated with Hawadle, Murasade and Marehan clans in Galgadud region.⁷⁹ The Galgala have assimilated into the Abgal in Jowhar and Mogadishu and the Nuh Mohamud sub clan of the Majerteen clan.⁸⁰ Members of these groups are therefore able to seek and receive adequate protection from their patron clans.

3.10.6 *Internal relocation.* The AIT in the case of AM & MM has found that a situation of generalised violence exists in Mogadishu and that those staying in Mogadishu for any length of time face a real risk of a mistreatment contrary to Article 3 ECHR. However, the

⁷⁴ COIS Somalia Country Report February 2009 (Ethnic groups; General security position for minority groups)

⁷⁵ COIS Somalia Country Report February 2009 (Ethnic groups; Midgan, Tumul, Yibil and Galgala & Annexes C-D)

⁷⁶ COIS Somali Country Report February 2009 (Ethnic groups)

⁷⁷ COIS Somali Country Report February 2009

⁷⁸ COIS Somalia Country Report February 2009 (Ethnic groups)

⁷⁹ UN-OCHA Study on Minority Groups in Somalia

⁸⁰ UN-OCHA Study on Minority Groups in Somalia

AIT in the case of AM and MM also said those claiming a real risk of mistreatment in Mogadishu would need to be able to show that there is no viable internal relocation option available to them to avoid such mistreatment. Those affiliated to major clan families, their immediate clan groups and associated sub clans should therefore be able to reside safely in an area outside of Mogadishu in which their clan is present and internal relocation for occupational castes is generally possible.

- 3.10.7** Freedom of movement is restricted in some parts of the country due to sporadic clan or sub-clan conflict, especially in southern and central regions. Checkpoints manned by clan militiamen or government forces can inhibit passage. For further information on checkpoints see section 2.16. Somalis are generally able to pass through government checkpoints on the road that make a charge for safe passage⁸¹ as well as checks to ensure people are not engaged in armed opposition and trying to escape from the authorities but those who can demonstrate that they do not fit into this category should not have any problems.⁸² In addition, though there do continue to be security incidents along the main road between Mogadishu International Airport and the city, travel along the road is possible and individuals using it do not generally face any difficulties. Individuals will also not generally require an escort to travel on the road. However if they do consider an escort to be necessary, it is feasible for them to arrange one with their own clan before or after arrival.⁸³
- 3.10.8** Large parts of northern Somalia, namely Somaliland and Puntland, are considered generally safe regardless of clan membership. However, the authorities controlling the Somaliland and Puntland regions have made it clear that they would only admit to the areas they control those who originate from that territory or those who have close affiliations to the territory through clan membership. In the case of majority clan affiliates, this means those associated with the Majerteen in Puntland and the Isaaq in Somaliland.⁸⁴
- 3.10.9** If an applicant who faces a real risk of ill-treatment/persecution in their home area would be able to 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. For those resident in Mogadishu, careful consideration must be given to whether internal relocation outside of Mogadishu would be an effective way to avoid a real risk of ill-treatment/persecution on account of the situation of generalised violence there.

3.10.10 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.

⁸¹ COIS Somalia Country Report February 2009 (Checkpoints)

⁸² BIA Fact Finding Mission report June 2007 para 6.06

⁸³ BIA Fact Finding Mission report June 2007 section 6

⁸⁴ COIS Somalia Country Report February 2009 (Ethnic groups; Somali clans & Annex C)

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

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).
- A person having to relocate from their home area including from Mogadishu will not 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 returnee's 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.

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

3.11 Female Genital Mutilation (FGM)

- 3.11.1** Some claimants may make asylum and/or human rights claims on the basis that they would be forcibly required by family/ clan members to undergo Female Genital Mutilation (FGM) and/ or that FGM will be forced upon their children if they were to return to Somalia.
- 3.11.2 *Treatment:*** The practice of FGM is widespread throughout Somalia. There have been estimates that up to 98% of women have undergone FGM which according to the United Nations Children's Fund (UNICEF) is primarily performed on girls aged 4-11⁸⁵. The majority of women are subjected to infibulation commonly referred to as "pharaonic circumcision", the most severe form of FGM. The less radical type of FGM sometimes called "sunna" is practised mainly in the coastal towns of Mogadishu, Brava, Merca and Kismayo.⁸⁶ In Puntland and Somaliland FGM is illegal; however, the law is not enforced.⁸⁷
- 3.11.3** 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.⁸⁸
- 3.11.4** The avoidance of FGM is dependent on whether a girl is from the town or the countryside. If a family lives in a major city it is possible to avoid FGM so long as the parents agree (even if the rest of the family and/ or clan do not support the idea). It has also been reported that there is a tendency towards Somali men being more easily convinced not to have their daughters circumcised.⁸⁹ 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.
- 3.11.5** Despite the fact that the practice of FGM is entrenched in Somali culture and custom, NGOs have made intensive efforts to educate the population about the dangers of the practice particularly those NGOs working with women's or health issues. For example, the United Nations Development Fund for Women (UNIFEM) has worked together with local NGOs in Jilib and Mogadishu⁹⁰ and the National Committee Against FGM and Save Somali Women and Children have also taken forward activities in various parts of the country.⁹¹ However, there are no reliable statistics to measure the success of their programs.
- 3.11.6** UNIFEM has also indicated that a mother can protect her daughter from FGM if she has her husband's support and he has some standing in the community to counter any opposition from the rest of the family. If the husband does not support his wife's decision, then his wife does have the option to leave the community with the child.⁹²
- 3.11.7 *Sufficiency of protection:*** Though illegal in Somaliland and Puntland, the law on FGM in these areas is not enforced. The procedure is also widely practised in the rest of Somalia

⁸⁵ UNICEF advocacy paper: Eradication of Female Genital Mutilation in Somalia
http://www.unicef.org/somalia/cpp_136.html

⁸⁶ USSD Somalia: Report on Female Genital Mutilation (FGM) or Female Genital Cutting (FCM) – June 2001
http://www.asylumlaw.org/docs/somalia/usdos01_fgm_Somalia.pdf

⁸⁷ Somalia COIR (Women; FGM) – August 2008

⁸⁸ Landinfo – Female genital mutilation in Sudan and Somalia December 2008

⁸⁹ Report on the Human Rights and Security in Central and Southern Somalia: Joint British-Nordic Fact-Finding Mission to Nairobi 7-21 January 2004, published 17 March 2004.

<http://www.unhcr.org/home/RSDCOI/405b2d804.pdf>

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where it is legal. FGM is generally considered a cultural issue in which the authorities do not interfere and therefore individuals may not be able to access sufficiency of protection.

- 3.11.8 Internal relocation.** The AIT in the case of AM & MM has found that a situation of generalised violence exists in Mogadishu and that those staying in Mogadishu for any length of time face a real risk of a mistreatment contrary to Article 3 ECHR. However, the AIT in the case of AM and MM also said those claiming a real risk of mistreatment in Mogadishu would need to be able to show that there is no viable internal relocation option available to them to avoid such mistreatment. Those affiliated to major clan families, their immediate clan groups and associated sub clans should therefore be able to reside safely in an area outside of Mogadishu in which their clan is present and internal relocation for occupational castes is generally possible.
- 3.11.9** Freedom of movement is restricted in some parts of the country due to sporadic clan or sub-clan conflict, especially in southern and central regions. Checkpoints manned by clan militiamen or government forces can inhibit passage. For further information on checkpoints see section 2.16. Somalis are generally able to pass through government checkpoints on the road that make a charge for safe passage⁹³ as well as checks to ensure people are not engaged in armed opposition and trying to escape from the authorities but those who can demonstrate that they do not fit into this category should not have any problems.⁹⁴ In addition, though there do continue to be security incidents along the main road between Mogadishu International Airport and the city, travel along the road is possible and individuals using it do not generally face any difficulties. Individuals will also not generally require an escort to travel on the road. However if they do consider an escort to be necessary, it is feasible for them to arrange one with their own clan before or after arrival.⁹⁵
- 3.11.10** Large parts of northern Somalia, namely Somaliland and Puntland, are considered generally safe regardless of clan membership. However, the authorities controlling the Somaliland and Puntland regions have made it clear that they would only admit to the areas they control those who originate from that territory or those who have close affiliations to the 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.⁹⁶
- 3.11.11** If an applicant who faces a real risk of ill-treatment/persecution in their home area would be able to 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. Each case must be considered on its individual merits. For those resident in Mogadishu, careful consideration must be given to whether internal relocation outside of Mogadishu would be an effective way to avoid a real risk of ill-treatment/persecution on account of the situation of generalised violence there. In addition, some women relocating within Somalia to escape an individualised threat of FGM or to escape so that their daughters do not have to undergo the procedure may encounter a lack of acceptance by others in a new environment as well as a lack of accommodation etc which may make internal relocation unduly harsh.
- 3.11.12 Caselaw.**

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

⁹³ COIS Somalia Country Report February 2009 (Checkpoints)

⁹⁴ BIA Fact Finding Mission report June 2007 para 6.06

⁹⁵ BIA Fact Finding Mission report June 2007 section 6

⁹⁶ COIS Somalia Country Report February 2009 (Ethnic groups; Somali clans & Annex C)

due to their geographic communities giving them protection rather than by living in hiding and suffering harassment (para 306).

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- 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.

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

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

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

3.12 Prison conditions

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

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

3.12.3 *Consideration.* Prison conditions remained harsh and life threatening in all regions of the country in 2008. The main Somaliland prison in Hargeisa, designed for 150 inmates, held more than 700 prisoners. Overcrowding, poor sanitary conditions, lack of access to health care, and inadequate food and water supply persisted in prisons throughout the country. Tuberculosis, HIV/AIDS, and pneumonia were widespread. Abuse by guards was common. Detainees' clans generally were expected to pay the costs of detention. In many areas prisoners depended on food received from family members or from relief agencies.⁹⁷

3.12.4 Human rights organisations and civil society leaders in Mogadishu reported the existence of makeshift detention centres in Mogadishu where prisoners were held during and after episodes of heavy fighting. In prisons and detention centres, juveniles were frequently held with adults. The incarceration of juveniles at the request of families who wanted their children disciplined continued to be a major problem. Female prisoners were separated from males; however, particularly in south/central Somalia, pretrial detainees were not necessarily separated from convicted prisoners.⁹⁸

3.12.5 The Puntland administration permitted prison visits by independent monitors. An agreement between Somaliland and the UN Development Programme (UNDP) allows for the monitoring of prison conditions. There were no visits by the International Committee of the Red Cross to prisons in Somaliland or in the rest of Somalia during 2008 but a Prisons Conditions Management Committee organised by the UNDP and comprised of medical doctors, government officials and civil society representatives continued to visit prisons in Somaliland. During 2008, UNDP managed a programme to improve Somaliland prisons by building new facilities and assisting in training wardens and judicial officials.⁹⁹

3.12.6 *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.

⁹⁷ COIS Somalia Country Report February 2009

⁹⁸ USSD 2008

⁹⁹ USSD Somalia 2008

4. Discretionary Leave

- 4.1** Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See API on Discretionary Leave) Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the Asylum Instructions on Article 8 ECHR.
- 4.2** With particular reference to Somalia the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the Asylum Instructions on Discretionary Leave and on Article 8 ECHR.
- 4.3 Minors claiming in their own right**
- 4.3.1** Minors claiming in their own right who have not been granted asylum or HP can only be returned where there are adequate reception, care and support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, care and support arrangements in place in Somalia.
- 4.3.2** Minors claiming in their own right without a family to return to, or where there are no adequate reception, care and support arrangements, should if they do not qualify for leave on any more favourable grounds be granted Discretionary Leave for a period as set out in the relevant Asylum Instructions.
- 4.4 Medical treatment**
- 4.4.1** Applicants may claim they cannot return to Somalia due to a lack of specific medical treatment. See the IDI on Medical Treatment, which sets out in detail the requirements for Article 3 and/or Article 8 to be engaged.
- 4.4.2** According to Medecins Sans Frontiers (MSF) in January 2004 (and reaffirmed in January 2006) the overall level of healthcare and possibilities for treatment in central and southern Somalia were very poor. MSF refers to a lack of basic medical training amongst the personnel (doctors and particularly nurses) operating at the limited number of hospitals and clinics in the region. It was estimated that up to 90% of the doctors and health staff in hospitals is insufficiently trained. For those with sufficient funding to pay for treatment, primary healthcare was available in all regions. MSF indicated that women and children had a better chance of receiving treatment on the grounds that they are less likely to be the target of militias. The actual situation does vary within different parts of the country although the few health workers who remain tend to be based in the more secure urban centres.¹⁰⁰
- 4.4.3** In Mogadishu there are two public hospitals (Medina and Keysane) with facilities to perform certain surgical procedures. Public hospitals in Galkayo (Mudug) and Kismayo (Lower Juba) serve enormous areas. These hospitals were beset with insecurity, lack of funding, equipment, qualified staff and drugs. The only other hospitals in southern/central regions - in Belet Weyne (Hiran) and Baidoa (Bay and Bakool) - have been closed for some years. Aid agencies have attempted to fill the gap in areas where health services and structures have all but collapsed. They struggle to provide health care in remote areas, where reaching the patients is a major problem. The Somali private health sector has grown

¹⁰⁰ COIS Somalia Country Report February 2009 (Section 26)

considerably in the absence of an effective public sector. Of the population who get any care at all, about two thirds of them get it from the private health sector.¹⁰¹

- 4.4.4** Mental health care provision is provided by NGOs who assist in the provision of services to mental patients and street children and training for primary health care personnel. There are only three centres for psychiatry including the mental hospital in Berbera and the general psychiatric wards in Hargeisa and Mogadishu. There is no private psychiatric inpatient facility though there are a few private clinics in Mogadishu and Hargeisa.¹⁰²
- 4.4.5** 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

- 5.1** Factors that affect the practicality of return such as the difficulty or otherwise of, where necessary, obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.
- 5.2** There is no policy precluding the return of failed Somali asylum seekers to any region of Somalia. Those without any legal basis of stay in the UK may also return voluntarily to any region of Somalia. There are scheduled air services to a number of destinations in Somalia – Mogadishu, Bosasso, Hargeisa, Berbera, Burao and Galcaiyu. Returns to Somaliland are conducted under the terms of a confidential Memorandum of Understanding (MoU) between the UK and the Somaliland authorities which provides for the return of those individuals who have no legal basis to remain in the United Kingdom but who have a right of return to Somaliland.
- 5.3** In the case of AM and MM the Tribunal found that consideration should be given to the onward route of return in any individual case consideration, that is, the any onward route of return to an individuals home area (see paras 28 and 207 of AM and MM) . Freedom of movement is restricted in some parts of the country due to sporadic clan or sub-clan conflict, especially in southern and central regions. Checkpoints manned by clan militiamen or government forces can inhibit passage. For further information on checkpoints see section 2.16. Somalis are generally able to pass through government checkpoints on the road that make a charge for safe passage¹⁰³ as well as checks to ensure people are not engaged in armed opposition and trying to escape from the authorities but those who can demonstrate that they do not fit into this category should not have any problems.¹⁰⁴ In addition, though there do continue to be security incidents along the main road between Mogadishu International Airport and the city, travel along the road is possible and individuals using it do not generally face any difficulties. Individuals will also not generally require an escort to travel on the road. However if they do consider an escort to be necessary, it is feasible for them to arrange one with their own clan before or after arrival.¹⁰⁵
- 5.4** Large parts of northern Somalia, namely Somaliland and Puntland, are considered generally safe regardless of clan membership. However, the authorities controlling the Somaliland and Puntland regions have made it clear that they would only admit to the areas they control those who originate from that territory or those who have close affiliations to the

¹⁰¹ COIS Somalia Country Report February 2009 (Section 26)

¹⁰² COIS Somalia Country Report February 2009 (Section 26)

¹⁰³ COIS Somalia Country Report February 2009 (Checkpoints)

¹⁰⁴ BIA Fact Finding Mission report June 2007 para 6.06

¹⁰⁵ BIA Fact Finding Mission report June 2007 section 6

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.¹⁰⁶

5.5 In its position paper of November 2005, UNHCR recommended that asylum-seekers originating from southern and central Somalia are in need of international protection and, excepting exclusion grounds, should be granted, if not refugee status then complementary forms of protection. UNHCR also re-iterated its call upon all governments to refrain from any forced returns to southern and central Somalia.¹⁰⁷ UNHCR's paper provides a broad assessment of the situation in Somalia and we do not dispute that it presents an accurate overview of the general humanitarian situation and the serious social and security problems inherent in a country without a central government. However, asylum and human rights claims are not decided on the basis of the general situation - they are based on the circumstances of the particular individual and the risk to that individual. We do not therefore accept UNHCR's conclusion, based on their overview of the general situation that it is unsafe for all persons who have been found not to be in need of some form of international protection to return to Somalia.

5.6 Caselaw.

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

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

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

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.

¹⁰⁶ COIS Somalia Country Report February 2009 (Ethnic groups; Somali clans & Annex C)

¹⁰⁷ COIS Somalia Country Report February 2009 (UNHCR position on the return of rejected asylum seekers)

- 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).
- A person having to relocate from their home area including from Mogadishu will not 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 look 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.

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