Upper Tribunal
(Immigration and Asylum Chamber)

AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia CG [2011] UKUT 00445 (IAC)

THE IMMIGRATION ACTS

Heard at Field House **On 13 to 21 June and 15 July 2011**	**Determination Promulgated** ……

Before

UPPER TRIBUNAL JUDGE LATTER
UPPER TRIBUNAL JUDGE P R LANE
UPPER TRIBUNAL JUDGE KEKIĆ

Between

AMM
MW
ZF
FM
AF

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

Intervening

Representation:

For Appellants AMM:	Ronan Toal, instructed by South Manchester Law Centre
For Appellant MW:	Harriet Short, instructed by Avon & Bristol Community Law Centre
For Appellant ZF:	Mark Schwenk, instructed by Parker Rhodes Hickmotts, Solicitors
For Appellant FM:	Mark Symes, instructed by Wilson Solicitors LLP
For Appellant AF:	Ronan Toal, instructed by Wilson Solicitors LLP
For the Respondent:	Tim Eicke QC and Christopher Staker, instructed by the Treasury Solicitor
For the UNHCR:	Tom Hickman, instructed by Baker & McKenzie LLP

Law

1) Whilst section 2 of the Human Rights Act 1998 and its associated case law requires United Kingdom tribunals in general to give effect to the jurisprudence of the European Court of Human Rights, including that Court's guidance on how to approach evidence in international protection cases, the weighing of evidence and the drawing of conclusions as to the relative weight to be placed on items of evidence adduced before a United Kingdom tribunal are ultimately matters for that tribunal. Whilst the factual finding the Strasbourg Court has made as a result of applying its own guidance is something to which the domestic tribunal must have regard, pursuant to section 2, it is not bound to reach the same finding.

2) There is nothing jurisprudentially problematic with the Strasbourg Court's judgment in Sufi & Elmi v the United Kingdom [2011] ECHR 1045, as regards Article 3 of the ECHR. The Court's finding, that the predominant cause of the humanitarian crisis in southern and central Somalia was due to the current warring parties, meant that the high threshold (identified, inter alia, in N v United Kingdom [2008] ECHR 453) for finding an Article 3 violation in the case of naturally occurring phenomena did not need to be met.

3) That high threshold is, however, still capable of being crossed in cases of sufficient exceptionality. In deciding what constitutes an exceptional case, regard must be had to all the factors, including the actions of the parties to a conflict, albeit that those actions are not the predominant cause of the humanitarian crisis.

4) Despite the suggestion in the judgment in Sufi & Elmi that there is no difference in the scope of, on the one hand, Article 3 of the ECHR (and, thus, Article 15(b) of the Qualification Directive) and, on the other, Article 15(c) of the Directive, the binding Luxembourg case law of Elgafaji [2009] EUECJ C-465/07 (as well as the binding domestic authority of QD (Iraq) [2009] EWCA Civ 620) makes it plain that Article 15(c) can be satisfied without there being such a level of risk as is required for Article 3 in cases of generalised violence (having regard to the high threshold identified in NA v United Kingdom [2008] ECHR 616). The difference appears to involve the fact that, as the CJEU found at [33] of Elgafaji, Article 15(c) covers a "more general risk of harm" than does Article 3 of the ECHR; that Article 15(c) includes types of harm that are

less severe than those encompassed by Article 3; and that the language indicating a requirement of exceptionality is invoked for different purposes in NA v United Kingdom and Elgafaji respectively.

5) Article 10 of the Qualification Directive requires the holding of some sort of belief, comprising a coherent and genuinely held system of values, whether these be theistic, non-theistic or atheistic, and is not satisfied in the case of a person who holds no such belief. Social restrictions, such as bans on watching football or television, do not comprise an interference with the right to religion, in the case of a person whose religious etc beliefs do not require him or her to participate in those activities. It is immaterial that a person may be permitted, according to those beliefs, to participate in the activities concerned.

6) Even where the motivation for a law is religious, the religious aspect will not, without more, lay the basis of a claim to international protection in relation to anyone who might fall foul of that law. However, the more such religiously motivated laws interfere with someone's ability to hold and practise their religious or other beliefs, the more intense will be the scrutiny.

7) The necessary religious element to satisfy Article 1(A) of the Refugee Convention is not satisfied solely by reference to the persecutor; but that element can be satisfied if the persecutor ascribes to the victim a perceived religious opinion.

8) There is no general legal principle that, in determining a person's entitlement to international protection, the Tribunal must leave out of account any possibility of that person's carrying out an act in the country of proposed return, which – if carried out in the United Kingdom – would constitute a criminal offence. A genuine conscientious objection to complying with unjust laws or demands may, however, provide an entitlement to such protection.

9) On the assumption that Al-Shabab's likely behaviour towards those who transgress its rules is as found in this determination, the position is as "extreme" as the factual basis in RT (Zimbabwe) [2010] EWCA Civ 1285. In the light of RT, a person from an Al-Shabab area who can show they do not genuinely adhere to Al-Shabab's ethos will have a good claim to Refugee Convention protection, once outside Somalia (subject to internal relocation and exclusion clause issues), regardless of whether the person could and would "play the game", by adhering to Al-Shabab's rules. As can be seen from a comparison with Sufi & Elmi, the effect of RT is, accordingly, to take the Refugee Convention beyond the comparable ambit of Article 3 ECHR protection.

10) There is no legal burden on the Secretary of State to prove that there is a part of the country of nationality etc of an appellant, who has established a well-founded fear in their home area, to which the appellant could reasonably be expected to go and live. The appellant bears the legal burden of proving entitlement to international protection; but what that entails will very much depend upon the circumstances of the particular case. In practice, the issue of internal relocation needs to be raised by the Secretary of State in the letter of refusal or (subject to procedural fairness) during the appellate proceedings.

11) It will then be for the appellant to make good an assertion that, notwithstanding the general conditions in the proposed place of relocation, it would not be reasonable to relocate there. In an Article 3 claim, a similar position pertains, in that, although the test of reasonableness/undue

harshness does not formally apply, unduly harsh living conditions etc – albeit not themselves amounting to a breach of Article 3 – may nevertheless be reasonably likely to lead to a person returning to their home area, where such a breach is reasonably likely.

12) An appellant who pursues their appeal on asylum and humanitarian protection grounds, following a grant of leave, is entitled to have their appeal decided on the hypothetical basis (if the facts so demonstrate) that family members would be reasonably likely to return with the appellant and that potential harm to those family members would cause the appellant to suffer persecution or Article 15(b) harm.

13) A person is not entitled to protection under the Refugee Convention, the Qualification Directive or Article 3 of the ECHR, on the basis of a risk of harm to another person, if that harm would be willingly inflicted by the person seeking such protection.

14) Article 8(1) of the Qualification Directive provides that Member States may determine that a person is not in need of international protection "if in a part of the country of origin there is no well-founded fear of being persecuted or no real risk of suffering serious harm and the applicant can reasonably be expected to stay in that part of the country. Article 8(3) states that Article 8(1) applies "notwithstanding technical obstacles to return to the country of origin". Although the Court of Appeal in HH & Others [2010] EWCA Civ 426 found that Article 8 was "to do principally with internal relocation", there is nothing in that judgment or in the Qualification Directive that demonstrates the Article is so confined, and it would be illogical for it to be so. Accordingly, difficulties in securing documentation to effect a return to a person's home area may not entitle that person to international protection, whether or not there are real risks to that person in some other area of the country concerned.

15) In assessing the effect of an appellant's lies (whether to the Secretary of State or a judicial fact-finder), it is unnecessary to construct a prescribed set of steps from the judgments of the Supreme Court in MA (Somalia) [2010] UKSC 49, particularly if they might lead to a "mechanistic" rather than a holistic approach. The significance or "negative pull" of the lie will possibly depend not only on the strength of the background evidence but on whether the lie – looked at in its own terms – is about an issue that is central to the disposition of the appeal. Where a person tells lies about issues which that person thinks are important to their claim but which, because of the passage of time or otherwise, are not, it is open to the Tribunal, given the earlier lies, to approach with caution the person's evidence regarding matters that are central to the current claim.

Country guidance

Mogadishu

1) Despite the withdrawal in early August 2011 of Al-Shabab conventional forces from at least most of Mogadishu, there remains in general a real risk of Article 15(c) harm for the majority of those returning to that city after a significant period of time abroad. Such a risk does not arise in the case of a person connected with powerful actors or belonging to a category of middle class or professional persons, who can live to a reasonable standard in circumstances where the Article 15(c) risk, which exists for the great majority of the population, does not apply. The significance

of this category should not, however, be overstated and, in particular, is not automatically to be assumed to exist, merely because a person has told lies.

2) The armed conflict in Mogadishu does not, however, pose a real risk of Article 3 harm in respect of any person in that city, regardless of circumstances. The humanitarian crisis in southern and central Somalia has led to a declaration of famine in IDP camps in Mogadishu; but a returnee from the United Kingdom who is fit for work or has family connections may be able to avoid having to live in such a camp. A returnee may, nevertheless, face a real risk of Article 3 harm, by reason of his or her vulnerability.

3) Except as regards the issue of female genital mutilation (FGM), it is unlikely that a proposed return to Mogadishu at the present time will raise Refugee Convention issues.

Southern and central Somalia, outside Mogadishu

4) Outside Mogadishu, the fighting in southern and central Somalia is both sporadic and localised and is not such as to place every civilian in that part of the country at real risk of Article 15(c) harm. In individual cases, it will be necessary to establish where a person comes from and what the background information says is the present position in that place. If fighting is going on, that will have to be taken into account in deciding whether Article 15(c) is applicable. There is, likewise, no generalised current risk of Article 3 harm as a result of armed conflict.

5) In general, a returnee with no recent experience of living in Somalia will be at real risk of being subjected to treatment proscribed by Article 3 in an Al-Shabab controlled area. "No recent experience" means that the person concerned left Somalia before the rise of Al-Shabab in 2008. Even if a person has such experience, however, he or she will still be returning from the United Kingdom, with all that is likely to entail, so far as Al-Shabab perceptions are concerned, but he or she will be less likely to be readily identifiable as a returnee. Even if he or she were to be so identified, the evidence may point to the person having struck up some form of accommodation with Al-Shabab, whilst living under their rule. On the other hand, although having family in the Al-Shabab area of return may alleviate the risk, the rotating nature of Al-Shabab leadership and the fact that punishments are meted out in apparent disregard of local sensibilities mean that, in general, it cannot be said that the presence of family is likely to mean the risk ceases to be a real one.

6) Al-Shabab's reasons for imposing its requirements and restrictions, such as regarding manner of dress and spending of leisure time, are religious and those who transgress are regarded as demonstrating that they remain in a state of kufr (apostasy). The same is true of those returnees who are identified as coming from the West. Accordingly, those at real risk of such Article 3 ill-treatment from Al-Shabab will in general be refugees, since the persecutory harm is likely to be inflicted on the basis of imputed religious opinion.

7) Although those with recent experience of living under Al-Shabab may be able to "play the game", in the sense of conforming with Al-Shabab's requirements and avoiding suspicion of apostasy, the extreme nature of the consequences facing anyone who might wish to refuse to conform (despite an ability to do so) is such as to attract the principle in RT (Zimbabwe). The

result is that such people will also in general be at real risk of persecution by Al-Shabab for a Refugee Convention reason.

8) The same considerations apply to those who are reasonably likely to have to pass through Al-Shabab areas.

9) For someone at real risk in a home area in southern or central Somalia, an internal relocation alternative to Mogadishu is in general unlikely to be available, given the risk of indiscriminate violence in the city, together with the present humanitarian situation. Relocation to an IDP camp in the Afgoye Corridor will, as a general matter, likewise be unreasonable, unless there is evidence that the person concerned would be able to achieve the lifestyle of those better-off inhabitants of the Afgoye Corridor settlements.

10) Internal relocation to an area controlled by Al-Shabab is not feasible for a person who has had no history of living under Al-Shabab in that area (and is in general unlikely to be a reasonable proposition for someone who has had such a history - see above). Internal relocation to an area not controlled by Al-Shabab is in general unlikely to be an option, if the place of proposed relocation is stricken by famine or near famine.

11) Within the context of these findings, family and/or clan connections may have an important part to play in determining the reasonableness of a proposed place of relocation. The importance of these connections is likely to grow, as the nature of the present humanitarian crisis diminishes and if Al-Shabab continues to lose territory.

12) Travel by land across southern and central Somalia to a home area or proposed place of relocation is an issue that falls to be addressed in the course of determining claims to international protection. Such travel may well, in general, pose real risks of serious harm, not only from Al-Shabab checkpoints but also as a result of the present famine conditions. Women travelling without male friends or relatives are in general likely to face a real risk of sexual violence.

13) An issue that may have implications for future Somali appeals is the availability of air travel within Somalia (including to Somaliland). Flying into Mogadishu International Airport is sufficiently safe. There is no evidence to indicate a real risk to commercial aircraft flying to other airports in Somalia.

Somaliland and Puntland

14) The present appeals were not designed to be vehicles for giving country guidance on the position within Somaliland or Puntland. There is no evidential basis for departing from the conclusion in NM and others, that Somaliland and Puntland in general only accept back persons who were former residents of those regions and were members of locally based clans or sub clans. In the context of Somali immigration to the United Kingdom, there is a close connection with Somaliland.

15) A person from Somaliland will not, in general, be able without real risk of serious harm to travel overland from Mogadishu International Airport to a place where he or she might be able

to obtain an unofficial travel document for the purposes of gaining entry to Somaliland, and then by land to Somaliland. This is particularly the case if the person is female. A proposed return by air to Hargeisa, Somaliland (whether or not via Mogadishu International Airport) will in general involve no such risks.

Female genital mutilation

16) The incidence of FGM in Somalia is universally agreed to be over 90%. The predominant type of FGM is the "pharaonic", categorised by the World Health Organisation as Type III. The societal requirement for any girl or woman to undergo FGM is strong. In general, an uncircumcised, unmarried Somali woman, up to the age of 39, will be at real risk of suffering FGM.

17) The risk will be greatest in cases where both parents are in favour of FGM. Where both are opposed, the question of whether the risk will reach the requisite level will need to be determined by reference to the extent to which the parents are likely to be able to withstand the strong societal pressures. Unless the parents are from a socio-economic background that is likely to distance them from mainstream social attitudes, or there is some other particular feature of their case, the fact of parental opposition may well as a general matter be incapable of eliminating the real risk to the daughter that others (particularly relatives) will at some point inflict FGM on her.

This determination is arranged as follows:

DETERMINATION AND REASONS

PART A

PRELIMINARY

1. In this determination the Tribunal gives country guidance on Somalia in the light of matters arising after the Asylum and Immigration Tribunal gave its guidance on that country in AM & AM (Armed conflict: risk categories) Somalia CG [2008] UKAIT 00091. We do so also in the light of the recent decision of the European Court of Human Rights (4th Section) in Sufi & Elmi v the United Kingdom [2011] ECHR 1045. Although the country guidance touches on matters concerning northern Somalia (that is to say, the semi-autonomous entity of Puntland and the self-proclaimed but internationally unrecognised state of Somaliland), it is primarily concerned with the situation pertaining in central and southern Somalia, including Mogadishu. The major issues concerning current risk on return to central and southern Somalia are the armed conflict taking place between, on the one hand, the Transitional Federal Government (TFG) and the African Union Mission in Somalia (AMISOM) and, on the other, the militant Islamists known as Al-Shabab; the threat of harm posed by Al-Shabab and (to a much lesser extent) the TFG to those living in their respective areas of control; and the humanitarian crisis, amounting in large areas to famine, occasioned by the most sustained drought in the region for many decades.

2. The Tribunal sat on 13 to 21 June and 15 July 2011. We heard oral evidence from the five appellants, whose appeals are the basis of this determination. We heard oral

evidence from the partner of appellant MW and from two expert witnesses, Tony Burns and Laura Hammond. The oral evidence is summarised in Appendix 1. The Tribunal was provided with a very large amount of documentary material, which is listed in Appendix 2. Throughout the determination, certain spellings have been standardised.

3. The original background evidence covered the position up to early July 2011 but, following the withdrawal in early August 2011 of Al-Shabab from military positions in Mogadishu, further written evidence and submissions were submitted by the parties, pursuant to directions from the Tribunal, covering the position up to late September 2011. Those directions included provision for the appellants to have until 10 October to provide a written response to the submissions and further evidence of the respondent. In the event, the appellants' submissions were received on 12 October and sought to adduce yet further written evidence, not contemplated in the directions or identified at the hearing, and on which the respondent had not had an opportunity to comment. We have not had regard to this further evidence or the submissions relating to it, but we have taken into account the remainder of the appellants' submissions served on 12 October, and the accompanying report of the UN Monitoring Group of July 2011, which was identified during the hearing, together with all the other written and oral submissions (including in skeleton arguments), in assessing the totality of the oral and written evidence that was properly placed before us. After discussion with the parties, we viewed two television programmes: a Channel 4 documentary and a more recent BBC Panorama programme, each regarding Mogadishu. In the event, neither had any material impact upon our findings.

4. These appeals have been conspicuously well-argued by Counsel, and the evidence assembled with evident industriousness by those instructing them. We are particularly grateful to the experts who gave oral evidence. As will be apparent, the issues upon which country guidance is necessary are multi-faceted and in several respects raise legal issues, about which the parties made detailed submissions. This has resulted in a very long determination; but, having regard to the observations of the Court of Appeal at [6] and [52] of the judgments in PO (Nigeria) [2011] EWCA Civ 132, we have adopted a structure which sets out the full extent of the country guidance and is generally intended to preclude the determination's length from adversely affecting the clarity of its exposition.

PART B

THE FIVE APPELLANTS

Appellant AMM

5. Appellant AMM was born on 6 January 1977. He comes from Jowhar in southern Somalia. Although, as we shall see, a large amount of appellant AMM's story of his

experiences has been legitimately disbelieved by those tasked with considering it, his home area in Somalia is not in dispute. Nor is the fact that his journey to the United Kingdom has been tortuous – not to say accidental – in that he was rescued by a Danish merchant ship from a broken-down motorboat, somewhere in the Mediterranean, and brought to a port in the United Kingdom, where he claimed asylum, in June 2005. It is evident from the determination of Immigration Judge Gladstone, who dismissed appellant AMM's appeal against the respondent's refusal in 2005 to grant asylum, that the account given by appellant AMM of how he came to be on the motorboat was not believed; in particular: the alleged factors that caused appellant AMM to leave Somalia and whether and if so how he had spent time in other countries.

6. Following the dismissal of his appeal by Immigration Judge Gladstone, appellant AMM went to the Republic of Ireland and claimed asylum. He was returned to the United Kingdom by the Irish authorities in February 2006, whereupon he made a further claim for asylum. Following the refusal of that claim, appellant AMM came before Immigration Judge Glossop, who dismissed the appeal in December 2006. Like the previous Immigration Judge, Immigration Judge Glossop rejected appellant AMM's claim to be from a minority clan (the Bantu). Immigration Judge Glossop also rejected appellant AMM's assertions that his son in Somalia had been killed and his wife and another child forced to flee to Ethiopia, following an attack upon his farm in Somalia. Immigration Judge Glossop's determination was not successfully challenged by appellant AMM. For some reason, however, the respondent decided to accept a further claim to asylum by appellant AMM. That claim having been rejected, appellant AMM again appealed and his appeal was heard by Immigration Judge Harris, who dismissed it, by means of a determination sent on 18 February 2008. The grounds upon which appellant AMM sought reconsideration under section 103A of the Nationality, Immigration and Asylum Act 2002 of Immigration Judge Harris's determination related to Articles 2 and 3 of the ECHR and Article 15(c) of the Qualification Directive (risk to life or person from indiscriminate violence in situation of internal armed conflict). On 4 August 2008, the Asylum and Immigration Tribunal in effect set aside the determination of Immigration Judge Harris, save as regards the Immigration Judge's findings of fact in relation to AMM's history.

7. The reconsideration of appellant AMM's appeal was completed by the Tribunal at a hearing in October 2008, held jointly with that of another appellant, which resulted in the country guidance determination of AM & AM. Appellant AMM's appeal was dismissed in that determination, in which the Tribunal considered his claim to international protection by reference to Refugee Convention, ECHR and Qualification Directive grounds. Permission to appeal to the Court of Appeal was sought on the basis that the Tribunal had wrongly concluded that there was uncertainty as to the "method of return" of appellant AMM to Somalia by the respondent and that the Tribunal had accordingly materially erred in law in its conclusion as to appellant AMM's entitlement to refugee status or humanitarian protection. Further challenges related to the alleged error in acquiring a "differential

impact" to be shown in relation to real risk of being persecuted or suffering serious harm and in relation to the assessment of the situation in central and southern Somalia, as regards persecution or other serious harm.

8. Permission to appeal was granted by Sedley LJ on 18 December 2009 on all of the grounds advanced by appellant AMM. On 23 April 2010 the Court of Appeal allowed appellant AMM's appeal and remitted the matter to the Upper Tribunal (Immigration and Asylum Chamber).

Appellant MW

9. Appellant MW was born on 26 June 1980. In August 2005 she applied at the British Embassy at Addis Ababa for entry clearance as the spouse of a British citizen of Somali origin, resident in the United Kingdom. Appellant MW's application was refused by an Entry Clearance Officer but she was successful in her appeal to the Asylum and Immigration Tribunal. As a result, she was issued with a two-year spouse visa on 30 May 2006 and entered the United Kingdom the following month. MW's relationship with her husband had collapsed by May 2007, by which time she was living with Mr Abdullahi, bearing him a son on 2 April 2008. Mr Abdullahi has since changed his name by deed poll to Osman Ali Omar. Appellant MW's leave to enter the United Kingdom came to an end on 30 May 2008. Appellant MW had been divorced from her husband on 16 November 2007.

10. Appellant MW claimed asylum on 27 May 2008, which was refused in August 2008. She appealed against that decision and her appeal was heard by Immigration Judge Woolley on 12 September 2008. The Immigration Judge found appellant MW to be a majority clan member from Merka, in lower Shabele, south-west of Mogadishu. The judge found that appellant MW had left Somalia in 1999 to live in Ethiopia with her aunt. The Immigration Judge made no finding as to appellant MW's claim that she and her aunt lived in Ethiopia without immigration status and were supported by money sent from Canada from a cousin. Nor was there any specific finding regarding appellant MW's assertion that her parents were dead and that she had no brothers and sisters. Immigration Judge Woolley heard evidence from Mr Osman (as he now is) but did not find him to be credible. The Immigration Judge concluded that Mr Osman could return to live in Somalia with appellant MW and their son.

11. In dismissing appellant MW's appeal on asylum grounds, the Immigration Judge had regard to the background evidence regarding violence against women in Somalia, in particular in relation to those who had been displaced. On the basis that appellant MW had been found to be from a majority clan, Immigration Judge Woolley found that there was no "differential impact" of the kind required by the House of Lords in Adan [1998] UKHL 15, over and above that faced by others caught up in clan warfare. On the basis of the country guidance set out in HH & Others (Mogadishu: armed conflict: risk) Somalia CG [2008] UKAIT 00022, the Immigration

Judge found that appellant MW had not demonstrated that she was entitled to humanitarian protection by reference to Article 15(c) of the Qualification Directive.

12. Reconsideration of Immigration Judge Woolley's decision was ordered under section 103A of the 2002 Act on 10 October 2008 and on 1 December 2009 the Asylum and Immigration Tribunal found that the determination contained a material error of law. The Immigration Judge had concluded that much of the background material adduced by appellant MW referred back to country information considered by the Tribunal in HH & Others, whereas the AIT found that this was "quite inaccurate as a description of the materials before" the Immigration Judge. Those materials were capable of giving rise to a different assessment of conditions in Somalia, as could now be seen from the case of AM & AM. The present proceedings accordingly constitute in effect the completion of the reconsideration of appellant MW's appeal.

13. Since the hearing before Immigration Judge Woolley, two more children have been born to appellant MW and Mr Omar. A son was born on 5 January 2010 and on 7 February 2011 appellant MW gave birth to a daughter. In view of Mr Osman's status, the children are British citizens.

14. During the present hearings, the respondent informed the Tribunal that a decision had been made to grant appellant MW discretionary leave to remain, having regard to Article 8 of the ECHR. Appellant MW has given notice under section 104(4B) of the 2002 Act and rule 17A(c) of the Tribunal Procedure (Upper Tribunal) Rules 2008 that she wished to pursue her appeal, in so far as it is brought on Refugee Convention and humanitarian protection grounds.

Appellant ZF

15. Appellant ZF was born on 1 January 1944. She arrived in the United Kingdom on 17 September 2009 and claimed asylum, asserting that she was a member of the Reer Hamar minority clan, having been born in Mogadishu and lived there until fleeing to Afgoye. In October 2009 the respondent refused appellant ZF's application and appellant ZF appealed to the Asylum and Immigration Tribunal. Immigration Judge Upson heard her appeal on 18 March 2010. The Immigration Judge found appellant ZF not to be a witness of truth. The Immigration Judge essentially found that appellant ZF came from north-western Somalia, noting that the linguistic report prepared by the respondent in respect of appellant ZF had found her "with certainty" to come from that part of Somalia, on the basis of her speech and vocabulary. The most the Immigration Judge was prepared to accept of her account was that there was "a chance that she has lived in Mogadishu". Her story of living in southern Somalia with two nieces, being regularly beaten but nevertheless raising $3,000 to pay agents for her passage to the United Kingdom was, likewise, rejected by the Immigration Judge. The Immigration Judge was presented at the hearing with documents showing that appellant ZF suffered from asthma, high blood pressure and rheumatism. She said she had been taking paracetamol for these conditions.

16. On the basis of these findings, the Immigration Judge concluded that appellant ZF had failed to establish that she was a refugee or otherwise entitled to international protection. Permission to appeal against the Immigration Judge's determination was refused by the First-tier Tribunal on 27 April 2010 but granted by Blake J, President of the Immigration and Asylum Chamber, on 28 May 2010 on the basis that:-

> "The question of whether [appellant ZF] can access effective internal protection if returned to Mogadishu needs further consideration in light of the Court of Appeal's decision in HH (Somalia) [2010] EWCA Civ 426 April 2010 that indicates that a safe route of return is not a matter for administrative decision as to the time of removal but may require the grant of subsidiary protection status unless and until safe access is identified."

17. On 13 January 2011, Mr Kandola, a Presenting Officer, conceded on behalf of the respondent that there was an error of law in the determination of Immigration Judge Upson and that that determination should be set aside. Mr Schwenk, for appellant ZF conceded on her behalf that the adverse credibility findings of the Immigration Judge should nevertheless stand for the purpose of the present proceedings. It is also necessary to observe at this stage that the reference to appellant ZF coming from north-west Somalia is a reference to her coming from Somaliland.

Appellant FM

18. Appellant FM was born in Mogadishu on 5 August 1987 and lived in the district of that city known as Hamar JaabJab. He claimed to have left Somalia in February 2006 and gone to Kenya, where he lived and worked in Nairobi, before flying from Kenya to an Arab country on 3 July 2006 and then on to the United Kingdom, which he entered using forged documentation. Appellant FM claimed asylum in Liverpool on 6 July 2006.

19. The respondent refused that claim on 26 July 2006 and appellant FM appealed to the Asylum and Immigration Tribunal, which dismissed his appeal on 6 October 2006. Appeal rights against that determination having become exhausted, appellant FM made further submissions, which were treated as a fresh claim, generating a refusal from the respondent on 2 October 2007. Further representations were refused by the respondent on 18 April 2008. Eventually, the respondent made a further decision that appellant FM should be removed by way of directions. This decision was dated 11 June 2008 and appellant FM appealed against it. Immigration Judge Blake dismissed that appeal on asylum and human rights grounds, by means of a determination dated 13 September 2008. Reconsideration of that determination was ordered by the AIT on 1 October 2008. The reconsideration was completed by Immigration Judge Sweet on 26 January 2009, leading to a determination of 27 January 2009, dismissing appellant FM's appeal. That determination was, however, set aside by the Deputy President of the AIT on 10 August 2009 on the basis that the determination had not engaged with the country guidance case of AM & AM.

20. Accordingly, the reconsideration of appellant FM's appeal fell to Immigration Judge Courtney. In a determination that followed a hearing on 27 November 2009, Immigration Judge Courtney dismissed appellant FM's appeal on asylum, human rights and humanitarian protection grounds.

21. Appellant FM claimed he was a member of the minority Ashraf clan who had married a member of the Hawiye clan, against the wishes of his wife's family. That family had detained appellant FM for four days until his aunt bribed a guard to have him released, after which he left Somalia.

22. The Immigration Judge did not find appellant FM or his witness to be credible, as regards appellant FM's claim to come from the Ashraf clan. The Immigration Judge nevertheless accepted that appellant FM came from Hamar JaabJab in Mogadishu. Applying the country guidance in AM & AM, the Immigration Judge concluded that return to Mogadishu would cause appellant FM to face a real risk of serious harm as defined in Article 15 of the Qualification Directive and treatment contrary to Article 3 of the ECHR (paragraph 56 of the determination). The Immigration Judge accordingly considered the issue of internal relocation. At paragraph 65, she did not consider the situation in central and southern Somalia had deteriorated since AM & AM was decided, to the point that it reached the threshold where civilians per se or Somali civilian IDPs per se faced a real risk of persecution or serious harm or treatment proscribed by Article 3 ECHR. Appellant FM was 22 years old and able-bodied with no reported health problems. On the other hand, he had been out of Somalia for nearly four years and might be "less adept than persons living there currently at dealing with ongoing difficulties. It is also reasonably likely that it will become known he has been in the UK and that as a consequence he may be perceived as someone who has or has access to relative wealth" (paragraph 66). Nevertheless, at paragraph 67, having considered "all relevant factors" the Immigration Judge concluded that appellant FM had "a viable internal relocation alternative. This would be so even if he is required to live in an IDP camp."

23. On 1 July 2010 Sedley LJ ordered appellant FM to renew his application for permission to appeal in court and on notice to the respondent. This was on the basis that Sedley LJ found it "hard to see how such a finding [of internal relocation away from Mogadishu] can stand without some prior finding as to (a) where in Somalia A can be reasonably safe and (b) whether he can get there in reasonable safety". Sedley LJ also thought it presently arguable that "it may have been irrational to conclude that a condition affecting up to half the population does not represent a real risk for anyone without access to special protection". On 27 October 2010 the Court of Appeal ordered that "the appeal against the determination of the Asylum and Immigration Tribunal promulgated on 20 December 2009 be withdrawn on the basis that the appeal be remitted for a differently constituted Tribunal to carry out a de novo second stage reconsideration of the applicant's appeal".

Appellant AF

24. Appellant AF was born on 6 October 1957 in Merka, a city on the coast of southern Somalia, some 70kms south-west of Mogadishu. He arrived in the United Kingdom on 9 November 2001 and claimed asylum. Appellant AF's application was refused on 29 January 2003 and he appealed to an Adjudicator, who dismissed his appeal on 10 October 2003. On 2 March 2006, appellant AF made a fresh claim for asylum, which was refused on 13 March 2006. His subsequent appeal against that refusal was dismissed by an Immigration Judge on 24 April 2006 but on 15 August 2006 the High Court ordered reconsideration of that determination, pursuant to section 103A of the 2002 Act.

25. On 11 June 2007 the Asylum and Immigration Tribunal found a material error of law in the determination and, following a re-hearing, a panel of two Immigration Judges dismissed appellant AF's appeal on 13 November 2007. Permission to appeal to the Court of Appeal against that determination was granted by the AIT on 10 January 2008 and on 10 April 2008, by consent, the Court of Appeal remitted the appeal to the AIT.

26. On 26 September 2008, the AIT (Senior Immigration Judge Freeman and Immigration Judge Monson) dismissed appellant AF's appeal. The panel, in its determination, rejected the submission made by Mr Toal on behalf of appellant AF that they should consider not only humanitarian protection but also revisit the earlier Tribunal findings in respect of asylum and human rights. Applying the conclusion of the Tribunal in HH & Others, the panel found that there needed to be shown a "differential impact" in order for appellant AF to succeed by reference to Article 15(c) of the Qualification Directive. The panel concluded that there was no evidence to show that, in appellant AF's case, such a differential impact existed. On 24 August 2009 the Court of Appeal allowed appellant AF's appeal and remitted the appeal to the AIT for reconsideration. It is common ground that appellant AF is a Midgan (Madhiban) who, despite coming from Merka, had lived for significant periods of time in various areas of Mogadishu, including Hamar Weyne and Hamar JaabJab, during periods of intense fighting in the city, and that whilst there he suffered harm which judicial fact-finders categorised as insufficient to constitute persecution.

PART C

SOMALI COUNTRY GUIDANCE CASES

27. From the start of the civil war in Somalia in the early 1990s until the rise of the Union of Islamic Courts and, more recently, Al-Shabab, the internal conflict in Somalia was

primarily clan-based, with majority clans using their militias to battle rival armed clans and also to dominate minority clans, which lacked militias of their own or majority clan patronage. A number of the earlier country guidance cases of both the Immigration Appeal Tribunal and the Asylum and Immigration Tribunal were, accordingly, intended to address the significance of membership of a particular clan.

NM and Others (Lone women - Ashraf) Somalia CG [2005] UKAIT 00076

28. Immediately prior to its demise in 2005, the Immigration Appeal Tribunal issued more general country guidance in NM and Others. At [117] the Tribunal held that the starting point in any assessment of risk was that

> "Male and female members of minority clans from the south will, in general, be at risk of breaches of their Article 3 rights, and will be refugees, in the absence of any evidence that they have a clan or personal patron and the means to access that area of safety without a real risk. Were such evidence to exist, which at present would be unusual, their return would involve no breach of either Convention. We recognise that there may be minority clans who are, at least locally, integrated with majority clans, and other groups who may not be a minority clan at all, being closer to a caste. Those will require specific consideration. We also recognise that a division between minority and majority does not represent a bright line on one or other side of which every clan must fall, because there are some which could be considered to be intermediate."

29. At [118] the Tribunal held that there was "obviously a greater risk for lone females both in the place of safety and in access, both in terms of degree of risk of occurrence and degree of severity of ill-treatment. Their position would call for particular care." On the other hand, a person of either gender who was not found to be a minority clan member would be subject to different considerations. There was likely to be a location in southern Somalia in which the majority clan would be able to afford protection sufficiently for neither Convention to apply. It was, however, important not to over-generalise [119]. The question of assessing risk in accessing places of safety would arise more strongly for females than males. Many routes had checkpoints or roadblocks. Majority clans, which will have their own militias, could be expected to provide military escorts for returnees and such returnees would be objectively able in most cases to prearrange such protection [122].

30. At [123] the Tribunal said this:-

> "123. There are problems with those whose case has been so disbelieved that it is not known what their clan or place of origin is. It is difficult to see that such a person could succeed; he or she would be a majority clan member who was in effect declining to demonstrate, even to the low standard of proof that they were at risk on return because unable to arrange for clan militia escorts from Mogadishu or wherever else they might be returned to."

31. At [125] the Tribunal did not accept that the general conditions of life or circumstances in Somalia engage the obligations of the Refugee Convention for all returnees or all female returnees, in the light of Adan. Being a single woman returnee was not in itself a sufficient "differential impact" in terms of Adan to engage those obligations. Nor did the Tribunal consider that general conditions or circumstances engaged Article 3.

32. At [126] the Tribunal addressed the position of Somaliland and Puntland:-

> "126. Returnees or lone women returnees claiming protection under the Refugee Convention or under the Human Rights Convention who are found to be former residents of Somaliland or Puntland or persons having a connection with a clan or sub-clan based in either of those regions, would not in general face a real risk of serious harm, whether or not they could arrange in advance for clan militia protection to meet them at the airport and escort them thereafter, provided that they were returned directly to those areas and not via Mogadishu. If they were to be returned via Mogadishu, we do not know whether a majority clan militia escort could be arranged for them."

33. As for internal relocation, this was considered not in general to be a viable option for members of minority clans except where they would be able to obtain majority clan protection in a secure area [128]. For majority clan members, it might be a viable option for those whose clan had a secure location elsewhere within southern Somalia than where the claimant originated, if the claimant's home area was not or had ceased to be one where the majority clan was sufficiently strong to provide protection.

34. In the present appeals, the United Nations High Commissioner for Refugees has exercised the right of intervention, as recognised in rule 9(5) of the Tribunal Procedure (Upper Tribunal) Rules 2008. In the light of the submissions and evidence of the UNHCR, to which we shall turn in due course, it is relevant to observe what the IAT had to say in NM & Others about the position of the UNHCR and the significance of its work to the Tribunal's task of giving country guidance:-

> "108. The extensive reliance upon UNHCR material makes a few observations germane. The value of the UNHCR material is first that where it has observers on the ground, it is in a good position to provide first hand information as to what in fact is happening. The process then whereby its observations of what is happening become position papers or recommendations is likely to increase the objectivity and soundness of its observations in that respect. It has a special role in relation to the Geneva Convention. It may also well be able to offer Governments advice on the practical implications of the forced or mass return of people who are not refugees; these implications may include infrastructure, economic conditions, resettlement facilities and absorption capacity; a slower rate of return may make the local government's task or the UNHCR task as a reception body that much easier to perform well.

109. But their comments have their limitations and these need equally to be understood. The UNHCR often speaks of inhibitions on the return, usually forced, of failed asylum seekers, who have been rejected after a proper consideration of their claims. It follows that the UNHCR is not then commenting on the return of refugees at all; it is acknowledging that they would not face persecution for a Convention reason and it is going beyond its special remit under the Geneva Convention. This is not a question of picking up on loose language. The UNHCR is perfectly capable of using language which shows that it is or is not dealing with the risk of persecution for a Convention reason, and sometimes does so. These are considered papers after all.

110. This is illustrated by UNHCR position papers, such as the January 2004 one dealing with Somalia, where UNHCR has responsibility for voluntary repatriation programmes, currently confined to northern Somalia, and has evident consequential concerns referred to in paragraph 3 of this report about "*over-stretched absorption capacity*" even in the relatively stable northern part of Somalia. Reasons of this kind lead UNHCR to discourage signatory states from going ahead with enforced returns of rejected asylum seekers. However, the only issue arising on statutory appeals on asylum or asylum-related grounds before Adjudicators and the Tribunal is whether the claimant is a refugee and if so, whether to return a person to Somalia would breach the Geneva Convention or constitute treatment contrary to Article 3 ECHR or any other Article, where engaged. The question of absorption problems that might flow from any United Kingdom government decision to enforce returns in numbers is not of itself the basis for showing that return would breach either Convention.

111. The UNHCR, in such circumstances and they arise very frequently, is pursuing what it sees as its wider remit in respect of humanitarian and related practical considerations for the return of people, particularly on a large scale. This is a common problem where the country of refuge borders the country of past persecution or strife. What it has to say about the practical problems on the ground will be important where it has staff on the ground or familiar with the conditions which a returnee would face.

112. But the assessment of whether someone can be returned in those circumstances is one which has to be treated with real care, if it is sought to apply it to non Refugee Convention international obligations, especially ECHR. The measure which the UNHCR uses is unclear; indeed, realistically, it may be using no particular measure. Instead, it is using its own language to convey its own sense of the severity of the problem, the degree of risk faced and the quality of the evidence which it has to underpin its assessment. It is often guarded and cautious rather than assertive because of the frailties of its knowledge and the variability of the circumstances.

113. This is not to advocate an unduly nuanced reading of its material, let alone an unduly legalistic reading. It is to require that the material be read for what it actually conveys about the level of risk, of what treatment and of what severity and with what certainty as to the available evidence. But there may be times when a lack of information or evidence permits or requires inferences to be drawn as to its significance, which is for the decision-maker to draw. There is often other relevant material as well.

114. UNHCR's language is not framed by reference to the ECHR and to the high threshold of Article 3 as elaborated in the jurisprudence of the Strasbourg Court and of the United Kingdom. That is not a criticism – it is not an expert legal adviser to the United Kingdom courts and couches its papers in its own language. So its more general humanitarian assessments of international protection needs should to be read with care, so as to avoid giving them an authority in relation to the United Kingdom's obligations under the ECHR which they do not claim. They may give part of the picture, but the language and threshold of their assessments show that the UNHCR quite often adopts a standard which is not that of the United Kingdom's ECHR obligations.

115. UNHCR papers are often not the only ones which Adjudicators or the Tribunal has to consider. Other organisations may have first-hand sources and differ from UNHCR; experts may bring a further perspective. A considered UNHCR paper is therefore entitled to weight but may well not be decisive."

HH (Mogadishu: armed conflict: risk) Somalia CG [2008] UKAIT 00022

35. It fell to the AIT in HH to consider the meaning and effect of Article 15(c) of the Qualification Directive, under which serious harm consists, inter alia, of a "serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict". The Tribunal's conclusion, that the existence of such a conflict was to be determined by reference to international humanitarian law, was disapproved by the Court of Appeal in QD (Iraq) [2009] EWCA Civ 620. The Court's conclusion, that the provision fell to be given an autonomous meaning, was confirmed by the Court of Justice of the European Union in Elgafaji [2009] EUECJ C-465/07. It is, however, common ground between the present parties that the Tribunal's finding in HH, that an internal armed conflict existed in Mogadishu and its immediate environs as at the end of 2007, was correct. The fighting, which at that time was between the TFG and its Ethiopian allies on the one hand and the Union of Islamic Courts on the other, was found not to be clan-based. The finding of the Tribunal was that, generally speaking, neither side was engaging in indiscriminate violence. Although clan support mechanisms were under strain, they had not broken down [301]. A person displaced from Mogadishu to a makeshift shelter along the road to Afgoye or in an IDP camp "may well experience treatment that would be proscribed by Article 3 of ECHR" [299]. Although there was no current evidence that women were specifically targeted in Somalia at the present time [303] there were risks for women who found themselves having to negotiate roadside checkpoints alone. Neither air travel to and from Mogadishu nor the mobile telephone network in southern Somalia had been significantly interrupted by the conflict [370]. The indiscriminate violence generated by the armed conflict in Mogadishu was not of such a level as to place the population of Mogadishu at risk of a consistent pattern of such violence [345].

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

36. Examining the evidence as at late October 2008, the AIT in AM & AM found that, since HH

> "The situation in Mogadishu has changed significantly, both in terms of the extent of population of displacement away from the city, the intensity of the fighting and of the security conditions there. On the present evidence we consider that Mogadishu is no longer safe as a place to live for the great majority of its citizens. We do not rule out that notwithstanding the above there may be certain individuals who on the facts may be considered to be able to live safely in the city, for example if they are likely to have close connections with powerful actors in Mogadishu, such as prominent businessmen or senior figures in the insurgency or in powerful criminal gangs. However, barring cases of this kind, we consider that in the cases of persons found to come from Mogadishu who are returnees from the UK, they would face on return to live there a real risk of persecution or serious harm and it is reasonably likely, if they tried staying there, that they would soon be forced to leave or that they would decide not to try and live there in the first place" [178]. The TFG, Ethiopian and AMISOM forces were "pitted against insurgent forces around Bakara Market" so that "at least 33 civilians were killed in the exchanges" on 22 September 2008. The UN Secretary General had spoken of "frequent attacks on civilians" which together with "the incessant level of harassment and intimidation by all militarised actors in the city is making living conditions for the civil population intolerable" [176].

37. At [179] the Tribunal held that, although Article 15(c) had "a protective scope additional to that afforded by the Refugee Convention and Article 15(b) of the Qualification Directive [and Article 3 of the ECHR], it is unnecessary on the facts of this case to rely on such additional scope, since return to that city for the great majority would amount to a real risk of persecution, serious harm and ill-treatment". Given these findings regarding return to Mogadishu, in order for most Somali claimants from that city to succeed "they need only show that they have no viable internal relocation alternative" [183].

38. At [144] the Tribunal found that, since HH, the armed conflict in central and southern Somalia "had spread to many other areas". Accordingly, it held that "a situation of internal armed conflict now exists throughout central and southern Somalia". Notwithstanding this and the deterioration in the humanitarian situation in southern Somalia in HH, the Tribunal in AM & AM was not persuaded that the situation in central and southern Somalia generally had reached 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 [156]. Although the level of violence had increased, the numbers of those killed and wounded were not of great magnitude. Civilians per se did not face a real risk of denial of basic food and shelter and other bare necessities of life. In reaching this conclusion, the Tribunal had regard, inter alia, to the evidence which indicated that "even though aid agencies can meet with obstruction and dangers in delivering aid to IDPs in need … a significant percentage of those in need are reached" [157]. Furthermore, as regards those not so reached, evidence emanating from Nairobi

indicated that "most people [in IDP camps] are helped by Somalis from the Diaspora". Accordingly, the assessment of the extent to which IDPs face greater or lesser hardships, outside Mogadishu, would vary significantly:-

> "depending on a number of factors: e.g. IDPs from more influential clans or sub-clans appear to have a better chance of being tolerated in the area to which they have fled …; IDPs who have a traditional clan area they can travel to, especially if in that area they have family, or friends, or close clan or sub-clan affiliations, appear to have better prospects of finding safety and support, although not if the area concerned is already saturated with fellow-IDPs …; those who lack recent experience of living in Somalia appear more likely to have difficulties dealing with the changed environment in which clan loyalties have to some extent fractured …; persons returning to their home area from the UK may be perceived as having relative wealth and be more susceptible to extortion, abduction and the like …; those who live in areas not particularly affected by the fighting and which are seen as not important strategically to any of the main parties to the conflict would appear less subject to security problems; whether the IDPs are female also appears a significant factor, given the evidence of the additional risks women and girls face of abduction, rape and harassment. To these factors, of course, one has to add the variables of age and state of health. Also relevant will be the evidence about the prevailing economic conditions in the area, bearing in mind the recent history of cruel droughts, poor harvests and rising food prices." [160]

39. At [182] the Tribunal found that in relation to IDPs who had fled Mogadishu in recent times, their plight was connected to what had happened to them there as a result of the armed conflict and was "sufficient to meet the 'by reason of' test contained within Article 15(c) of the Qualification Directive". Those originating from outside Mogadishu who sought to rely on Article 15(c) would, however, need to demonstrate that their particular area was experiencing a consistent pattern of indiscriminate violence giving rise to a serious and individual threat, since as a general matter central and southern Somalia (other than Mogadishu) was not in such a state [184]. Even then, the person concerned would have to establish that he or she had "no viable internal relocation alternative".

40. As for internal relocation, a person who would have to spend a substantial period of time in an IDP camp, as a means of relocation, would generally be able to demonstrate that such relocation alternative was unreasonable [190]. Each case would, however, need to be considered individually.

41. As with HH, the Tribunal's analysis of internal armed conflict in AM & AM was subsequently found to have wrongly drawn on international humanitarian law concepts. Nevertheless, as with HH, the Tribunal's conclusions regarding Article 15(c) both as regards Mogadishu and elsewhere in central and southern Somalia, were accepted by the parties to the present appeal as constituting the appropriate starting point for the up-to-date evaluation that this determination will undertake.

42. The one qualification to this that we must record at this stage is that the appellants, led in this regard by Mr Toal, queried the validity of the finding that an association

with "powerful actors" and the like was likely to be a significant factor. We shall return to this in due course.

43. In AM & AM, the Tribunal held that it was not "possible to say that matters relating to the method of return are implicit in the immigration decision and on that basis it does not fall within our jurisdiction to assess risk relating to it" [191]. That finding now has to be read in the light of the Court of Appeal judgments in HH and others [2010] EWCA Civ 426. Nevertheless, the Tribunal went on to make *obiter* findings regarding the security situation at Mogadishu International Airport and the road from it to Mogadishu [191]. The Tribunal concluded that, despite the evidence of difficulties the overall evidence "does not demonstrate that for travellers from MIA to Mogadishu there is a real risk en route of persecution or serious harm" [195].

PART D

SCOPE OF THE PRESENT APPEALS AND COUNTRY GUIDANCE

44. For the respondent, Mr Eicke adopted the position that the Refugee Convention was not before the Tribunal in the present proceedings. There were two basic strands to this submission. First, as set out in the respondent's original skeleton argument, it was submitted that the stance of the appellants in seeking to demonstrate a real risk on return of persecution from Al-Shabab on the basis of imputed political opinion or religion, and appellant MW's claim to face persecution as a member of a political social group, namely women, were "new and extended issues" that should not be entertained by the Tribunal. In support, the respondent cited the following passage from [201] of AM & AM:-

> "Of course in the case of Somali claimants who are able to satisfy the respondent or the Tribunal that they have given a credible account of the existence of a risk personal to them, there will often be little difficulty in showing a Convention ground based on race (clan) or religion (if pro- or anti-jihadist) or political opinion (if perceived as pro- or anti-government or pro- or anti-insurgents). However (excluding the fact that in the case of AM2 it is an accepted fact that he is a member of the Sheikhal Logobe clan), our focus in these appeals is confined to persons who have failed to show any personal risk characteristics beyond their nationality and home area. Is it possible to identify any Convention ground at this level of generality? We think not."

45. The second strand, advanced in Mr Eicke's oral submissions, appeared to be that – at least in the case of some of the appellants – the basis upon which their appeals came before the present Tribunal was not such as to encompass the Refugee Convention.

46. We have no hesitation in rejecting both of these submissions. All five of the appellants raised the Refugee Convention as a ground of appeal against the respective immigration decisions of the respondent. The present appeals have, as is common ground, been set down in order, inter alia, for this Tribunal to give country guidance which updates that in AM & AM. As can be seen from Part C of this

determination, both HH and AM & AM considered Refugee Convention issues, as well as other forms of serious harm. Indeed, at paragraph 366 of the respondent's written submissions, reliance is placed by her on passages in the determination in AM & AM which include this:-

> "As Ms Laing herself put it during her closing submissions, there are no 'hermetic seals' between this issue [Article 15(c)] and the subject-matter covered by the refugee protection and Article 3 grounds. It is apparent from the Tribunal cases of HH and KH that the subject-matter of Article 15(c) protection is seen to overlap heavily with the subject-matter of refugee protection and Article 3 protection" [13].

In this regard, we would add that the scheme of the Qualification Directive requires decision-makers to give primacy to an assessment of refugee protection over subsidiary protection.

47. On 12 November 2010, the Tribunal gave directions, prior to the first of a number of case management hearings in relation to the present appeals, in which the proposed new country guidance was identified as "risk on return to Mogadishu; conditions in that city and its environs for those who come from there or might be expected to live there on return; conditions in other areas of Somalia; and safety *en route* between the airport and those other areas; as well as risk to men and women respectively". Following discussion at the case management hearing on 13 January 2011, at which the respondent was represented, that proposed description of country guidance was confirmed. At no point prior to the commencement of the substantive hearing (and submission of the respondent's initial skeleton argument), was it suggested by the respondent that – contrary to the approach adopted in HH and AM & AM – the Refugee Convention was not expected by the respondent to play any part in the current appeals.

48. There is force in what the appellants say regarding the fact that, in framing the instructions to the expert witnesses, it would have been evident to the respondent that issues relating to serious harm, capable of falling within the Refugee Convention, were to be explored. This is particularly the case in relation to having to live under the rule of Al-Shabab. Although that organisation was in existence at the time of AM & AM and the determination in that case makes reference to its attitude towards civilians within its control, one of the important developments that has undoubtedly occurred since AM & AM has been the widening of Al-Shabab's sphere of influence, so as to encompass most of southern Somalia. The evidence gathering exercise has also uncovered a good deal about alleged Al-Shabab practices.

49. The directions issued by the Tribunal on 8 March 2011 stated that the "parties are encouraged to co-operate with each other in refining and supplementing [the proposed country guidance issues], as may be necessary in the course of preparing the cases and to inform the Tribunal in writing of the results (including any request for a further direction that may be necessary, in the event of material disagreement)". Any concerns the respondent might have had in this regard ought, therefore, to have

been resolved through this process, rather than by attempting to take the point at the substantive hearing.

50. Of course, regardless of what has just been said, it would not be possible for this Tribunal to engage substantively with Refugee Convention issues if, as a matter of law, it was precluded from doing so; in particular, by the terms on which an appeal had been remitted to it by the Court of Appeal. There is, however, no such restriction in the Court of Appeal's orders in respect of appellants AMM, FM and AF (see Part B above). The same is true in relation to the means by which the other two appellants' appeals have reached us. Furthermore and in any event, the respondent has not identified anything in the structure of the appellate system under the Nationality, Immigration and Asylum Act 2002 and the Tribunals, Courts and Enforcement Act 2007 that might have the effect of precluding the Tribunal from resolving a Refugee Convention issue that it finds has properly arisen in respect of a pending appeal. In this regard, Mr Symes was, we consider, right to rely upon R v Secretary of State for the Home Department and Immigration Appeal Tribunal, exp Robinson [1997] Imm AR 568:-

> "[37] It follows from what we have said that it is the duty of the appellate authorities to apply their knowledge of Convention jurisprudence to the facts as established by them when they determine whether it would be a breach of the Convention to refuse an asylum-seeker leave to enter as a refugee, and that they are not limited in their consideration of the facts by the arguments actually advanced by the asylum seeker or his representative."

51. Mr Symes also relied upon Article 18 (right to asylum) and Article 47 (right to an effective remedy and to a fair trial) of the Charter of Fundamental Rights of the European Union, as well as Article 13 of the Qualification Directive (granting of refugee status), under which Member States "shall grant refugee status to a third country national or a stateless person, who qualifies as a refugee in accordance with Chapters 2 and 3". It may well be moot what part these provisions might play, where the effect of our domestic law was such as to prevent judicial adjudication of a Refugee Convention issue. The provisions are, however, pointers towards the need to identify a clear and specific legal restriction upon the Tribunal's ability to adjudicate the issue. No such provision has been identified in relation to any of these appeals.

52. So far as the particular social group of women is concerned, Mr Eicke raised an objection to the Tribunal giving country guidance on the issue of female genital mutilation in Somalia. As will be seen from Part H of this determination, the respondent, in her closing written submissions, has raised a legal issue as to the legal entitlement of appellant MW to succeed in an international protection claim by reference to the risk of FGM being performed on her daughter. Regardless of the resolution of that issue, however, the fact is that appellant MW has, pursuant to the Tribunal's case management directions, put forward a large amount of detailed evidence regarding FGM in Somalia. Ms Short, for appellant MW, was correct to state that the AIT had been "poised to give country guidance on the risk of FGM in

Somalia in a case called *SH (Somalia)* Court Ref …" as set out in the witness statement of James Elliot at page 78 of bundle MW1. That appeal was required to be treated as abandoned after the respondent conceded the appeal and granted the appellant refugee status, before the country guidance hearing could take place.

53. In the event, we heard a considerable amount of evidence and submissions from both the appellants and the respondent on the issue of FGM. Both on this issue and in relation to the Refugee Convention matters to which we have earlier made reference, it was quite apparent that Mr Eicke QC and Mr Staker, on behalf of the respondent, were in the event placed at no procedural disadvantage, so as to give rise to any issue of procedural fairness and, indeed, no submission to the contrary has been made.

54. Accordingly, the issues in these appeals and the country guidance which arises therefrom, encompass the Refugee Convention, Article 15(b) and (c) of the Qualification Directive and Article 3 of the ECHR. The risks and related issues with which we are concerned are risk from armed conflict, in Mogadishu and, separately, elsewhere in southern and central Somalia; risks from Al-Shabab, as regards that organisation's religious and social practices, including punishments; risks from allegedly lawless elements of the TFG/AMISOM; risks from other criminal elements; internal displacement; the general humanitarian position; and the practice of female genital mutilation. We approach the task of giving country guidance by taking the existing relevant country guidance on Somalia as our starting point. There is no formal burden on a party to show there has been any change in circumstances (see EM and Others (Returnees) Zimbabwe CG [2011] UKUT 98 (IAC) 98).

PART E

THE ECtHR JUDGMENT IN SUFI & ELMI AND ITS BEARING ON THE PRESENT APPEALS

55. On 28 June 2011 the Fourth Section of the European Court of Human Rights gave judgment in the case of Sufi & Elmi v the United Kingdom [2011] ECHR 1045. Both Sufi and Elmi asserted that they risked being ill-treated or killed, if the Government of the United Kingdom returned them to Mogadishu. The ECtHR granted interim measures under rule 39 of the Rules of Court on 27 February and 14 March 2007 respectively, to prevent the removal of Sufi and Elmi to Mogadishu, prior to the Court's consideration of their applications. Some 214 similar cases are, apparently, pending before the ECtHR.

56. The judgment delivered on 28 June is not a final one. Each of the parties had three months, from its delivery, in which to request that the case be referred to the Grand Chamber of the Court. The respondent has informed us that such a request has been made by the United Kingdom government. A panel of five judges will, therefore, consider whether the judgment, or certain parts of it, deserves further examination.

If it does, the Grand Chamber will hear the case and deliver a final judgment. Otherwise, the judgment becomes final.

The Applicants' circumstances

57. Sufi, born in 1987, entered the United Kingdom illegally in September 2003 and subsequently claimed asylum on the basis that he was a member of a minority clan who had been persecuted by majority clan militia, who had also killed members of his immediate family. The Secretary of State rejected Sufi's claim and his subsequent appeal to an Adjudicator was dismissed, on the basis that Sufi's account of events in Somalia was not credible.

58. Just over three months later, Sufi pleaded guilty to two offences of burglary, five offences of dishonestly obtaining goods by deception and one offence of attempting to dishonestly obtain goods by deception. He was sentenced to eighteen months' imprisonment. On 14 February 2006 Sufi was convicted, amongst other things, of threats to kill, for which he received a further six months sentence of imprisonment. In October 2007 he was sentenced to three months' imprisonment for indecent exposure. In July 2009 Sufi received 32 months' imprisonment for five counts of burglary and theft and two counts of attempted burglary.

59. Given the seriousness of these offences, the Secretary of State decided that Sufi should be deported from the United Kingdom. Sufi's appeal against that decision was dismissed by an Immigration Judge in September 2006 and a subsequent judicial review was refused in January 2007.

60. Elmi was born in 1969 in Hargeisa, now the capital of the self-declared state of Somaliland. It appears that, when he was 2 years old, his family moved to Mogadishu and he did not subsequently return to Somaliland. Elmi's father became the Military Attaché at the Somali Embassy in London in 1988 and Elmi joined him in this country later that year. In April 1989 Elmi made an application for asylum based on his father's position in the Somali army and beginning of the civil war in Somalia. In October 1989 Elmi was recognised as a refugee and granted leave to remain until 31 October 1993. In January 1994 he was granted indefinite leave to remain in the United Kingdom.

61. Elmi was convicted of a road traffic offence in June 1992. In March 1996 he received a sentence of five and a half years' imprisonment for handling stolen goods, obtaining property by deception, robbery and possession of an imitation firearm for committing an offence. On 30 November 2000 he was convicted of perverting the course of justice for which he received a sentence of three months' imprisonment. Also in 2000 he was convicted of further offences of theft, and also road traffic offences. In March 2001 he was convicted of theft and placed on a curfew. In June 2001 he was again convicted of theft and sentenced to three months' imprisonment. On 23 May 2002 he was convicted on eight counts of supplying Class A drugs

(cocaine and heroin) and in November 2002 he was sentenced to 42 months' imprisonment in respect of these offences. In June 2004 Elmi was sentenced to twelve months' imprisonment for burglary and theft.

62. In June 2006 the Secretary of State decided that Elmi should be deported, as a result of his criminal behaviour. The Secretary of State considered that Elmi could be returned to Somalia as he was a member of the Isaaq majority clan.

63. In October 2006 Elmi's appeal against the deportation decision was dismissed by the AIT. The Tribunal accepted that Elmi would not find support in relation to his drug dependency in Somalia but considered that he would not be at risk, as a member of a majority clan. There was also a real likelihood of Elmi reoffending. That conclusion proved to be correct. After Elmi had been granted the benefit of rule 39 of the ECtHR's Rules of Court, he was convicted, in March 2008, of possession of a Class A controlled drug with intent to supply, for which he received eighteen months' imprisonment.

Background on Somalia

64. Paragraphs 37 to 47 of the ECtHR's judgment contained a useful description of the factual background to the conflict in Somalia, which was agreed by the parties to the applications. It can be summarised as follows.

65. Somalia comprises three autonomous areas: the self-declared Republic of Somaliland in the north-west, the state of Puntland in the north-east and the remaining southern and central regions. Somali society has traditionally been characterised by clan membership, with clans being divided into sub-divisions. The four majority clans are Darod, Hawiye, Isaaq, and Dir. There are also a number of minority groups, also sub-divided, whilst the Digil and the Mirifle take "an intermediate position between the majority clans and minority groups" [38].

66. There has been no functioning central government in Somalia since President Barre was overthrown by opposing clans in 1991. As those clans could not agree on a replacement, lawlessness, civil conflict and clan warfare ensued. Mogadishu is fragmented into rival, clan based factions. The Transitional Federal Government was established in October 2004 but has failed to become a functioning government.

67. In June 2006 the Union of Islamic Courts took control of Mogadishu and, later, control of most of central and southern Somalia. In 2006, a United Nations Resolution authorised a deployment of an African Union and Intergovernmental Authority on Development force to protect the TFG. Ethiopian forces also moved into Somalia to support the TFG, with the result that by the end of 2006 the Union of Islamic Courts had been ousted from Mogadishu and much of the rest of southern Somalia. However, the semblance of order in Mogadishu that had been established under the rule of the UIC deteriorated, with a return to banditry and violence, as well

as attacks on the TFG and Ethiopian forces, with civilians caught up in the fighting on a frequent basis. There was significant displacement of the civilian population.

68. In 2007 Somali Islamists and opposition leaders joined forces to fight the TFG/Ethiopians. Although a ceasefire was signed in August 2008, Islamic insurgents were not party to the agreement and, by late 2008, these insurgents, including Al-Shabab, had regained control of most of southern Somalia.

69. Ethiopia removed its troops from Somalia in January 2009 and Al-Shabab took control of Baidoa, formerly a government stronghold. In May 2009 insurgents launched an attack on Mogadishu and by October of that year Al-Shabab had consolidated its position as the most powerful insurgent group, driving its main rival, Hisbul Islam, out of the southern city of Kismayo. Al-Shabab openly declared allegiance with Al-Qaeda. In December 2010 Hisbul Islam and Al-Shabab merged.

Case law

70. The ECtHR had specific regard to the Tribunal's country guidance cases of NM & Others, HH & Others and (most significantly, because it was the most recent) AM & AM. The Court was also aware of the Court of Appeal judgments in HH and others [2010] EWCA Civ 426, including the fact that, in addition to HH, appellant AM number 1 in AM & AM had also appealed to the Court of Appeal and was dealt with in the judgments there, as well as two other appellants including one known as MA. Appellant MA's case is described at paragraph 77 of the ECtHR judgment. However, it does not appear that the ECtHR's attention was drawn to the fact that the Secretary of State's subsequent appeal in MA's case to the Supreme Court was successful (MA (Somalia) [2010] UKSC 49).

71. Two other cases were noted by the Court. In AM (Evidence – route of return) Somalia [2011] UKUT 54 (IAC) the Upper Tribunal found that it would not be a breach of Article 3 for a person to travel from Mogadishu International Airport to Afgoye, noting that travel took place with some degree of regularity along this route and that, as the appellant had lived in Yemen and Saudi Arabia, he would be well able to anticipate and comply with the requirements of Al-Shabab.

72. Finally, the Court noted the judgment of 24 February 2011 of the Swedish Migration Court of Appeal where the Swedish Court found that an internal armed conflict existed throughout the whole of central and southern Somalia, which was sufficiently serious to expose the Somali applicant in question to a risk of serious harm, even though he could not demonstrate that he would be specifically targeted. The Court considered that the situation in recent months "had become very unstable and unpredictable" and that the presence of the United Nations and other international organisations "had decreased and, as a consequence, detailed updated information was hard to come by" [79]. Although safety in Somaliland and Puntland

was acceptable, a Somali returnee could only gain admittance to those areas if seen as belonging or having a connection to them.

Relevant country information

73. At [80] to [97], the Court described, in some detail, the report of the Fact-Finding Mission to Nairobi of September 2010, which is also one of the sources of evidence before us. There was general agreement that the TFG/AMISOM controlled the airport, seaport, Villa Somalia and the road between the airport and Villa Somalia. The security situation in Mogadishu was described by sources as poor. Al-Shabab areas of the city were at risk of shelling by AMISOM, and vice-versa. Both sides carried out indiscriminate shelling and there was constant movement of IDPs in and out of the city. One diplomatic source suggested, however, it would be possible to live in non-conflict areas of the city, which were generally considered to be safe. Al-Shabab violence had become more sophisticated over the past year as some foreign fighters had been brought in.

74. There were regular flights into Mogadishu International Airport and the position there was generally safe, although there were reports of a failed attack on the airport in September 2010. Certain sources considered that Diaspora returnees who regularly travel to Mogadishu were well connected and anyone seeking to return would need a lot of preparation to ensure they had contacts in Mogadishu.

75. There was no consensus on which groups controlled other regions in central and southern Somalia, although it was agreed that Al-Shabab controlled most of the land south of the line drawn between Beletweyne and Dhusarmareb. Militias aligned with the TFG controlled pockets of land on the Ethiopian border. Hisbul Islam was nominally in control of some small areas, but even here Al-Shabab's influence was significant. A region known as Galmudug was controlled by a local clan-based administration acting under the umbrella of Ahlu Sunna Waljamaca [89]. Certain sources considered areas controlled by Al-Shabab to be stable and safe for Somalis who were able "to play the game", contrasting with a view of an international NGO that there were no safe areas in south central Somalia as long as Al-Shabab and Hisbul Islam were present [92]. Nevertheless, sources indicated that in Al-Shabab areas human rights were practically non-existent because of the organisation's interpretation of Sharia law and that this particularly affected women [94].

76. The Court also had regard to the UKBA's Operational Guidance Note of 1 July 2010 which, amongst other things, noted the possibility of Somalis flying from Mogadishu International Airport directly to Hargeisa, Somaliland [103].

77. The Court had regard to the Norwegian Directorate of Immigration Country of Origin Centre Somalia: Security and Conflict in the South report of 23 August 2010, which described the situation in southern Somalia and Mogadishu in particular as unstable, with areas of control changing quickly. In spite of a certain amount of

stability in parts of the country, the civilian population was still the victim of indiscriminate violence, albeit "to a slightly lesser extent than previously" [111]. In Mogadishu, there was a difference between the northern and southern parts of the capital. Certain areas – Hodan, Hawl, Wadaag, Wardhingley, Yaqshiid, Bondheere, Shibis, and Abdulaziz - were hardest hit; Medina, Dharkley, Hamar Weyne, Waaberi, and Hamar JaabJab less so. The UNHCR figure of 370,000 displaced persons in Mogadishu and 360,000 in the Afgoye Corridor were estimates, based on satellite images and, according to a well-informed international aid worker, many houses have been built "to mislead aid organisations" [119]. Outside Mogadishu, fighting was mostly localised around certain key areas and towns. The main challenge for the population of southern Somalia was, however, humanitarian in nature.

78. The Court had before it various reports of the UN Secretary General, including one dated 28 April 2011, well after the time (October 2010) stated in paragraph 8 of the judgments as when the last recorded observations of the applicants and the UK Government were made. In the April 2011 report, the Secretary General noted a major military offensive against Al-Shabab on 19 February 2011, by Ahlu Sunnah Wal Jama and other groups allied with the TFG. Hostilities centred on Gedo, Bay and Bakool regions. Reports of heavy casualties and intensified recruitment methods on the part of Al-Shabab "suggested that the group's capabilities might have been reduced", although it was still said to be receiving arms and ammunition through southern Somali ports and acquiring financial resources from extortion, illegal exports and taxation [127].

79. As well as the report of an "independent expert" dated 16 September 2010, dealing mainly with the humanitarian position and the behaviour of Al-Shabab, the Court noted the UNHCR's Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Somalia of 5 May 2010. UNHCR concluded "that any person returned to southern and central Somalia would, solely on account of his or her presence there, face a real risk of serious harm. Moreover, UNHCR considered that there was no internal flight alternative available inside southern and central Somalia" [135]. The UNHCR identified three potential agents of persecution: (i) Al-Shabab/Hisbul Islam, which had admitted using civilians as human shields, intimidated and assassinated civilians working for or perceived as collaborating with the TFG/AMISOM, as well as engaging in forced recruitment and imposing social decrees of an extreme and abusive nature; (ii) criminal elements in Mogadishu, who put at risk business persons and civil societies there; and (iii) the TFG/AMISOM, who indiscriminately shelled civilian areas of Mogadishu in reprisal for Al-Shabab mortar attacks.

80. The UNHCR Guidelines considered that effective state protection was unavailable in southern and central Somalia, given the situation of armed conflict and the inability of the government to extend control over any territory outside a few districts in Mogadishu. Since 2007 clan protection had been undermined in Mogadishu and increasingly in other regions, including as a result of Al-Shabab/Hisbul Islam interpretations of Sharia law.

81. The Court also had before it various Amnesty International and Human Rights Watch Reports, including the latter's "Harsh War, Harsh Peace", which was relied on by the appellants in the present appeals. In the HRW Report "Welcome to Kenya" of June 2010, details were given of what were said to be continuing abuses perpetrated by the Kenyan authorities against Somali refugees and asylum seekers. World Food Programme and Médicins Sans Frontières described the humanitarian problems facing those in southern and central Somalia and, amongst the news reports referred to by the Court, was one from the Guardian of 3 February 2011, that Somalia "was once again facing a malnutrition crisis" [194].

The ECtHR's Assessment

Mogadishu

82. At [241] to [250] the Court assessed the then current security situation in Mogadishu. In doing so, it in effect took as its starting point the country guidance conclusions of the AIT in AM & AM, that the situation in Mogadishu was such "that everyone except possibly prominent businessmen or senior figures in the insurgency or in powerful criminal gangs would be at risk if returned there". The Court adopted the yardstick in AM & AM for assessing whether the parties to a conflict were responsible for a situation of general violence of such intensity as to pose a real risk to the life or person of any civilian in the capital. The criteria were (1) whether the parties were employing methods and tactics of warfare which increased the risk of civilian casualties or directly targeting civilians; (2) whether the use of such methods and/or tactics was widespread among the parties; (3) whether the fighting was localised or widespread; and (4) the number of civilians killed, injured and displaced as a result of the fighting. Although these criteria were not exhaustive, the Court considered that they formed an appropriate yardstick by which to assess the level of violence in Mogadishu.

83. Looking at post-AM & AM events, the Court noted that the situation in Mogadishu had improved in 2009 but that "The most recent reports indicate that all significant parties to the conflict have continued to engage in indiscriminate violence, conducting numerous mortar attacks against enemy forces in densely populated areas of Mogadishu without regard to the civilian population" [244]. In particular, this involved firing mortars indiscriminately in the general direction of opposition fire or bombarding areas such as Bakara Market, considered to be opposition strongholds. Reports also indicated that the security situation in Mogadishu deteriorated in 2010. For instance, statistics from the Elman Peace Centre of Somalia recorded that 918 civilians had died in the first seven months of 2010 and a further 2,555 were injured. There were thus thousands of civilian casualties, to which had to be added the displacement of hundreds of thousands of people. Any changing tactics by Al-Shabab as a result of recruiting foreign fighters had not in any way reduced the risk to civilians; on the contrary one source told the Fact-Finding Mission

that new tactics included random attacks on civilians [246]. The Norwegian Directorate's report indicated that increasing professionalism on the part of Al-Shabab had resulted in "greater brutality". Whilst fighting in Mogadishu was more intense in some areas than others, the position on the ground was capable of changing on a daily basis [247]. Accordingly, at [248], the Court concluded that "The large quantity of objective information overwhelmingly indicates that the level of violence in Mogadishu is of sufficient intensity to pose a real risk of treatment reaching the Article 3 threshold to anyone in the capital". In reaching this conclusion the Court had regard to "indiscriminate bombardments and military offensives carried out by all parties to the conflict, the unacceptable number of civilian casualties, the substantial number of persons displaced within and from the city, and the unpredictable and widespread nature of the conflict".

84. At [249] the Court considered the exception identified by the AIT in AM & AM of certain individuals "exceptionally well-connected to 'powerful actors' in Mogadishu [who] might be able to obtain protection and live safely in the city". The ECtHR noted it had not received any submissions specifically addressed to this issue and the country reports on it were "largely silent". Nevertheless, the Court decided not to exclude the possibility that it might be shown in the case of an individual applicant that he or she was "a well-connected individual" who "would be protected in Mogadishu. However it considers it likely that this would be rare. First in the light of the Tribunal decision it would appear that only connections at the highest level would be in a position to afford such protection" and it was not enough to show that an individual was merely a member of a majority clan. Secondly the Court recalled that in HH and others in the Court of Appeal that Court had found that "an applicant who had not been to Somalia for some time was unlikely to have the contacts necessary to afford him protection on return. It is therefore unlikely that a contracting state could successfully raise such an argument unless the individual had recently been in Somalia."

Southern and central Somalia (outside Mogadishu)

(a) The internal relocation alternative

85. Although the ECtHR observed in Sufi & Elmi that the United Kingdom Government intended to return the applicants to Mogadishu, the Court decided in the light of the findings in AM & AM that it was necessary to consider whether the applicants could relocate to a safer region in southern or central Somalia.

86. So far as Somaliland or Puntland were concerned, the Court found that Somali nationals would not be able to gain admittance there unless they were born in the region in question or had strong clan connections with it. The Court was not, however, aware of the existence of any similar obstacles preventing Somali returnees from gaining admittance in other parts of southern and central Somalia [267]. Nevertheless, given the humanitarian crisis and resulting strain placed on

individuals and the traditional clan structure, the Court did not in practice consider a returnee could find refuge or support in such an area of southern and central Somalia where he or she had no close family connections. Without such connections, or if the returnee could not safely travel to an area where such connections existed, then in both cases the Court considered "it reasonably likely that he would have to seek refuge in an IDP settlement or refugee camp".

(b) The risk in transit or upon settling elsewhere in southern and central Somalia

87. At [268] the Court observed that, although there were a number of airports in southern and central Somalia "all applicants facing removal from the United Kingdom have been issued with removal directions to Mogadishu International Airport". We take it this is a reference to the 216 applicants (including Sufi and Elmi) referred to earlier in the judgment as being subject to rule 39 orders. The Court held that the situation in the airport was not such as to give rise to a real risk of ill-treatment to somebody arriving there. It also noted that certain journeys to places in central and southern Somalia from the airport did not involve having to go to Mogadishu.

88. Although there were reports of fighting in various towns in central and southern Somalia, this fighting was categorised by the Court as sporadic and localised and that "other areas have remained comparatively stable" [270]. It was therefore possible for a returnee to travel from Mogadishu International Airport to another part of central and southern Somalia "without being exposed to a real risk of treatment proscribed by Article 3 solely on account of the situation of general violence". However this would "very much depend upon where a returnee's home area is. It is not possible for the Court to assess the level of general violence in every part of southern and central Somalia and, even if it were to undertake such an exercise, it is likely that its conclusions would become outdated very quickly. Consequently, if the applicant's home is one which has been affected by the conflict, the conditions there will have to be assessed against the requirements of Article 3 at the time of removal" [271].

89. However, general violence was not the only problem facing such a traveller. The areas with the lowest levels of generalised violence were those under the control of Al-Shabab "which are also the areas reported to have the worst human rights conditions". Such a returnee might therefore still be exposed to a real risk of ill-treatment on account of the human rights situation in the areas to which he or she would need to travel.

90. In the areas of their control, Al-Shabab was enforcing "a particularly draconian version of Sharia law, which goes well beyond the traditional interpretation of Islam in Somalia…and in fact amounts to a repressive form of social control" [273]. Al-Shabab were concerned "with every little detail of daily life, including men's and women's style of dress, the length of men's beards, the style of music being listened to and the choice of mobile phone ringtone". Women were "particularly targeted" in

that, in addition to strict dress codes, they were not permitted by Al-Shabab to go out in public with men, even male relatives, and had been ordered to close their shops. There were also reports of systematic forced recruitment by Al-Shabab of adults and children.

91. These forms of control by Al-Shabab applied not only to those living in the areas under its control but also to those travelling through them, who would have to negotiate Al-Shabab checkpoints. "Persons not obeying Al-Shabab's rules could experience difficulties at these checkpoints".

92. At [275] the Court assessed the evidence from a number of sources who had told the Fact-Finding Mission "that areas controlled by Al-Shabab were generally safe for Somalis provided that they were able to 'play the game' and avoid the attention of Al-Shabab by obeying their rules". Since, however, Al-Shabab only began seizing parts of southern and central Somalia in late 2006, the Court considered it unlikely that a Somali "with no recent experience of living in Somalia would be adequately equipped to 'play the game' with a risk that he would come to the attention of Al-Shabab, either while travelling through or having settled in an Al-Shabab controlled area. The Court considers that this risk would be even greater for Somalis who had been out of the country long enough to become 'westernised' as certain attributes, such as a foreign accent, would be impossible to disguise." Again, it was not possible to predict the fate of a returnee who came to the attention of Al-Shabab for failing to comply with their rules. Evidence of punishments indicated that these could include stoning, amputation, flogging and corporal punishment, all of which would fall within Article 3. Although the Court accepted the likelihood that punishment would depend upon the gravity of infringement, there was evidence that Somalis had been beaten or flogged for relatively minor transgressions, such as playing Scrabble, watching the World Cup or wearing inappropriate clothing. Accordingly, the Court found that a returnee with no recent experience of living in Somalia would be at real risk of being subjected to treatment proscribed by Article 3 in an Al-Shabab controlled area.

(c) Humanitarian conditions in refugee and IDP camps

93. So far in this précis of the ECtHR's findings in Sufi & Elmi, we have omitted the Court's discussion of various legal issues, since these are best dealt with separately, later in this Part of the determination. In describing the Court's findings regarding the humanitarian conditions in refugee/IDP camps, however, it is necessary at this point to say a little about the Court's legal approach, not least because the respondent in the present appeals took issue with it. In essence, in apparent reliance on the recent ECtHR case of MSS v Belgium and Greece [2011] ECHR 108, the Court concluded that, if the "dire humanitarian conditions in Somalia were solely or even predominantly attributable to poverty or to the state's lack of resources to deal with a naturally occurring phenomenon, such as drought, the test in *N v the United Kingdom* may well have been considered to be the appropriate one. However, it is clear that

while drought has contributed to the humanitarian crisis, that crisis is predominantly due to the direct and indirect actions of the parties to the conflict. The reports indicate that all parties to the conflict have employed indiscriminate methods of warfare in densely populated urban areas with no regard to the safety of the civilian population… This fact alone has resulted in widespread displacement and the breakdown of social, political and economic infrastructures. Moreover, the situation has been gravely exacerbated by Al-Shabab's refusal to permit international aid agencies to operate in the areas under its control" [282]. Accordingly, at [283], the Court rejected the N v United Kingdom approach and preferred that in MSS v Belgium and Greece "which requires it to have regard to an applicant's ability to cater for his most basic needs, such as food, hygiene and shelter, his vulnerability to ill-treatment and the prospect of his situation improving within a reasonable timeframe".

94. Assessing the position on this basis, the Court found that conditions for internally displaced persons in southern and central Somalia were "dire". Even before the recent failure of the rains, over half of the population of Somalia was dependent on food aid; but, despite the humanitarian crisis, Al-Shabab continued to deny international NGOs access to areas under its control [284]. Although it was impossible to assess with any degree of accuracy how many IDPs were living in the Afgoye Corridor, it could be as many as 410,000. Significant numbers of these were being forced to return to Mogadishu in search of food and water. IDPs were extremely vulnerable to exploitation and crime, as well as forced recruitment to Al-Shabab. The increased urbanisation of the Afgoye Corridor, as identified by the UK Government, was supported by a number of country reports, but did not demonstrate that the conditions for the majority of IDPs had improved. On the contrary, reports suggested IDPs were experiencing difficulties in finding shelter in the Afgoye Corridor because landlords were selling land that the IDPs could otherwise have lived on [286].

95. At [287] to [291], the Court decided that it was appropriate to have regard to the evidence in the Dadaab Camps in Kenya, to which the NGOs had direct access, and which were said to be severely overcrowded, besides having high levels of theft and sexual violence, exploitation by elements of the Kenyan authorities and risk of *refoulement* to Somalia by the Kenyan authorities. Having regard to this situation, the Court decided that "any returnee forced to seek refuge in either camp [Dadaab or the Afgoye Corridor] would be at real risk of Article 3 ill-treatment on account of the dire humanitarian conditions". If anything, conditions in Somalia were likely to be worse.

96. The ECtHR accordingly found that to remove Sufi or Elmi to Mogadishu would be a violation of their Article 3 rights.

The Significance of Sufi & Elmi to the present appeals and country guidance

(a) Formal status

97. It is common ground that, as a matter of international law, the United Kingdom is bound to abide by a final judgment of the ECtHR (Article 46(1) ECHR). As Mr Eicke pointed out, however, this has no relevance to the present proceedings, since the duty only relates to the actual ruling of the Court in any particular case which, in Sufi & Elmi is, not to remove either of those individuals to Somalia and to pay their costs and expenses.

98. For our purposes, the relevant legislative provision is section 2(1)(a) of the Human Rights Act 1998, which provides that a:

> "court or tribunal determining a question which has arisen in connection with a Convention right must take into account any-
>
> (a) judgment, decision, declaration or advisory opinion of the European Court of Human Rights,
>
> …
>
> whenever made or given, so far as, in the opinion of the court or tribunal, it is relevant to the proceedings in which that question has arisen."

99. In R (Alconbury Developments Ltd.) v Environment Secretary [2003] 2 AC 295, Lord Slynn had this to say about the duty in section 2:-

> "Although the Human Rights Act 1998 does not provide that a national court is bound by these decisions it is obliged to take account of them so far as they are relevant. In the absence of some special circumstances it seems to me that the court should follow any clear and consistent jurisprudence of the European Court of Human Rights. If it does not do so there is at least a possibility that the case will go to that court which is likely in the ordinary case to follow its own constant jurisprudence" [26].

100. In Ullah v Special Adjudicator [2004] UKHL 26, Lord Bingham approved that passage in Alconbury, holding that it:-

> "reflects the fact that the Convention is an international instrument, the correct interpretation of which can be authoritatively expounded only by the Strasbourg court. From this it follows that a national court subject to a duty such as that imposed by section 2 should not without strong reason dilute or weaken the effect of the Strasbourg case law… The duty of national courts is to keep pace with the Strasbourg jurisprudence as it evolves over time: no more, but certainly no less."

101. The boundaries of that duty are described in R v Horncastle et al [2009] UKSC 14, where the Supreme Court held that:-

> "There will, however, be rare occasions where the domestic court has concerns as to whether a decision of the Strasbourg court sufficiently appreciates or accommodates particular aspects of our domestic process. In such circumstances it is open to the domestic court to decline to follow the Strasbourg decision, giving reasons for adopting this course. This is likely to give the Strasbourg court the opportunity to reconsider the particular aspects of the decision that is in issue, so that there takes place what may prove to be a valuable dialogue between the domestic court and the Strasbourg Court." [11]

102. This was developed in Manchester City Council v Pinnock [2010] UKSC 45:-

> "This Court is not bound to follow every decision of the EurCtHR. Not only would it be impractical to do so: it would sometimes be inappropriate, as it would destroy the ability of the Court to engage in the constructive dialogue with the EurCtHR which is of value to the development of Convention law… Of course, we should usually follow a clear and constant line of decisions by the EurCtHR: R (Ullah) v Special Adjudicator … but we are not actually bound to do so or (in theory, at least) to follow a decision of the Grand Chamber. Where, however, there is a clear and constant line of decisions whose effect is not inconsistent with some fundamental substantive or procedural aspects of our law, and whose reasoning does not appear to overlook or misunderstand some argument or point of principle, we consider that it would be wrong for this Court not to follow that line." [48]

103. As Mr Eicke submitted, it is also plainly the case that where a judgment of the Court of Appeal or Supreme Court is binding on the Upper Tribunal, we must, compatibly with the rules of *stare decisis*, follow that judgment, even if it might be considered by the Tribunal to be incompatible with the Strasbourg Court's clear and constant jurisprudence. As we shall shortly explain, Mr Eicke submitted that there is an aspect of the judgment in Sufi & Elmi which falls squarely within this principle. As we have already indicated, it relates to the ECtHR's assessment of the humanitarian position in southern and central Somalia.

104. Apart from that issue, to which we shall need to turn in due course, there is no suggestion of the Strasbourg Court in Sufi & Elmi not following its clear and consistent jurisprudence on Article 3, as regards its analysis of the evidence relating to the armed conflict in Mogadishu and elsewhere, and as to the behaviour of Al-Shabab towards those in, or attempting to traverse, areas it controls. The question for us, accordingly, is how, if at all, section 2 of the 1998 Act and the domestic authorities we have cited require us to take account of and follow the Court's conclusions as to Article 3, by reference to the evidence before it.

105. In this regard, the appellants relied upon the judgments of the Court of Appeal in Batayav v Secretary of State for the Home Department [2003] EWCA Civ 1489. In that appeal, the IAT found that Batayav's likely imprisonment in Russia would not violate his Article 3 rights, by reason of the conditions pertaining then in Russian prisons. The IAT dismissed the appellant's appeal without considering the judgment of the ECtHR in Kalashnikov v Russia (2002) 36 EHRR 587, which held that the conditions in which Kalashnikov, as well as most other prisoners, were detained in

Russia breached Article 3. At paragraph 25, the Court concluded that "If the only basis for deciding whether the appellant faced degrading treatment if returned to a Russian prison were Kalashnikov, the decision of the Tribunal would have to be reversed".

106. By the same token, the present appellants submitted that the effect of the decision in Sufi & Elmi is that "So far as the appellants' circumstances are materially similar to Sufi's or Elmi's, their removal from the UK would violate Art 3 of the ECHR unless it is shown that the situation in Somalia has changed sufficiently since it was examined by the Court to eliminate the identified risks".

107. Of course, every decision of the Strasbourg Court ultimately involves the application of the jurisprudence relating to the ECHR to a particular set of facts, concerning a particular applicant. As such, the decision of the Strasbourg Court is unlikely to be automatically determinative of other cases, for the simple reason that the facts of those cases are unlikely in all respects to be materially the same as those of the Strasbourg case. However, as Batayav demonstrates, there may be occasions when this is not so:-

> "22. The Secretary of State, whilst accepting that *Kalashnikov* is plainly relevant, asserts that it is neither binding authority nor, says Mr Garnham, does it provide definitive guidance on any of the issues of substance. The judgment in *Kalashnikov*, he says, is a conclusion on the facts of a particular case. No two cases alleging detention in conditions breaching Article 3 will be identical, and the Court must look at the individual circumstances of each case to decide if a violation has been established. The appellant's experience of prison in Russia was, he says, hugely different from Kalashnikov's and even on the evidence adduced by the appellant himself there was nothing to show that he had been kept in conditions breaching Article 3.
>
> 23. I cannot accept Mr Garnham's submissions. As I have already said, the appellant's remaining claim to the protection of Article 3 is founded not on his own particular circumstances but on the conditions faced generally by persons, whether or not the victims of persecution, incarcerated in the Russian prison system. To establish his case he does not need to refer to evidence specific to his own circumstances but rather to the evidence bearing on the class of which he is a member. In other words, in the circumstances of this case, to the evidence showing the conditions faced generally by persons incarcerated in the Russian prison system.
>
> 24. True it is that the decision in *Kalashnikov* focused on the conditions in which Kalashnikov himself had been detained, and addressed the question of whether he had been subjected to degrading treatment. But the wider significance of the case emerges from the Russian Federation's admission that conditions which the Federation accepted fell below the standard set by other Member States of the Council of Europe, and which the Court held amounted to degrading treatment constituting a breach of Article 3, applied to 'most detainees in Russia'."

108. The Russian Federation's admission that conditions in Russian prisons fell below relevant standards, as regards "most detainees in Russia" was, thus, highly significant. Since Batayav was at risk of being imprisoned if returned to Russia, there was really little else that needed to be said. Indeed, it would be difficult to see how a domestic court or tribunal in the United Kingdom could validly have found that, notwithstanding what was in substance a concession, the treatment faced by a prisoner in a Russian prison would not be contrary to Article 3. Another case where the factual matrix was indistinguishable from that in the relevant Strasbourg case was R (on the application of) EW v SSHD [2009] EWHC 2957 (Admin).

109. But in a situation as multi-faceted and complex as Mogadishu and central and southern Somalia, it is doubtful whether a domestic court or tribunal, applying section 2 of the 1998 Act and the related jurisprudence, is *necessarily* obliged to draw exactly the same conclusions as regards risk to returnees, as were reached by the ECtHR in Sufi & Elmi, even where the raw evidence before the domestic court or Tribunal is precisely the same as that which was before the ECtHR. In United Kingdom law, at least, it is well-established that a fact-finding tribunal is entitled (albeit within public law principles) to decide what weight to give to each material element of the evidence before it. Indeed, as we shall see, one of the areas of disagreement between the appellants and the respondent in the present appeals centred on the weight (or, rather, lack of weight) which the ECtHR saw fit to give to the respondent's report of the Fact-Finding Mission to Nairobi of September 2010. Whilst we are prepared to accept that a domestic court or tribunal is still required by section 2 to "have regard" to the weight which the ECtHR had seen fit to place upon the particular piece of evidence, we do not consider that the House of Lords and Supreme Court authorities, to which we have made reference, can be said to compel the Tribunal to follow the Strasbourg Court, to the extent of placing precisely the same weight on that evidence as the Strasbourg Court has seen fit to do, in a case where the weighing of that evidence is something the domestic court or tribunal is required to undertake. The references in the domestic authorities to "jurisprudence" cannot properly be said to encompass the task of attributing weight to evidence.

110. In so finding, we are aware that the Strasbourg Court has, from time to time, seen fit to give guidance on the approach to evidential materials in international protection cases. Thus, in NA v United Kingdom [2008] ECHR 616 the Court had this to say about the use to be made of materials emanating from a Contracting State and from "other reliable and objective sources", such as other States, UN agencies and reputable NGOs:-

> 120. In assessing such material, consideration must be given to its source, in particular to its independence, reliability and objectivity. In respect of reports, the authority and reputation of the author, the seriousness of the investigations by means of which they were compiled, the consistency of their conclusions and their corroboration by other sources are all relevant considerations …
>
> 121. The Court also recognises that consideration must be given to the presence and reporting capacities of the author of the material in the country in question. In this

> respect, the Court observes that States (whether the respondent State in a particular case or any other Contracting or non-Contracting State) through their diplomatic missions and their ability to gather information, will often be able to provide material which may be highly relevant to the Court's assessment of the case before it. It finds that the same consideration must apply, a fortiori, in respect of agencies of the United Nations, particularly given their direct access to authorities of the country of destination as well as their ability to carry out on-site inspections and assessments in a manner which States and non-governmental organisations may not be able to do".

111. We are also mindful of what the AIT said in TK (Tamils – LP updated) Sri Lanka CG [2009] UKAIT 00049:-

> "… By virtue of the disagreement between the parties in NA as to the relative value of particular sources, the December 2006 UNHCR Position paper in particular, the Court also felt it necessary to articulate in greater detail than previously its view of the relevant criteria that decision makers should apply to Country of Origin Information (COI). In the latter respect, it seems to us that, at least within the context of Article 3 jurisprudence, judges should now be assessing COI by the standards set out by the Court at paras. 132-135 of NA (which can be summarised as accuracy, independence, reliability, objectivity, reputation, adequacy of methodology, consistency and corroboration). Indeed, within the closely related context of asylum and humanitarian protection claims, very much the same standards have now become, by virtue of EU legislation, legal standards: see the Refugee Qualification Directive (2004/83/EC), Article 4(1), 4(3)(a) and 4(5)(c) and the Procedures Directive (2005/85/EC), Article 8(2)(a) and (b) and 8(3)." [5]

112. For our part, we do not think that the provisions of the Directives cited by the AIT can be said to be anything like as detailed and prescriptive as the ECtHR's guidance and that, if that guidance is regarded as being part of that Court's settled jurisprudence, which domestic courts are supposed to follow, there is no corresponding requirement to do the same as regards the Refugee Convention and EU subsidiary protection. Be that as it may, there is recent Court of Appeal authority for the proposition that domestic tribunals are required to follow the guidance in NA. This authority, however, clearly demarcates between the need to apply the guidance and the ultimate duty of the tribunal to reach its own view on the weight to be given to the totality of the evidence before it.

113. In MD (Ivory Coast) [2011] EWCA Civ 989, the Court had to decide whether the Upper Tribunal had erred in its treatment of information contained in a letter from a political officer in the Foreign and Commonwealth Office regarding checkpoints. Sullivan LJ said:

> "Although the tribunal in the present case did not refer to NA, in my judgment it adopted the approach that is described in that case. It treated the political officer's letter not as expert evidence but as akin to other kinds of country information. It considered whether it should attach weight to the fact that the Embassy had vouchsafed that one of its staff had furnished the evidence in good faith and concluded that it should. It considered the provenance [of] the information and most importantly it concluded in the final sentence of paragraph 242:

'In the end, however, it is a matter of judgment as to the weight that should be attached to the material'". [46]

114. Toulson LJ held that NA and TK provided "authoritative guidance on the proper approach to country information in the form of reports or letters provided by British Embassies" [50]. Pill LJ considered that the "weight to be given to the information will be for the tribunal to decide, as an expert fact finding tribunal, in the circumstances of the particular case" [53].

115. It is therefore evident that, whilst the Strasbourg Court's guidance as to the general approach to evidence is part of its jurisprudence, to be followed by United Kingdom courts and tribunals to the extent demanded by the House of Lords and Supreme Court authorities, the weighing of the evidence and the conclusions as to the relative weight to be placed on the items of evidence are ultimately matters for the tribunal. Whilst the factual finding the Strasbourg Court has made as a result of applying its own guidance is something to which the domestic tribunal must have regard, the tribunal is not bound to reach the same finding.

116. It is the case that, as regards the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal, Practice Direction 12 of the Senior President of Tribunals' Directions of 10 February 2010 requires both chambers to treat a country guidance case of the Tribunals, and their predecessors, as authoritative, when deciding an appeal, so far as that appeal:-

> "(a) relates to the country guidance issue in question; and
>
> (b) depends upon the same or similar evidence."

117. The effect of Practice Direction 12 is, accordingly, to require judicial fact-finders in those Chambers in effect to accept the relative weight which the Tribunal giving the country guidance has seen fit to place upon the various pieces of evidence. In the context of domestic tribunals operating within the same jurisdiction, according to what are broadly the same principles and procedures, such a requirement makes sense. It by no means follows, however, that we should apply the principle of Practice Direction 12, as some sort of "gloss" on section 2 of the 1998 Act, so as to place the ECtHR in the position of supreme maker of country guidance for the purposes of our tribunals.

118. Practice Direction 12.2 contains the exception that the FTT and the UT are not to regard country guidance as authoritative if the country guidance case in question "is inconsistent with other authority that is binding on the Tribunal". For the reasons we have given, we do not consider that, even if it becomes a final judgment, Sufi & Elmi is binding on the relevant Chambers so far as it concerns an assessment of facts.

119. So far, we have considered the issue, on the assumption that the evidence that has been placed before this Tribunal is the same as was put before the ECtHR. A glance

at Appendix 2 to this determination and at the synopsis of the Sufi & Elmi evidence mentioned above at [82] to [95] shows this not to be the case. Considerably more evidence was placed before us than was available to the ECtHR, including the oral expert evidence of two witnesses, whose views were tested under cross-examination.

120. In particular, we have evidence of the position at a later date than that considered by the ECtHR. Exactly what the last date was for the ECtHR is a matter of some debate. Paragraph 8 of the judgment refers to further observations being submitted in October 2010. Ms Short, for appellant MW, however, ascertained that further submissions from the United Kingdom Government were made on 12 January 2011. At all events, the only material from 2011 which the Court appears to have considered was the decision of the Upper Tribunal in AM (Evidence – route of return), the judgment of the Swedish Migration Court of Appeal, the report of the UN Secretary General of 28 April 2011 and two news reports from February 2011, concerning the recent drought.

121. Mr Eicke submitted that if this Tribunal had seen fit to justify its factual findings by reference to evidence that we had seen fit to obtain for ourselves or which was, in any event, not drawn to the attention of each of the parties, so as to obtain their reaction, our determination would almost certainly be successfully challenged on appeal. That may be so, although Ms Short's researches indicate, amongst other things, that in Strasbourg the parties have a duty to assist the ECtHR in the gathering of relevant information, up to the time the decision is made. The point which emerges from all this is not that the practices and procedures of a particular domestic tribunal are better or worse than those of the Strasbourg Court or, indeed of the courts and tribunals of other States subject to its jurisdiction. Rather, the differences reinforce our conclusion that, ultimately, a domestic fact-finding tribunal follows its domestic law, as regards the admissibility of evidence, the testing of that evidence and the ascribing of weight to it.

122. It is important to be clear that, so far in this discussion, we have been talking about the attributing of weight to evidence, so as to reach findings of fact. But, as will already have become apparent, even once the facts have been found, there will often be considerable scope for argument as to the application of the relevant ECtHR legal principles to those facts. The Batayav case was, perhaps, at least if not more concerned with applying a value judgment as to whether prison conditions breached Article 3 as it was with the actual facts of those conditions. In the case of a United Kingdom country guidance case, Practice Direction 12 requires judicial fact-finders to regard as authoritative, not only the primary fact-finding of the Country Guidance Tribunal but also that Tribunal's application of the relevant legal principles or "tests": eg is the treatment of a particular group such that members of that group are, in general, at real risk of Article 3 ill-treatment?

123. It could be said that what we have found to be the position will provide greater encouragement to claimants to make use of the rule 39 procedure in Strasbourg. Indeed, the appellants asserted it would be undesirable for us to risk "inconsistency

with the ECtHR in its response to patterns of country evidence that are similar to those which confronted that Court" (closing submissions [39]). The existence of the rule 39 procedure (based, as it often is, on limited information, supplied on an *ex parte* basis) should not, however, in our view be seen as having had a legal effect on the relationship between domestic courts and tribunals and the Strasbourg Court, to the extent that would be entailed in adopting a different approach to the one we have just set out. Even less should we adopt a different approach, not through legal obligation, but merely in order to eliminate the practical problems that inconsistency in fact-finding with the ECtHR might involve. Indeed, in the context of country guidance, it seems to us that – quite apart from what we consider to be our domestic legal obligations - the concept of "valuable dialogue" between domestic courts and tribunals and the ECtHR requires us to continue finding the facts as we see them (albeit following any relevant general guidance and taking account of Strasbourg's actual approach to the same or similar evidence) and embodying our conclusions in country guidance, whilst applying the Court's clear and consistent jurisprudence. The solution to any practical problems that this may cause, in terms of rule 39, lies either with the ECtHR itself or in the political realm.

(b) Article 3 and humanitarian conditions

124. We must now return to the matter highlighted earlier, regarding what might be described as the correct threshold for Article 3 in the context of the humanitarian situation which exists in southern and central Somalia, outside Mogadishu.

125. For the respondent, Mr Eicke took great issue with the following paragraphs of the judgment in Sufi & Elmi:-

> "278. In *Salah Sheekh v. the Netherlands*, cited above, the Court held that socio-economic and humanitarian conditions in a country of return did not necessarily have a bearing, and certainly not a decisive bearing, on the question whether the persons concerned would face a real risk of ill-treatment within the meaning of Article 3 in those areas... However, in *N. v. the United Kingdom* … the Court held that although the Convention was essentially directed at the protection of civil and political rights, the fundamental importance of Article 3 meant that it was necessary for the Court to retain a degree of flexibility to prevent expulsion in very exceptional cases. It therefore held that humanitarian conditions would give rise to a breach of Article 3 of the Convention in very exceptional cases where the humanitarian grounds against removal were 'compelling' ...
>
> 279. In the recent case of *M.S.S. v. Belgium and Greece* … the Court stated that it had not excluded the possibility that the responsibility of the State under Article 3 might be engaged in respect of treatment where an applicant, who was wholly dependent on State support, found himself faced with official indifference in a situation of serious deprivation or want incompatible with human dignity (§ 253). In that case, the applicant had spent months living in a state of the most extreme poverty, unable to cater for his most basic needs: food, hygiene and a place to live. Added to that, the Court noted the applicant's ever-present fear of

being attacked and robbed and the total lack of any likelihood of his situation improving (§ 254). It held that the conditions in which the applicant was living reached the Article 3 threshold and found Greece in breach of that Article as it was the State directly responsible for the applicant's living conditions (§ 264). It also found Belgium to be in breach of Article 3 because, *inter alia*, it had transferred the applicant to Greece and thus knowingly exposed him to living conditions which amounted to degrading treatment (§ 367).

280. In the present case the Government submitted, albeit prior to the publication of the Court's decision in *M.S.S. v. Belgium and Greece*, that the appropriate test for assessing whether dire humanitarian conditions reached the Article 3 threshold was that set out in *N. v. the United Kingdom*. Humanitarian conditions would therefore only reach the Article 3 threshold in very exceptional cases where the grounds against removal were 'compelling'.

281. The Court recalls that *N. v. the United Kingdom* concerned the removal of an HIV-positive applicant to Uganda, where her lifespan was likely to be reduced on account of the fact that the treatment facilities there were inferior to those available in the United Kingdom. In reaching its conclusions, the Court noted that the alleged future harm would emanate not from the intentional acts or omission of public authorities or non-State bodies but from a naturally occurring illness and the lack of sufficient resources to deal with it in the receiving country. The Court therefore relied on the fact that neither the applicant's illness nor the inferior medical facilities were caused by any act or omission of the receiving State or of any non-State actors within the receiving State.

282. If the dire humanitarian conditions in Somalia were solely or even predominantly attributable to poverty or to the State's lack of resources to deal with a naturally occurring phenomenon, such as a drought, the test in *N. v. the United Kingdom* may well have been considered to be the appropriate one. However, it is clear that while drought has contributed to the humanitarian crisis, that crisis is predominantly due to the direct and indirect actions of the parties to the conflict. The reports indicate that all parties to the conflict have employed indiscriminate methods of warfare in densely populated urban areas with no regard to the safety of the civilian population ... This fact alone has resulted in widespread displacement and the breakdown of social, political and economic infrastructures. Moreover, the situation has been greatly exacerbated by al-Shabab's refusal to permit international aid agencies to operate in the areas under its control, despite the fact that between a third and a half of all Somalis are living in a situation of serious deprivation ...

283. Consequently, the Court does not consider the approach adopted in *N. v. the United Kingdom* to be appropriate in the circumstances of the present case. Rather, it prefers the approach adopted in *M.S.S. v. Belgium and Greece*, which requires it to have regard to an applicant's ability to cater for his most basic needs, such as food, hygiene and shelter, his vulnerability to ill-treatment and the prospect of his situation improving within a reasonable time-frame (see *M.S.S. v. Belgium and Greece*, cited above, § 254)."

126. Mr Eicke pointed out that the United Kingdom Government had not been given an opportunity by the ECtHR in Sufi and Elmi to comment upon the significance or otherwise of MSS v Belgium and Greece. It was, he said, highly significant that the receiving State, in which the asserted ill-treatment had taken place, was Greece, a signatory to the ECHR. If one examined MSS, there was no consideration in that judgment of N v United Kingdom. This omission was significant, given that in N, the Court had said:-

> "42. … The fact that the applicant's circumstances, including his life expectancy, would be significantly reduced if he were to be removed from the Contracting State is not sufficient in itself to give rise to breach of Article 3. The decision to remove an alien who is suffering from a serious mental or physical illness to a country where the facilities for the treatment of that illness are inferior to those available in the Contracting State may raise an issue under Article 3, but only in a very exceptional case, where the humanitarian grounds against the removal are compelling. In the D. case the very exceptional circumstances were that the applicant was critically ill and appeared to be close to death, could not be guaranteed any nursing or medical care in his country of origin and had no family there willing or able to care for him or provide him with even a basic level of food, shelter or social support.
>
> 43. The Court does not exclude that there may be other very exceptional cases where the humanitarian considerations are equally compelling. However, it considers that it should maintain the high threshold set in D v United Kingdom and apply them in subsequent case-law which it regards as correct in principle, given that in such cases the alleged future harm would emanate not from the intentional acts or omissions of public authorities or non-State bodies, but instead from a naturally occurring illness and the lack of sufficient resources to deal with it in the receiving country."

127. Whether or not due to its failure to have regard to its own established case law, the Court in MSS failed, according to Mr Eicke, to explain how it was able to move as it did from paragraph 366 to the conclusion in paragraph 367:-

> "366. In the instant case the Court has already found the applicant's conditions of detention and living conditions in Greece degrading… It notes that these facts were well known before the transfer of the applicant and were freely ascertainable from a wide number of sources… It also wishes to emphasise that it cannot be held against the applicant that he did not inform the Belgian administrative authorities of the reasons why he did not wish to be transferred to Greece. It is established that the procedure before the Aliens Office made no provision for such explanations and that the Belgian authorities applied the Dublin Regulation systematically…
>
> 367. Based on these conclusions and the obligations incumbent on the States under Article 3 of the Convention in terms of expulsion, the Court considers that by transferring the applicant to Greece the Belgian authorities knowingly exposed him to conditions of detention and living conditions that amounted to degrading treatment."

128. When one probes the judgment in MSS, however, the situation becomes somewhat clearer. The reference to "detention" in [366] refers to the conclusion the Court had reached, at [233], that the conditions of detention in Greece in which the applicant found himself had violated Article 3. When he was not in detention, however, the applicant appears to have faced unacceptable living conditions in Greece. At [262] the Court was "of the opinion that, had they examined the applicant's asylum request promptly, the Greek authorities could have substantially alleviated his suffering" in this regard. The conclusion the Court reached on this issue was as follows:-

> "264. It follows that, *through the fault of the authorities*, the applicant has found himself in a situation incompatible with Article 3 of the Convention. Accordingly, there has been a violation of that provision" (our emphasis).

129. Viewed in this light, the finding at [282] of Sufi and Elmi makes jurisprudential sense. If the predominant cause of the poor living conditions faced by a person is due to human actions in the State in question, rather than to naturally occurring phenomena, coupled with a lack of resources to deal with those phenomena, then the high threshold set by N need not be reached. As we understood Mr Eicke, however, the respondent considers this jurisprudence to be novel, rather than "clear and consistent". It would, he said, in effect be possible in many cases to ascribe a State's inability to tackle phenomena such as drought or HIV illness as due to the inefficiency, incompetence or corruption of the government of that State. To introduce such considerations would, therefore, be to undermine the settled jurisprudence in N v United Kingdom. It would, in any event, undermine the judgments of the House of Lords in N v Secretary of State for the Home Department [2005] 2 AC 296, which were binding on this Tribunal, irrespective of what the ECtHR might subsequently have held.

130. Whilst we note Mr Eicke's criticisms of the reasoning process and recognise that such an important issue might have benefited from fuller consideration than that given at [278] to [283] of Sufi and Elmi, we conclude that there is nothing in that judgment on this point that is problematic from a jurisprudential point of view. The requirement in [282] of predominant cause is such as at least substantially to reduce, if not eliminate, the dangers to which Mr Eicke referred. It would, for example, be difficult to hold that the prevalence of a disease such as HIV/AIDS across sub-Saharan Africa is predominantly due to the corruption or other misfeasance of the governments of the countries in that part of Africa. On the other hand, whilst no one disputes that cholera is a naturally occurring disease, there can be no doubt that a government which imprisons people in conditions that are so insanitary as to allow cholera to flourish, would be acting in violation of Article 3. The test of "predominant cause", upon analysis, seems to us to be part of the settled jurisprudence of the ECtHR and underlies the approach in such cases as N vUK and Kalashnikov.

131. The real problem with [282] of Sufi and Elmi, as we see it, is a factual one. Even on the evidence available to the Court in that case, it is, with respect, difficult to see how

the actions of the "parties to the conflict" (which must mean the TFG/AMISOM and Al-Shabab) can be said, by their indiscriminate methods of warfare over a comparatively short period of time, to have caused a breakdown of "social, political and economic infrastructures". Anyone with experience of Somali international protection cases over the past two decades will know that, long before the arrival of these parties, there was precious little by way of social, political and economic infrastructure to speak of in Somalia. Furthermore, the evidence points to the current drought being the most severe in the past 60 years, which would in any event have been bound to have brought about a very serious humanitarian situation, regardless of the present conflict, for those whose existence depends directly on agriculture. In any event, whilst having due regard to the conclusion of the ECtHR in Sufi & Elmi that, on the evidence before that Court, the humanitarian crisis of 2011 was predominantly due to the actions of the parties, we have concluded, for the reasons given above, that the issue of whether or not that is so on the evidence before us is a matter for this Tribunal to determine, as a matter of fact, by reference to that evidence, ascribing to each item of it such weight as we see fit.

132. We shall examine that evidence in due course in this determination (**paragraphs 376 – 384**). It may, however, be helpful at this point to state that, whilst not the predominant cause of the present humanitarian crisis in central and southern Somalia, the conflict between TFG/AMISOM and Al-Shabab, and the behaviour of Al-Shabab in the areas which it controls, have been found by us to be significant for two reasons. First, the fact that many of those fleeing the consequences of the drought have seen fit to seek refuge in Mogadishu, at a time when that city was the subject of ongoing armed conflict, is indicative of the exceptional nature of the humanitarian crisis. Second, the nature and actions of Al-Shabab, in particular denying aid from Western agencies (at least, until very recently), has had a significant effect in aggravating an already problematic situation. As a result, we have concluded that the humanitarian position in southern and central Somalia is such that, *as a general matter*, the case is properly to be viewed as an exceptional one, which reaches the very high standard required in N v United Kingdom.

133. Sufi & Elmi touches on two other issues of a general nature: the weight to be given to the Fact-Finding Mission's report of 2010 and the correct approach to the issue of internal relocation. The first of these we have touched on already, in the context of the relationship between the Strasbourg Court and domestic tribunals, but it will be necessary in Part G to explain why we take a different view from the ECtHR as to the weight to be attributed to that report. The second issue we deal with in Part H.

PART F

THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

Submissions and evidence

134. The UNHCR exercised its right to intervene in the case of the present appeals, as it had done in HM (Iraq: Article 15(c)). The Tribunal received written submissions from Tom Hickman, Counsel, and Adam Smith-Anthony (then Adam Smith) of Baker & McKenzie, each acting *pro bono*; oral submissions from Mr Hickman, written evidence from Janice Marshall, Deputy Director in the Division of International Protection at the Office of the UNHCR in Geneva; a witness statement on the subject of information gathering which, because of its nature, was by agreement made the subject of an order under rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008; the UNHCR's Guidelines of July 2003 on international protection: "Internal Flight or Relocation Alternative"; the UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Somalia (May 2010), with update to June 2011.

135. The basic purpose of the UNHCR's intervention in the present appeals was to explain why it was considered that the UNHCR had submissions of value to make on the issue of Article 15(c) of the Qualification Directive and why the UNHCR was of the view that, at the present time, no-one could be returned to Somalia from the United Kingdom, compatibly with Article 15(c).

136. Having rehearsed the background to the Qualification Directive, and Article 15(c) in particular, the UNHCR's submissions noted how the Court of Appeal in QD (Iraq) [2009] EWCA Civ 620 considered that the Directive not only gave effect to the 1951 Refugee Convention and non-refoulement obligations under the ECHR, but that Article 15(c) gave legal force to:-

> "…the humanitarian practices adopted by many EU states, the UK included, towards individuals who manifestly need protection but who do not necessarily qualify under either Convention. Amongst these are people whose lives or safety, if returned to their home area, would be imperilled by endemic violence".

137. The UNHCR submitted that the "Qualification Directive itself is poorly drafted…and should not be given an overly legalistic interpretation". What constituted a real risk of a serious and individual threat to a civilian's life or person by reason of indiscriminate violence was not a question that was well-suited "to a problematic assessment of casualty rates based on past events and inevitably incomplete statistics (although such information is undoubtedly relevant), and the ambiguity in the wording (e.g. 'real risk' of a 'serious…threat') reflects this". In Elgafaji, the CJEU considered that there would be a sufficient individual threat where the 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 face a real risk of being subject to a serious threat" [35].

138. The detailed submissions of the UNHCR in relation to Article 15(c) are considered below (Part I(1)(b) and (2)(b)). At this point, we shall concentrate on the UNHCR's submissions as to why the Eligibility Guidelines of 5 May 2010, together with their update of June 2011, should be followed by this Tribunal. The UNHCR accepted that there had been occasions when Tribunals had expressed reservations about UNHCR Reports; for example, NM (Somalia) CG [2005] UKIAT 00076, on the basis that the UNHCR referred generally to the situation in a country or to the need for international protection without specifically addressing governing international and domestic norms. There was also thought to be a lack of corroboration or evidential basis for some statements; and a number of cases where the thoroughness or cogency of UNHCR Reports had been challenged by the parties (LP (Sri Lanka) CG [2007] UKAIT 00076).

139. As to its mandate and functions, UNHCR submitted that it had no agenda other than the full exercise of its legal duty pursuant to the mandate given to it by the international community. That community charged UNHCR with the obligation to assist states in the interpretation and application of the legal framework established for the protection of refugees. UNHCR's statute envisaged the UNHCR fulfilling its mandate by "promoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto" (§ 8(a)). Article 35 of the Refugee Convention required contracting states to "undertake to cooperate with the Office of the United Nations High Commissioner for Refugees and to provide the UNHCR with information and statistical data requested by the UNHCR, regarding the condition of refugees, the implementation of the Convention and laws, regulations and decrees relating to refugees". Thus, the 1951 Convention itself envisaged the UNHCR "would become a central repository of knowledge and information on the condition of refugees" and that it would prepare reports to that effect.

140. The fact that UNHCR has been called upon by the international community to pronounce upon issues of humanitarian protection going beyond persons fleeing persecution could be seen from calls from the General Assembly and the Economic and Social Committee of the UN, over the years, to the UNHCR to provide assistance to persons in need of international protection. This called into play paragraph 9 of the UNHCR Statute, whereby the High Commissioner is required to "engage in such additional activities … as the General Assembly may determine, within the limits of the resources placed at his disposal". In practical terms, Mr Hickman submitted that this had extended the UNHCR's mandate to cover forced displacement resulting from conflict, indiscriminate violence or disorder, in relation to persons, whether or not they were refugees within the 1951 Convention. UNHCR accordingly considered "that serious (including indiscriminate) threats to life, physical integrity or freedom resulting from generalised violence or events seriously disturbing public order are

valid reasons for international protection under its mandate". The significance of that mandate could be seen from the weight placed by the High Court and the Court of Appeal upon the reports of the UNHCR in, respectively, R (Saedi) v SSHD [2010] EWHC 705 (Admin) and QD (Iraq).

141. The reliance placed on UNHCR positions had, in its turn, made it incumbent on UNHCR "to articulate clear, concise and timely guidance on issues relating to eligibility for refugee status and associated issues of subsidiary protection". This had led to adjustments being made to the content and format of UNHCR country-related papers. UNHCR Reports accordingly now "routinely and where appropriate address directly specific international and regional norms", as in the Somalia Eligibility Guidance.

142. Since 2010, UNHCR has organised its country-related papers in the following way, in order to distinguish between the different purposes of the information:-

    (i) Eligibility Guidelines and updates: these contain factual descriptions of circumstances in individual countries as objectively assessed and corroborated by UNHCR, setting out UNHCR's legal analysis and recommendations.

    (ii) Safe third country papers: these contain UNHCR positions on the availability of protection in third countries.

    (iii) Return advisories: these provide guidance on the return of people not found to be in need of international protection, following fair, efficient asylum procedures.

    (iv) Country of origin papers: these summarise background country of origin information and may be externally commissioned by UNHCR, in which case that would be made clear. Such papers do not contain legal analysis or recommendation.

143. In NA v United Kingdom [2008] ECHR 616, the ECtHR recognised that States' diplomatic missions would often be able to provide material that would be highly relevant to the Court's assessment in the case before it, as regards conditions in a particular country in which that mission was situated. But:-

> "It finds that the same consideration must apply, *a fortiori*, in respect of agencies of the United Nations, particularly their direct access to the authorities of the countries of destination as well as their ability to carry out on-site inspections and assessments in a manner which States and non-governmental organisations may not be able to do" [121].

144. Furthermore, greater importance would be attached to reports "which consider the human rights situation in the country of destination and directly addressed the grounds for the alleged real risk of ill-treatment in the case before the Court". Since the Court's own assessment of the human rights situation in a country was carried

out "only to determine whether there would be a violation of Article 3 if the applicant in the case before it were to be returned to that country", weight would be attached to independent assessments, depending "on the extent to which those assessments are couched in terms similar to Article 3. Thus in respect of the UNHCR, due weight has been given by the Court to the UNHCR's own assessment of an applicant's claims when the Court determined the merits of her complaint under Article 3 …. Conversely, where the UNHCR's concerns were focused on general socio-economic and humanitarian considerations, the Court has been inclined to accord less weight to them, since such considerations do not necessarily have a bearing on the question of a real risk for an individual applicant of ill-treatment within the meaning of Article 3 (*Salah Sheekh*)" [122].

145. The UNHCR's submissions then turned to the process of compiling Eligibility Guidelines. Ms Marshall's statement explained the methodology adopted in producing country condition material, which included ensuring that every statement in the Guidelines is "corroborated by a process of 'triangulation'", which:-

> "means that all factual statements made in Eligibility Guidelines (whether a footnote reference appears or not) are assessed to be reliable and are corroborated. It also means that the association of a factual statement in an Eligibility Guideline with a public source by a footnote reference does not mean that this reference is the only basis of that statement; in many cases it will represent a form of corroboration for the statement."

146. Quite apart from the process of triangulation, the UNHCR also carried out an assessment of the reliability of each piece of information relied upon, having regard to the experience of the source of the information, their objectivity, observational capacity and methodology. Risk levels were assessed by means of a process "that ensures consistency between different countries and different reports. It draws on UNHCR's unrivalled global reach and experience as well as its local experience." Local and regional UNHCR offices are "not only staffed by people who have direct and long-standing experience of a country, but also enable UNHCR to draw on information obtained directly from displaced persons and UNHCR partners in the country concerned".

147. The Eligibility Guidelines of May 2010 were before the ECtHR in Sufi & Elmi, and were also before us. They noted that over the past three years there had been a consistent failure by all parties to respect basic principles of basic international humanitarian law, as regards the conflict in central and southern Somalia. As a result, civilians were regularly caught in crossfire as well as suffering from indiscriminate bombardments and grenade attacks in civilian areas, together with roadside bombs. Hospital records indicated that there were over 900 civilian casualties in Mogadishu in March and April 2010 and that between 20 and 50 civilians were killed in Mogadishu each week. In addition to all this, the report noted evidence that Somalis were fleeing due to fear of persecution linked to the recent political and human rights situation in Al-Shabab areas. As a result, UNHCR

concluded that "any person returned to central and southern Somalia would, solely on account of his or her presence there, face a real risk of serious harm".

148. The June 2011 update report considered that developments since May 2010 had been "largely negative in respect to the security of civilians in central and southern Somalia". This reiterated the earlier recommendations that "in the European context – a situation of indiscriminate violence in a situation of internal armed conflict in the meaning of Article 15(c) of the EU Qualification Directive" existed [2]. Amongst the "developments" were the continued displacement of people due to the conflict, with 85,000 displacements recorded between July and September 2010, mainly from Mogadishu. There were currently 1.46 million IDPs in Somalia, displaced primarily due to insecurity. In Mogadishu, regular exchanges of mortar and artillery fire were made from, within and into civilian districts, resulting in civilian casualties. TFG forces had "poor command and control", which led to fighting within the TFG, resulting in civilian casualties. In May 2011 there was a dramatic increase in children under the age of 5 being admitted to hospital in Mogadishu with weapons related injuries "representing 35% of all weapons related injuries in two hospitals".

149. Outside Mogadishu there was a "regular cycle of offensives and counter offensives between Al-Shabab and pro-TFG militias in Galgaduud and Hiran since the end of 2008". Urban areas were targeted. In February 2011 the TFG launched a significant military offensive against Al-Shabab on several fronts, including Mogadishu, Gedo, Lower Juba and the central regions. Both these attacks and Al-Shabab counterattacks "share the same lack of respect for international humanitarian law which typifies the fighting in Mogadishu". For instance, an offensive to capture Belet Hawo in Gedo involved the destruction of the market area, with thousands of civilians displaced, whilst the town of Dobley was shelled in March 2011, again leading to significant civilian displacement.

150. Al-Shabab's already harsh treatment of civilians in the areas under its control was being exacerbated by military pressures on the organisation. There were forced recruitment campaigns and the cessation in the movement of goods from Bay into Gedo. Areas taken by pro-TFG militias were "far from stable" and Al-Shabab had "reverted to guerrilla style attacks in territory taken" by pro-TFG militias.

151. In conclusion, the update report stated that it "cannot be considered reasonable for any Somali, regardless of whether the individual originates from southern and central Somalia, Somaliland or Puntland, to relocate within or to southern or central Somalia".

152. At paragraph 7 of the update, it was asserted that even if displaced persons were of the same clan as members of the host community, it would still not be reasonable to expect persons with a well-founded fear of persecution to relocate as economic collapse and massive displacement had saturated the capacity for clan, social and economic support in home clan areas. Thus, persons from Mogadishu who had gone to their clan areas in Galgaduud had chosen to return to Mogadishu, with

interviewees reporting to UNHCR "that they had reached the level of desperation so severe that they preferred the misery and insecurity in Mogadishu". Furthermore, all major urban centres under Al-Shabab control, including Merka and Jowhar, were considered likely to be affected by the TFG offensive if that offensive succeeded.

The Tribunal's assessment

153. We are grateful to the UNHCR for intervening in the present proceedings and providing evidence as to the way in which the Eligibility Guidelines on Somalia have been prepared, as well as explaining the background to the decision to concentrate in those Guidelines upon subsidiary forms of protection, including Article 15(c) of the Qualification Directive and the process whereby lawyers on the UNHCR's staff sift the evidence, in preparing the Guidelines. We accept the evidence of Ms Marshall regarding the process of "triangulation" and the attempt to ensure that the evidence used is, in addition, assessed by reference to reliability. An examination of the footnotes to the May 2010 Guidelines reveals that many of the sources cited, such as Human Rights Watch, feature in the evidence before this Tribunal.

154. In his oral submissions, Mr Hickman did not contend that we, or other Tribunals in the same position, should automatically follow the UNHCR's view, which, he said, was that Article 15(c) currently precludes returns to central and southern Somalia. His submission was, rather, that we should have careful regard to the UNHCR's Guidelines. We have indeed done so. In his written submissions, however, he said we should "accept the assessment" of the UNHCR in the Guidelines and their update.

155. Both the evidence cited in the Guidelines and the legal interpretation of that evidence, particularly as regards Article 15(c), are highly significant to our tasks. At the end of the day, however, it is our job, on the basis of all the evidence and submissions, to reach a view as to whether the evidence, properly interpreted, reaches the particular threshold, whether as regards a well-founded fear of persecution or a fear of indiscriminate violence in the context of Article 15(c). That is what Parliament requires us to do, in the context of re-making decisions on appeals under the Nationality, Immigration and Asylum Act 2002. The fact that UNHCR lawyers, on the basis of the evidence before them, have reached a particular conclusion, whilst extremely helpful, cannot be determinative.

156. The exercise undertaken by the UNHCR lawyers is also significantly different from the proceedings which have generated this determination. The parties have not only respectively sought to place before us evidence which (compatibly with their professional duties) points towards different legal outcomes; they have also probed and tested each other's evidence, not least that of the experts who gave oral evidence. It is no criticism of the UNHCR Guidelines to observe that the circumstances surrounding their compilation were very different. This is not to trumpet the merits of an adversarial system of adjudication; one can detect the same dialectic at work in

the judgment in Sufi & Elmi. It is merely to be aware of the points of difference between an assessment by a non-judicial organisation tasked with pursuing humanitarian objectives and the responsibilities of fact-finding courts and tribunals. Our more detailed assessment of the Guidelines etc is set out in Part I of this determination (paragraphs 359 to 362).

PART G

THE UKBA'S SOMALIA – REPORT OF FACT-FINDING MISSION TO NAIROBI (8-15 SEPTEMBER 2010 AND WILSON SOLICITORS' EVIDENCE FROM NAIROBI (14-21 MAY 2011)

157. Two sources of evidence from the parties call for special mention, as the significance of each was challenged by the appellants and the respondent respectively. The UKBA's Country of Origin Information Service went on a Fact-Finding Mission to Nairobi in September 2010. The mission comprised Debbie Goodier, Senior Researcher in the COIS, Eugenio Bosco, a Researcher in COIS, and Darren Forbes-Batey, First Secretary (Migration) at the British High Commission, Nairobi. Fifteen persons were interviewed, all except Captain Bulhan of the African Express Airways were described in anonymous terms in the interview notes and report. The stated purpose of the FFM was to obtain specific information on the then current security and humanitarian situation in southern and central Somalia, seeking information in particular on what groups controlled each area in southern and central Somalia; how easy it was to travel between different areas there; the security situation; the human rights situation and conditions in IDP camps.

158. Wilson Solicitors' Fact-Finding Mission took place in May 2011 and comprised James Elliott, (a Partner), Joanna Hunt and Anab Nour, (Solicitors) with the firm, together with Mr Toal of Counsel attending "in an advisory capacity". According to Mr Elliot's letter of 15 June 2011, the persons to whom the team spoke comprised those working for international organisations, NGOs, charities, journalists and recent arrivals from Somalia. Some were known through previous trips; others were identified through web-based research. Eighteen people provided statements. Except for Tanga Shumer of the Somalia NGO Consortium, the NGO representatives were anonymised, as were the representative of the European Union and a businessman. So too was the statement of a recent arrival from Mogadishu; but several other arrivals allowed their names to be published, as did a journalist and a coordinator of the Gedo Peace Consortium.

159. The ECtHR at [230] to [234] of its judgment in Sufi & Elmi considered the UKBA's fact-finding report. It noted that states through their diplomatic missions would be able to gather information that could be highly relevant. It also appreciated that there were "many difficulties faced by governments and NGOs gathering information in dangerous and volatile situations" and that it would therefore not

always be possible to carry out investigations in the immediate vicinity of a conflict. But:-

> "233. That being said, where a report is wholly reliant on information provided by sources, the authority and reputation of those sources and the extent of their presence in the relevant area will be relevant factors for the Court in assessing the weight to be attributed to their evidence. The Court recognises that where there are legitimate security concerns, sources may wish to remain anonymous. However, in the absence of any information about the nature of the sources' operations in the relevant area, it will be virtually impossible for the Court to assess their reliability. Consequently, the approach taken by the Court will depend on the consistency of the sources' conclusions with the remainder of the available information. Where the sources' conclusions are consistent with other country information, their evidence may be of corroborative weight. However, the Court will generally exercise caution when considering reports from anonymous sources which are inconsistent with the remainder of the information before it.
>
> 234. In the present case the Court observes that the description of the sources relied on by the fact-finding mission is vague. As indicated by the applicants, the majority of sources have simply been described either as 'an international NGO', 'a diplomatic source', or 'a security advisor'. Such descriptions give no indication of the authority or reputation of the sources or of the extent of their presence in southern and central Somalia. This is of particular concern in the present case, where it is accepted that the presence of international NGOs and diplomatic missions in southern and central Somalia is limited. It is therefore impossible for the Court to carry out any assessment of the sources' reliability and, as a consequence, where their information is unsupported or contradictory, the Court is unable to attach substantial weight to it."

160. In the present proceedings, the appellants sought to rely upon those observations of the ECtHR in order to persuade the Tribunal not to place significant weight on the FFM Report.

161. Conversely, the respondent urged us to treat the Wilson Solicitors' FFM report with caution, since, unlike the COIS and the FCO who conduct the FFM exercises on behalf of UKBA, one of the core duties owed by solicitors engaged in the present proceedings is "to act in the best interests of their clients; it was not clear whether or to what extent the preparation of the witness statements followed a 'similarly strict methodology to that (rightly) required and expected of an FFM conducted by COIS and the FCO"; and as regards the private individuals interviewed it was 'impossible to ascertain whether they have or had a direct interest in the evidence they gave to Wilson Solicitors in that they may themselves have been seeking refugee status either in Kenya or been on their way to seeking refugee status elsewhere".

162. In the light of the criticisms in Sufi & Elmi, the respondent submitted the April 2008 Review of COI Fact-Finding Mission Reports and Guidelines by Dr Alan Ingram of University College London, together with UKBA's response to that Review. She also

provided the EU Common Guidelines on Joint Fact-Finding Missions of November 2010. As regards the Ingram report, Mr Symes submitted that Ingram considered even 17 to 42 meetings/interviews as not necessarily providing a comprehensive and adequate coverage of a particular matter, whereas in the present case only 15 interviews were held. Ingram had also recommended the introduction of "triangulation", which had not been taken on board; nor was there any indication that follow-up interviews had been used as a manner of improving the contribution of interviewees. Mr Schwenk submitted that the UKBA response had been "defensive" and attempted to justify its methodology. So far as the EU Common Guidelines were concerned, Mr Symes submitted that these indicated that as a general rule sources should be named in order to give credibility and transparency to an FFM report although "the personal security of the source should be of paramount" (sic) [5.1.8]. The EU Guidelines went on to say that if it is "not possible to quote a source by name, it may be possible to list only the organisation a person is representing. If a source is to be listed anonymously this can be done in various ways. For example 'a doctor', 'a lawyer', 'a police officer', 'a human rights defender', possibly providing some further indication where they were located or the city they were interviewed in. Or it may be appropriate to refer to them just as an international NGO … Alternatively they could be listed as 'a source who did not wish to be named' or even 'source A'."

163. In EM & Others (Returnees) Zimbabwe CG [2011] UKUT 98 (IAC), the Tribunal addressed criticisms of the UKBA's FFM report on Zimbabwe [74] to [113]. The Tribunal in EM found that the value of the Zimbabwe FFM report lay not in any summary or analysis but solely in the views and opinions of the interviewees, as set out in the approved records of interview. That is the approach we have adopted in relation to the present UKBA FFM report and, indeed, to the Wilson Solicitors report (which does not contain any summary or similar "gloss").

164. So far as anonymity is concerned, it does not appear that the ECtHR in Sufi & Elmi was referred to paragraph 5.1.8 of the EU Common Guidelines. Had this happened, it would have been apparent to the Court that the way in which the interviewees were described in the UKBA's FFM report follows the recommendations set out in the Guidelines. Furthermore, it appears to us to be axiomatic that a representative of "an international NGO", for instance, who wished to remain anonymous because of security concerns, would at least be very likely to be giving a first-hand account of conditions encountered in the course of the NGO's activities in Somalia. As a result, and with respect to the ECtHR, we have concluded that its assertion, that in the absence of information about the nature of the source's operations in Somalia, it will be "virtually impossible" to assess reliability, is too sweeping. The important thing is not precisely what a particular NGO is doing in Somalia, but what they observe about the situation in that country whilst they are doing it. It is also noteworthy that Dr Ingram's approach to anonymity was not that a source should be discounted or downplayed for wishing to be anonymous in the resulting report, but that information obtained from people whose identity and organisational affiliation could not be definitively ascertained by the researcher should not be included in reports.

165. Mr Elliot's letter of 15 June 2011 is pertinent in this regard:-

> "A number of the statements [in the Wilson Solicitors' report] are anonymised. This is because the representatives of NGO's that we met were extremely concerned that if they were identified then their staff working in Somalia could be at risk. I would ask the Tribunal to note the UNHCR's similar concerns.
>
> I can say that most of the organisations that we saw were large NGO's the names of which will be known to people in the UK. A number of people that we saw said that they had been seen by the Home Office during previous Fact-Finding Missions. A number also said that they had been approached by representatives of the Foreign Office who had been making enquiries during the same week we were in Nairobi presumably to assist the respondent in preparing their evidence."

166. This touches on a further criticism levelled by Mr Symes at the UKBA report; namely, that there was "no sign of an audit trail of all contact with sources in the sense of a scoping enquiry as to which sources were appropriate to present a comprehensive picture". It is true that the Tribunal has not seen any specific evidence from the respondent in the present case regarding the reasons behind the choice of interviewees in the September 2010 mission. Given the professional responsibilities of those involved in the mission, however, and bearing in mind past practice, it is fanciful to assume that those interviewed would have been chosen on any other basis than that they had what was considered to be genuinely important information and views to impart.

167. Accordingly, both as regards the anonymous interviewees in the UKBA report and those representing organisations in the Wilson Solicitors' report, there is no legitimate reason for limiting the weight placed on it, such as was done by the ECtHR at [234] of Sufi & Elmi.

168. This leaves the respondent's submissions on the statements of the individuals who had fled Somalia for Kenya. We agree with the respondent that these statements need to be approached with some degree of caution. The present and future intentions of the interviewees are unclear. Unlike the representative of an NGO, there is an issue as to whether such persons are telling the truth or motivated to paint a false picture of their circumstances in Somalia, in order to aid a present or future claim to refugee status. We have borne such considerations in mind when assessing the evidence but, nevertheless, consider that the degree of detail in at least some of the statements is such as to carry the ring of truth.

PART H

FURTHER LEGAL ISSUES

169. At this point, it is probably convenient to examine a number of further general legal issues, raised by the appeals, although, as will become clear, legal matters are by no means confined to this Part of the determination. Several of these issues arise from the evidence regarding the nature of Al-Shabab rule in the areas of south and central Somalia that the organisation controls. The issues are to a substantial extent inter-related, as will be seen from the analysis which follows.

(1) Al-Shabab and religion

170. It is common ground that, in some areas at least, Al-Shabab impose very significant restrictions on what the inhabitants of those areas (and those passing through them) may or may not do, and that these restrictions and requirements are driven by Al-Shabab's particular interpretation of the Islamic faith. Thus, there is evidence that people are required to undertake prayers at mosques; that men are prohibited from shaving and from wearing trousers longer than to their ankles; that activities such as watching football, TV and films and listening to music are prohibited; that women may be required to wear the thick and bulky abaya and socks; and that there is social segregation of the sexes.

171. As can be seen from Appendix 1 to this determination, the appellants asserted in evidence that, although Muslims, they did not share Al-Shabab's interpretation of that religion. On their behalf, Mr Toal accordingly submitted that to return any of the appellants to an Al-Shabab area would result in a real risk of persecution by reason of religion, proscribed by the Refugee Convention.

172. Before going any further, it is useful to remind ourselves of relevant provisions of the Qualification Directive:

> "Article 9
>
> Acts of persecution
>
> 1. Acts of persecution within the meaning of article 1 A of the Geneva Convention must:
>
> (a) be sufficiently serious by their nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; or

(b) be an accumulation of various measures, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner as mentioned in (a).

2. Acts of persecution as qualified in paragraph 1, can, inter alia, take the form of:

(a) acts of physical or mental violence, including acts of sexual violence;

(b) legal, administrative, police, and/or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner;

(c) prosecution or punishment, which is disproportionate or discriminatory;

(d) denial of judicial redress resulting in a disproportionate or discriminatory punishment;

(e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling under the exclusion clauses as set out in Article 12(2);

(f) acts of a gender-specific or child-specific nature.

3. In accordance with Article 2(c), there must be a connection between the reasons mentioned in Article 10 and the acts of persecution as qualified in paragraph 1.

Article 10

Reasons for persecution

1. Member States shall take the following elements into account when assessing the reasons for persecution:

…

(b) the concept of religion shall in particular include the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief;

…"

173. In relation to Article 9(1)(a), the rights from which derogation cannot be made under Article 15(2) are those in Articles 3, 4(1) and 7.

174. Mr Toal referred us to various international and domestic instruments and authorities, in support of his submission that:-

"Unless an asylum seeker's present religious beliefs and practices accord with those of AS so that he or she has to adopt practices that are not his or her own and would have to do so in order to avoid being subject to persecution, the asylum seeker has [a] well founded fear of being persecuted for reason of religion."

175. Article 18 of the International Covenant on Civil and Political Rights provides that:-

> "1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
>
> 2. No-one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
>
> 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
>
> …"

176. The Constitutional Court of South Africa in S v Lawrence; S v Negal; S v Solberg [1997] (4) SA 1176 (CC) approved Dixon CJC in the case of R v Big Drug Mart Limited as stating that "the essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses" but also that freedom of religion "implies an absence of coercion or constraint and that freedom of religion may be impaired by measures that force people to act or refrain from acting in a manner contrary to their religious beliefs".

177. In Kokkinakis v Greece (1994) 17 EHRR 397 the ECtHR held that freedom of religion is "one of the most vital elements that go to make up the identity of believers and their conception of life" [31]. In the *Law of Refugee Status*, Professor Hathaway opines that "an individual's right to religion implies the ability to live in accordance with a chosen belief, including participation in or abstention from formal worship and other religious acts, expression of views, and the ordering of personal behaviour".

178. In HJ (Iran) v Secretary of State for the Home Department [2010] UKSC 31 the House of Lords held that a gay man had a well founded fear of being persecuted for reason of his membership of a particular social group, if the evidence demonstrated that he would suffer persecution unless he concealed his sexuality and that he would in fact conceal his sexuality owing to that fear of persecution. Dyson SCJ said:-

> "[110] The Convention must be construed in the light of its object and purpose, which is to protect a person who 'owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country'. If the

> price that a person must pay in order to avoid persecution is that he must conceal his race, religion, nationality, membership of a social group or political opinion, then he is being required to surrender the very protection that the Convention intended to secure for him. The Convention would be failing in its purpose if it were to mean that a gay man does not have a well founded fear of persecution because he would conceal the fact that he is a gay man *in order to avoid persecution* on return to his own country" (original emphasis).

179. Citing *Asylum Law and Practice 2nd Edition*, para 4.9, Mr Toal submitted that the "religion" referred to in Article 1A(2) of the Refugee Convention could be either that of the persecutor or of the persecuted.

180. For the respondent, Mr Eicke submitted that the claimed Al-Shabab requirements for all men to wear long beards and wear trousers above their ankles, together with the prohibitions on chewing khat and playing football, were social norms directed at all members of society living in areas controlled by Al-Shabab and were not requirements targeted at particular social groups or requirements aimed at those holding particular political or religious opinions. Only if a particular appellant could establish that his or her religion prohibited them from wearing a beard, or trousers above the ankles, or required them to chew khat or play football, would Al-Shabab's requirements have an impact on the exercise of the person's religious rights. Even then, however, it would not necessarily be the case that such requirements or prohibitions amounted to persecution. Not every restriction of general application to the population at large, which in practice prevented a group from doing something in accordance with its religious culture, would necessarily amount to a breach of human rights on grounds of religious discrimination. Even if that were not so, a breach would not necessarily amount to persecution within the meaning of the Refugee Convention. The present appellants did not even meet the first of these requirements, since the mere fact that their religion did not prohibit them from watching football, for example, could not be said to mean that a prohibition on watching football, applicable to the general population, amounted to persecution on grounds of religion. All countries had laws prescribing standards of public decency. Thus the fact that the authorities in southern European countries required those entering churches and cathedrals to dress appropriately, covering shoulders and possibly heads, did not mean that a north European tourist was being persecuted or discriminated against on the grounds of religion merely because he or she wanted to enter a church with head and shoulders uncovered.

181. Likewise, different countries had different standards of public decency and a visitor to such a country by a person from a western country could not claim that the application of the public decency laws to them amounted to discrimination. This was so even if the stricter laws in the visited country ultimately derived from religious requirements of the predominant religion in that country.

182. By the same token, a law prohibiting blasphemy against a particular religion, which applied generally to the whole population of a country, did not prevent persons from other religions (including atheists) from practising their own religion, unless their

own religion required such persons to make the statements that were considered blasphemous to the other religion.

183. The appellants' objection to restrictions on watching football and shaving, did not put them in a comparable situation to the appellants in HJ (Iran), where the issue was whether it was appropriate to expect of individuals a "long-term deliberate concealment" of an "immutable characteristic".

184. As for the appellants' asserted abhorrence of Al-Shabab practices, such as recruiting child soldiers or forcing young girls to marry soldiers, the mere fact that a "governing entity" engaged in practices that were offensive to the religion of one or more of the governed could not amount to persecution of those individuals on grounds of religion, especially where the individuals themselves were not at risk of being subjected to such treatment. An example was given of a State which indulges in capital punishment, which was offensive to a person's religion. The fact that that person lived in the country in question did not mean that he or she was being persecuted on grounds of religion. That was so even if the person concerned were convicted of a capital crime and sentenced to death.

185. As for Article 18 of the ICCPR or "perhaps more relevantly, Article 9 ECHR", such rights were, of course, qualified in nature (Article 15 ECHR) and Mr Eicke relied on Mr Toal's oral statement, disavowing any suggestion that the appellants were submitting that return to Somalia would involve a "flagrant denial" of their rights under Article 9 ECHR.

186. In reply, the appellants emphasised that Article 10(1)(b) of the Qualification Directive was not limited to the applicant's belief but covered "any religious belief". Al-Shabab's reason for imposing its requirements and restrictions was a Salafist or Takfiri jihadist version of Islam, as described in an International Crisis Group report of 2010. The Takfiri doctrine contended that modern day Muslims had lapsed into a state of apostasy, building on the Salafi doctrine that such persons were in a state of jahiliaah (pre-Islamic age of ignorance). Takfiri ideas were said to have a long pedigree in Somalia but beginning in 2009 a fanatic fringe had revived and instrumentalised such ideas in its ideological war.

187. It was thus, in the appellants' view, incorrect to regard the restrictions and requirements in question as merely "social norms", since they were dictated by Al-Shabab in accordance with its religious beliefs. Accordingly, if after return the appellants would be reasonably likely to try to change their religion by participating in or abstaining from formal worship in private or public (for example, by praying at times and places not of their choosing but at Al-Shabab's dictation) or by adopting forms of personal communal conduct based on or mandated by any religious belief, and their reason for so doing would be a well-founded fear of being persecuted if they did not change their religion, then they should be entitled to refugee status.

188. The appellants accepted that if the reason for the change in religion was in response to an order or to avoid a lawful and proportionate measure or penalty, rather than to avoid being persecuted, then an appellant would not be entitled to refugee status. Thus, returning to a country of origin might require a girl to cease wearing a Muslim headscarf in school in order to avoid being expelled. In Aktas v France (2009) (Appl No. 43568/08) the ECtHR had found that the French ban on wearing such a headscarf interfered with an applicant's freedom to manifest her religion, protected by Article 9, but that the ban and consequent exclusions from school in order to enforce it were proportionate measures, "explained by the requirements of protecting the rights and freedoms of others and public order". By the same token, having to comply with particular practices or customs regulating public decency, so long as these were lawful and proportionate, might not amount to persecution.

189. However, the detailed and coercive regulation of everyday life by a proscribed terrorist organisation in order to advance its version of jihad was not, the appellants submitted, comparable with measures taken by a legitimate democratic State neutrally arbitrating between different religions in the interests of the rights and freedom of others and of public order. It was submitted that, accordingly, the interference with the right to freedom of religion occasioned by the headscarf ban "would, no doubt, have been found to have breached [an applicant's] Article 9 rights if they had been done by a terrorist organisation in the interests of jihad rather than one of the legitimate interests identified in Article 9(2)". Even if Al-Shabab prayer times were not inconsistent with the times that the appellants might wish to pray, nevertheless, it was submitted, to pray at the times and in the places dictated by Al-Shabab because of fear of Al-Shabab would be to submit to their will rather than to pray in accordance with God's will. The same was true of the other Al-Shabab requirements, which were invested with religious significance or adopted through submission to Al-Shabab rather than to the will of God.

The Tribunal's assessment

190. We are aware that the German Federal Administrative Court has made a preliminary reference to the CJEU regarding the interpretation of Article 9 of the Qualification Directive in relation to religious persecution. It is, however, clear from Article 10 of the Directive that the concept of religion requires the holding of some sort of belief comprising a coherent and genuinely held system of values, whether they be theistic, non-theistic or atheistic, and is not satisfied in the case of a person who holds no such belief. The reference in Article 10(1)(b) to abstention from formal worship has to be read in the light of the words that precede it. Notwithstanding that Article 10(1)(b) does not purport to be comprehensive as to what is meant by the concept of religion, we do not consider that it encompasses a person who does not, in reality, organise his or her life to any extent whatsoever upon any recognisable such system.

191. We accordingly accept the respondent's submissions that social restrictions per se, such as bans on watching football or television, do not comprise an interference with

the right to religion under the 1951 Convention in the case of a person whose religious etc. beliefs do not require him to participate in those activities. The fact that a person may be permitted, according to his or her religion or other relevant beliefs, to participate in those activities is immaterial.

192. The question of what a person's religious etc. beliefs require them to do or not to do is one of fact. Accordingly, in the case of the appellants, we make relevant findings of fact in Part L of this determination.

193. In the case of Aktas v France, the interference with what was undoubtedly an aspect of the applicant's religion was held to be proportionate. That was in the context of the French authorities being motivated not by religious factors of their own but, rather, out of a desire to be a "neutral and impartial organiser of the exercise of various religions, faiths and beliefs". Even where the motivation for a law is religious, such as with the laws of various states of the USA concerning sexual behaviour, or even the United Kingdom's restrictions on Sunday trading, the religious aspect plainly does not, without more, lay the basis of a claim to international protection in relation to anyone who might fall foul of the law. This would be true of an internationally recognised State, even one such as Iran, whose democratic and human rights credentials are highly debatable.

194. However, the more such religiously motivated or inspired laws interfere with the ability of a person to hold and practise his or her religious or other beliefs, the more intense will be the scrutiny and the more important will become the issue of proportionality.

195. It is important to keep in mind Article 9 of the Qualification Directive. This sets a high threshold for what constitutes an act of persecution. A violation of a basic human right must be "severe"; in particular where, as in Article 9 of the ECHR (right to religion), the right is a qualified one (QD, Article 9(1)(a)). However, although religion is engaged for the purposes of Article 1A of the 1951 Convention, the violation under Article 9(1)(a) need not, of course, be a violation of the right to religion. On the contrary, as the evidence regarding Al-Shabab tends to indicate, the issue will often turn on whether the punishment for the religiously motivated law is itself a violation of Article 3 of the ECHR; for example, whether punishment for adultery is stoning, as opposed to the imposition of a fine, or where the punishment for violations of the dress code is a beating.

196. We have to say that we are somewhat doubtful whether the reason of religion under Article 1(A) is necessarily engaged solely by reference to the persecutor, rather than the persecuted, as Mr Toal submitted, relying upon a passage in *Asylum Law and Practice, 2nd Edition* (Symes and Jorro). One of the cases cited in support of the proposition in the passage, Omoruyi v Secretary of State for the Home Department [2001] Imm AR 175, does not, upon analysis, appear to support it. In that case a so-called "devil cult", the Ogboni were said to have become furiously antagonistic towards the appellant, as a result of his refusal to surrender to them the body of his

father, for a ritual burial that, it appears, would have involved mutilation. The Christian appellant chose to bury his father according to Christian rites. The Court of Appeal specifically refused to accept that the Ogboni were acting from religious purposes. Furthermore, the Court also considered that the Ogboni's animosity towards the appellant was due not to the latter's Christianity but rather "stemmed from his refusal to comply with their demands".

197. The idea that the necessary religious element can be found merely in the alleged persecutor, rather than in the persecutor's perception of the persecuted, appears to be at variance with the other Convention grounds in Article 1A, particularly political opinion. It is trite law that the political opinion in question is that of the alleged victim, whether that opinion is actual or imputed. If that ceased to be a requirement, it is likely that the scope of the Refugee Convention would be significantly enlarged. The proposition that the religious aspect need reside only in the alleged persecutor also seems to us to be inconsistent with the underlying nature of the Refugee Convention as an instrument designed to tackle serious forms of discrimination. The reason for the persecution must be religion. By analogy with political opinion persecution, it is trite law that persecution can be for the reason of political opinion if the victim holds an opinion opposed to the persecutor or is perceived by the latter to do so. We cannot see why a different approach should apply to religious persecution. In both cases, it is not sufficient to constitute Convention persecution that the persecutor is motivated by his or her religious or political beliefs, if the persecution inflicted is indifferent to the actual or perceived religious or political beliefs of the victim.

198. We would observe that such an approach is consistent with the terminology of the prohibition on *refoulement* in Article 33(1):-

> "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened *on account of his* race, religion, nationality, membership of particular social group or political opinion" (our emphasis).

199. Having said all this, we consider that, in the particular circumstances of the cases before us, the punishments meted out by Al-Shabab against transgressors are rooted in Al-Shabab's Takfiri doctrine, whereby Muslims who do not follow its rules are regarded as apostates. There would, accordingly, be the required element of religion in relation to the victim, albeit an imputed element. We shall return to this issue in Part I, when assessing the general evidence.

(2) No Requirement to act illegally?

200. In AM & AM the Tribunal considered to be "untenable" the "contention that taking account of the ability of returnees to pre-arrange armed militia escorts would be contrary to [United Kingdom] orders in Council and UN law" [66]. That finding was not challenged by the appellants in the present appeals. However, an issue arose as

to the consequences of the evidence that, in the areas it controls, Al-Shabab demands from the civilian population payments in the form of "taxes". Mr Toal contended that in the light of the addition of Al-Shabab to the list of proscribed organisations in Schedule 2 to the Terrorism Act 2000 (by the Terrorism Act 2000 (Proscribed Organisations) Amendment Order 2010 SI 2010/611), anyone who, short of a defence of duress, paid such money to Al-Shabab would be committing an offence under section 15(3) of the 2000 Act ("a person commits an offence if he provides any money or other property and knows or has reasonable cause to suppose that it will or may be used for the purposes of terrorism") or section 17 (entering an arrangement as a result of which money or other property is made available, knowing or reasonably suspecting it will or may be used for the purposes of terrorism). In addition, such payments would be such as States are required by international law to prevent (UN Security Council Resolution 1844 (2008) and Security Council SC/9904).

201. It is plainly not the case that a person who can show a reasonable likelihood of having to pay such "taxes" to Al-Shabab, assuming this to be a breach of the criminal law of the United Kingdom or comparable international law norms, is *thereby* to be treated as a refugee for the purposes of the 1951 Convention. The issue is, rather, whether one must ignore the fact that a person in such a situation may choose to pay taxes (and thus avoid possible ill-treatment), in determining whether that person has made out a claim to international protection.

202. Even on this basis, we very much doubt whether all forms of activity which, if committed in the United Kingdom, would be illegal fall to be so excluded. Indeed, the appellants in the present appeals did not put their cases on this basis. For example, in many parts of the world corrupt officials expect to be bribed.

203. The payments with which we are concerned, however, are of a different order. Given that Al-Shabab is fighting to impose its rule over Somalia, there must be a strong likelihood that any money it demands of civilians is likely, at least in part, to be used to fund its war against the internationally recognised government of that country. Even here, however, we do not find that any likelihood a person would make such payments must automatically be excluded from consideration in assessing his or her international protection claim. Despite the scope of section 63 of the 2000 Act, which provides that a person who acts outside the United Kingdom in such a way as would have constituted an offence if done here, shall be guilty of an offence, a foreign national who commits such an act outside the United Kingdom and never submits to the jurisdiction of this country will never be subject to its law. More particularly, as Mr Eicke submitted, the consequence of taking such a stance towards Al-Shabab "taxes" would suggest that (short of duress) anyone who had paid such taxes before fleeing Somalia would be excluded from any form of international protection by virtue of Article 12(2)(c) and Article 17(1)(c) of the Qualification Directive, on the basis that there were grounds to suspect that they had committed acts contrary to the purposes and principles of the United Nations.

204. Perhaps in the light of these problems, the appellants' closing submissions adopted an approach which aimed to ground itself more firmly in established Refugee Convention jurisprudence. Mr Toal relied on Sepet v Secretary of State for the Home Department [2003] 1 WLR 856, which concerned the issue of whether a conscientious objector might be entitled to be recognised as a refugee. At [33] Lord Hoffman said:-

> "While the demonstrator or objector cannot be morally condemned, and may indeed be praised for following the dictates of his conscience, it is not necessarily unjust for the State to punish him in the same way as any other person who breaks the law. It will of course be different if the law itself is unjust. The injustice of the law will carry over into its enforcement."

205. In the context of Al-Shabab, Mr Toal submitted that the refusal to pay "tax" would not be "an objection to a legitimate and lawful demand imposed by a legitimate state but a refusal to commit a criminal act on behalf of a terrorist organisation". Thus, in the spirit of Sepet, little by way of evidence should be required to satisfy the Tribunal that an appellant has a conscientious objection to paying such money to Al-Shabab where the payment would be contrary to law; contrary to considerations of common humanity and "contrary to the religious beliefs of the overwhelming majority of Muslims".

206. We agree with this approach. A person who, on the facts, shows that they have a genuine conscientious objection, whether or not rooted in religion, to paying such taxes (if unjust) may well be able to demonstrate an entitlement to subsidiary protection under the Qualification Directive or, if a Refugee Convention ground is shown, under the 1951 Convention. Furthermore, as Mr Toal also submitted, it may on the facts be shown that the objection to paying flows from a genuine religious conviction. In such circumstances, the approach we have outlined earlier will apply. It will, however, be necessary for us to return to the issue of illegality, when considering the submissions on Somaliland and whether Appellant ZF could be expected to produce an "unofficial" or "old green" Somali passport (Part I, paragraphs 534 to 544).

(3) "Playing the game" – RT (Zimbabwe)

207. At [87] of Sufi & Elmi, the ECtHR noted the evidence of the UKBA's Fact-Finding Mission that "Al-Shabab checkpoints normally check that people were obeying their code of behaviour and would therefore stop women travelling alone. Some individuals operating these checkpoints would punish those who were not acting according to Al-Shabab's rules." At [92] the Court noted that "a number of sources considered the areas controlled by Al-Shabab to be stable and generally safe for those Somalis who were able to 'play the game' and avoid the unnecessary attention of Al-Shabab".

208. At [273] the Court held that Al-Shabab was enforcing a particularly draconian version of Sharia law that went far beyond the traditional interpretation of Islam in

Somalia, amounting to a repressive form of social control. Al-Shabab were concerned with "every little detail of daily life". Al-Shabab's interest extended not only to its inhabitants but also to those travelling through its areas [274]. At [275] the Court recalled the evidence of a number of sources telling the Fact-Finding Mission that areas controlled by Al-Shabab were generally safe for Somalis provided they were able to "play the game" and avoid the attention of Al-Shabab by obeying their rules. The Court, as we have seen, went on to hold that it was unlikely a Somali with "no recent experience of living in Somalia would be adequately equipped to 'play the game', with the risk that he would come to the attention of Al-Shabab, either while travelling through or having settled in an Al-Shabab controlled area". The risk was even greater to Somalis who had been out of the country long enough to become "westernised". What punishment transgressors would face was unpredictable but the evidence indicated that it did not necessarily depend on the gravity of the infringement. The Court accordingly concluded a returnee with no recent experience of living in Somalia would be at real risk of Article 3 harm in an Al-Shabab controlled area [277].

209. At this stage, it is necessary to deal in some detail with a case which featured in the appellants' submissions regarding Al-Shabab and religion: RT (Zimbabwe) v Secretary of State for the Home Department [2010] EWCA Civ 1285. Like TM (Zimbabwe) v Secretary of State for the Home Department [2010] EWCA Civ 916, RT concerned the working through of the consequences of the judgments of the Supreme Court in HJ (Iran). At [25] and [27] the Court in RT appeared to have had no difficulty in accepting that the HJ (Iran) "point", that a gay person should not be refused refugee status merely because he was likely to hide his sexuality and/or act "discreetly" to avoid persecution, applied also to a person "found to have genuine political beliefs". The same must plainly apply to someone who genuinely has religious beliefs, who (as we have explained above) would suffer a flagrant denial of his right to such beliefs, if they were required to be hidden.

210. At [28], however, the Court of Appeal considered what it described as "the extended HJ (Iran) point", which was that the same principle must apply, even if the person had no genuine political opinions. The Zimbabwe appellants in RT contended that, provided they were not in truth supporters of the Mugabe regime, the fact that they might be able to profess loyalty, if challenged by ZANU-PF militias, was immaterial, since they were not required, on HJ (Iran) principles, to lie in order to avoid persecution.

211. At [36] and [37] Carnwath LJ said:-

> "36. It may be said that there is marked difference in seriousness between the impact of having to lie on isolated occasions about political opinions which one does not have, and the 'long-term deliberate concealment' of an 'immutable characteristic', involving denial to the members of the group their 'fundamental right to be what they are' (see per Lord Hope para 11, 21). We are not persuaded, however, that this is a material distinction in this context. The question is not the seriousness of the prospective maltreatment (which is not in issue) but the reason for it. If the

reason is political opinion, or imputed political opinion, that is enough to bring it within the Convention. In this case, we are concerned with the 'imputed' political opinions of those concerned, not their actual opinions (see para 4 above). Accordingly, the degree of their political commitment in fact, and whether political activity is of central or marginal importance to their lives, are beside the point. The 'core' of the protected right is the right not to be persecuted for holding political views which they do not have. There is nothing 'marginal' about the risk of being stopped by militia and persecuted because of that. If they are forced to lie about their absence of political beliefs, solely in order to avoid persecution, that seems to us to be covered by the *HJ(Iran)* principle, and does not defeat their claims to asylum.

37. Accordingly we accept the thrust of Mr Norton-Taylor's second submission, if not the precise wording. It is not a question of what the claimant is 'required' to do. However, if the Tribunal finds that he or she would be willing to lie about political beliefs, or about the absence of political beliefs, but that the reason for lying is to avoid persecution, that does not defeat the claim."

212. Relying on RT (Zimbabwe), the appellants in the present appeals contended that in terms of the Refugee Convention, as opposed to Article 3 of the ECHR (which was the form of international protection under consideration in Sufi & Elmi), the appellants had no obligation at all to "play the game" in Al-Shabab-controlled areas, regardless of their political and/or religious beliefs, save only if those beliefs happened to correspond precisely with those of Al-Shabab (in which case, of course, there would be no element of obligation).

213. In the light of our conclusions regarding the nature of persecution by reason of religion, the appellants' submission is plainly a powerful one, provided that Al-Shabab would in practice (a) impose a punishment serious enough (whether on its own or combined with other measures) to satisfy Article 9(1) of the Qualification Directive; and (b) impose that punishment because of Al-Shabab's perception of the transgressor as a religious inferior. We shall consider those factual questions as part of our assessment in Part I of this determination.

214. For the respondent, however, Mr Eicke endeavoured to persuade us that the *ratio* of RT (Zimbabwe) was, in reality, much narrower and that the case was one of an "extreme" category, unlike the present appeals. He relied on [53] of the judgment:-

"53. The problems posed by these cases are extreme. None of the appellants is a political refugee in the ordinary sense. In most contexts their claims to asylum would be hopeless. However, conditions in Zimbabwe, as they are described in *RN* are exceptional. The legality of these decisions must be decided by reference to the guidance in that case. Any changes since the period covered by that decision will be considered by the tribunal as part of its review of the country guidance. Applying *RN* we are satisfied that the appeals, except *DM*, should be allowed. Mr Norton-Taylor invited us to substitute our own decision in all or at least some of them. For the reasons given above, we agree in respect of *RT*, in which the claim to asylum will be allowed. We are not persuaded that course is

> open to us in the cases of *SM* and *AM*, where there were adverse findings of credibility. We shall accordingly remit those cases to the Upper Tribunal."

215. The extreme nature of the RT (Zimbabwe) cases was, Mr Eicke submitted, explained in [8] and [9] of the judgments, where the Court, adopting for this purpose the judgment of Elias LJ in TM (Zimbabwe), took account of the country guidance in RN "that those at risk on return to Zimbabwe on account of imputed political opinion are no longer restricted to those who are perceived to be members or supporters of the MDC but include anyone who is unable to demonstrate support for or loyalty to the regime or ZANU-PF". Thus "a person who was unable to produce a ZANU-PF card might be asked to sing the latest ZANU-PF campaign songs. An inability to do so would be taken as evidence of disloyalty to the party and so as support for the opposition. Clearly, a person returning to Zimbabwe after some years living in the United Kingdom would be unlikely to be able to pass such a test."

216. In his closing submissions, Mr Toal contended that the present appeals were equally "extreme", bearing in mind (i) what an individual would be required to do in order to "play the game" and (ii) the gravity of the consequences if he or she failed to do so.

217. There is a factual issue about the extent to which Al-Shabab imposes and enforces by disproportionate means, its requirements and restrictions over those within the areas it controls. Again, we shall examine this in due course. But, assuming the facts are as the appellants contend, then the position would, we consider, be every bit as "extreme" as in RT (Zimbabwe). The consequences will also be significant. Every person living under Al-Shabab control in central and southern Somalia, who could show that they do not genuinely adhere to that organisation's ethos, would have a good claim to Refugee Convention protection, once outside Somalia (subject to internal relocation and exclusion clause issues). The effect of RT (Zimbabwe), in comparison with Sufi & Elmi, is to take the Refugee Convention well beyond the comparable ambit of Article 3 ECHR protection (and, we might add, of subsidiary protection under the Qualification Directive). We understand that RT (Zimbabwe) is under appeal to the Supreme Court. It is possible that that Court will prefer the more restricted application of HJ (Iran), as found in the *obiter* remarks of Elias LJ in TM (Zimbabwe). But, be that as it may, RT (Zimbabwe) represents the law and is binding on this Tribunal.

(4) Internal relocation and the burden of proof

218. The appellants, in their opening skeleton argument on common issues, took issue with the finding at [183] of AM & AM that "in order to succeed [the appellant] need only show that they have no viable internal relocation alternative, if at risk in Mogadishu". The appellants contended that "insofar as the Tribunal there imposed a burden on the appellants to show that they had no internal relocation alternative, the Tribunal erred in law". In so submitting, the appellants cited Article 8 of the Qualification Directive:-

"Article 8

Internal protection

1. As part of the assessment of the application for international protection, Member States may determine that an applicant is not in need of international protection if in a part of the country of origin there is no well-founded fear of being persecuted or no real risk of suffering serious harm and the applicant can reasonably be expected to stay in that part of the country.

2. In examining whether a part of the country of origin is in accordance with paragraph 1, Member States shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant.

3. Paragraph 1 may apply notwithstanding technical obstacles to return to the country of origin."

219. The appellants submitted that in view of Article 8 "it is not for the asylum seeker to establish that he or she has no internal relocation alternative. A claim must succeed if the asylum seeker establishes the relevant risk unless the Tribunal is satisfied by the evidence before it (a) that there is a part of the country where there is no relevant risk and (b) that the asylum seeker can reasonably be expected to stay there."

220. Mr Eicke submitted that Article 8 of the Qualification Directive does not make any statement as to the procedural mechanisms by which the Member State "may determine" that there is an internal relocation alternative. Procedural rules are separately provided for under the Procedures Directive (2005/85) but no provision in support of the appellants' contention has been identified in that Directive. Furthermore, it was a general principle of European Union law that, subject to the principles of effectiveness and equivalence, Member States enjoy procedural autonomy enabling them to lay down the detailed procedural rules applicable to the enforcement of any EU law right.

221. That submission seems to us to be plainly right. It does not, however, dispose of the appellants' submissions on this issue, since they also relied upon domestic authority.

222. In Jasim v Secretary of State for the Home Department [2006] EWCA Civ 342 Sedley LJ said:-

"[16] The possibility of internal relocation is relevant to refugee and human rights claims because it may demonstrate that a fear of persecution or harm, though warranted by the applicant's experience in his place of origin, is not well-founded in relation to other parts of the state whose duty it is to protect him. But while the two issues – fear and relocation - go ultimately to the single question of safety, they cannot be decided in the same breath. Once the judge of fact is satisfied that the applicant has a justified fear of persecution or harm if returned

to his home area, the claim will ordinarily be made out unless the judge is satisfied that he can nevertheless be safely returned to another part of his country of origin. Provided the second issue has been flagged up, there may be no formal burden of proof on the Home Secretary (see *GH* http://www.bailii.org/uk/cases/UKIAT/2004/00248.html[2004] UKIAT 00248); but this does not mean that the judge of fact can reject an otherwise well-founded claim unless the evidence satisfies him that internal relocation is a safe and reasonable option.

[17] It is necessary to stress both adjectives - safe and reasonable. It is well established that relocation to a safe area is not an answer to a claim if it is unreasonable to expect the applicant to settle there. There may be no work or housing. He may not speak the language. Similarly, relocation to an area may be perfectly reasonable by these standards but unsafe, for example because of the risk of continued official harassment or - as in this case – revenge-seeking."

223. In AH (Sudan) v Secretary of State [2007] UKHL 49, Lord Bingham referred to what he had said in Januzi v Secretary of State for the Home Department [2006] UKHL 5:-

> "The decision-maker, taking account of all relevant circumstances pertaining to the claimant and his country of origin, must decide whether it is reasonable to expect the claimant to relocate or whether it would be unduly harsh to expect him to do so… There is, as Simon Brown LJ aptly observed in Svazas v Secretary of State for the Home Department [2001] 1 WLR 1891, para 55, a spectrum of cases. The decision-maker must do his best to decide, on such material as is available, where on the spectrum the particular case falls … or must depend on a fair assessment of the relevant facts [5]."

224. In AA (Uganda) v Secretary of State for the Home Department [2008] EWCA Civ 579 an Immigration Judge, on the reconsideration of an appeal following an earlier Immigration Judge's determination, dismissed the appellant's appeal because, although she had a well-founded fear of persecution in a particular area of Uganda, she had attended a particular church in the United Kingdom and the Immigration Judge saw "no reason why she could not also turn to the church in Uganda for similar support if the need arises". That finding was categorised as perverse, not being based on relevant (indeed) any evidence [12], [40] and [54].

225. We do not consider that the case law relied upon by the appellants comes close to establishing that the respondent bears the legal burden of proving that there is a part of the country of nationality of an appellant, who has established a well-founded fear in one area thereof, to which the appellant could reasonably be expected to go and live. The person who claims international protection bears the legal burden of proving that he or she is entitled to it. What that burden entails will, however, very much depend upon the circumstances of the particular case. In practice, the issue of an internal relocation alternative needs to be raised by the Secretary of State, either in the letter of refusal or (subject to issues of procedural fairness) during the appellate proceedings. In many cases, the respondent will point to evidence regarding the general conditions in the proposed place of relocation. It will then be for the appellant to make good an assertion that, notwithstanding those conditions, it would

not be reasonable to relocate there. Those reasons may often be ones about which only the appellant could know; for example, whether there are people living in the area of proposed relocation who might identify the appellant to those in his home area whom he fears. The Secretary of State clearly cannot be expected to lead evidence on such an issue.

226. Article 8 of the Qualification Directive relates both to the Refugee Convention and subsidiary protection under the Directive itself. What, though, is the position under Article 3 of the ECHR? At para 266 of Sufi & Elmi, the ECtHR had this to say:-

> "266. In the United Kingdom an application for asylum or for subsidiary protection will fail if the decision maker considers that it would be reasonable – and not unduly harsh – to expect the applicant to relocate (*Januzi, Hamid, Gaafar and Mohammed v Secretary of State for the Home Department* [2006] UKHL 5 and *AH (Sudan) v Secretary of State for the Home Department* [2007] UKHL 49). The Court recalls that Article 3 does not, as such, preclude Contracting States from placing reliance on the existence of an internal flight alternative in their assessment of an individual's claim that a return to his country of origin would expose him to a real risk of being subjected to treatment proscribed by that provision (*Salah Sheekh v. the Netherlands*, no. 1948/04, § 141, ECHR 2007 I (extracts), *Chahal v. the United Kingdom*, 15 November 1996, § 98, *Reports of Judgments and Decisions* 1996 V and *Hilal v. the United Kingdom*, no. 45276/99, §§ 67 – 68, ECHR 2001 II). However, the Court has held that reliance on an internal flight alternative does not affect the responsibility of the expelling Contracting State to ensure that the applicant is not, as a result of its decision to expel, exposed to treatment contrary to Article 3 of the Convention (*Salah Sheekh* …). Therefore, as a precondition of relying on an internal flight alternative, certain guarantees have to be in place: the person to be expelled must be able to travel to the area concerned, gain admittance and settle there, failing which an issue under Article 3 may arise, the more so if in the absence of such guarantees there is a possibility of his ending up in a part of the country of origin where he may be subjected to ill-treatment …."

227. Although the language of "guarantees" might at first sight suggest otherwise, we do not consider that, as regards an Article 3 claim, an applicant in the United Kingdom has to do any more or less than show that there is a real risk of suffering Article 3 harm if returned to the country of nationality etc. In this regard, what we have just said about the role of the Secretary of State equally applies; in other words, the issue of relocation needs to be put "in play" between the parties. On the other hand, we do not consider that the test of unreasonableness or undue harshness applies, when assessing conditions in the place of proposed relocation. In Sufi & Elmi, the ECtHR made no express reference to reasonableness or undue harshness. However, it may well be that unreasonableness/undue harshness has a part to play, even in a pure Article 3 assessment, in that, say, unduly harsh living conditions – albeit not themselves amounting to a violation of Article 3 – may nevertheless be reasonably likely to lead to the person concerned ending up back in his or her home area, where such a violation is a real possibility.

(5) Legal issues regarding appellant MW's appeal

(a) Effect of Beoku-Betts

228. Although affecting only appellant MW, there are further legal issues, which fall most conveniently to be dealt with in this Part of the determination. The first concerns the effect on the re-making of the decision in appellant MW's appeal of the recent grant to her of discretionary leave and of the daughter of the appellant MW being a British citizen (see Part D above).

229. As is recorded in Appendix 1, when Appellant MW was asked what she would do if she had to choose between having her daughter subjected to FGM and "being called names", she replied that she would have her daughter circumcised.

230. In his closing submissions, Mr Eicke asserted that, even if it were possible to establish that the daughter would be entitled to international protection on the basis of the risk to her of being subjected to FGM, that did not inevitably or necessarily translate into refugee status for appellant MW where, by virtue of her British citizenship, the daughter was not required to accompany her mother to Somalia, so as to be exposed to risk, but could remain with the father in the United Kingdom particularly since, on appellant MW's own evidence, the latter was likely to be the perpetrator of the very harm against which protection was sought.

231. The respondent submitted that the appeal of appellant MW was materially different from the position in FM (FGM) Sudan CG [2007] UKAIT 00060, as in that case the appellant and her children were citizens of Sudan who would all inevitably have been returned to Sudan together and the risk of FGM to the daughters arose not from the mother herself but from members of the extended family taking advantage of any temporary absence of the mother to subject the daughters to FGM. It was submitted that the case law "understandably relied on by [appellant MW] in relation to Article 8 ECHR can have no bearing on this question which, by definition, now arises solely in the context of the [status] claim under the Refugee Convention or Article 15(b) of the Qualification Directive".

232. We remind ourselves that that last submission relates to the giving of notice by appellant FM under rule 17A of the Tribunal Procedure (Upper Tribunal) Rules 2008, that she wished to pursue her appeal under section 82 of the 2002 Act on Refugee Convention grounds, as permitted by section 104(4D) of that Act. The respondent's acknowledgement that, in addition, appellant MW can pursue her appeal by reference to the Qualification Directive (subsidiary protection) is in response to the Court of Appeal judgments in FA (Iraq) [2010] EWCA Civ 696, which concerned the directly comparable situation under section 83 of the 2002 Act.

233. For appellant MW, Ms Short relied upon Beoku-Betts v Secretary of State for the Home Department [2008] UKHL 39 in support of her submission that, regardless of

the daughter's citizenship and the grant of leave to appellant MW, the daughter's own human rights (Article 3) were directly engaged in MW's continuing appeal. In Beoku-Betts, the House of Lords found that, in an Article 8 appeal, the rights of the appellant's family members under that Article were justiciable in determining the outcome of the appellant's appeal.

234. We do not consider that Beoku-Betts has any relevance in the circumstances in which appellant MW finds herself. It is common ground that her appeal does not now encompass any human rights ground under section 84(1)(g) of the 2002 Act. The ratio of Beoku-Betts is clearly confined to Article 8 cases. In an Article 8 case, family members who could not be removed with the appellant would nevertheless be regarded as victims who, if the appellant were removed, could bring separate proceedings under section 7 of the Human Rights Act 1998, alleging a breach of their Article 8 rights because of the appellant's removal. In the present case, however, there can be no possibility of the daughter of appellant MW bringing any proceedings based on Article 3 of the ECHR, regardless of whether appellant MW is removed.

235. Ms Short was, however, on much stronger ground in relying on the Court of Appeal judgment in Saad & Others v Secretary of State for the Home Department [2001] EWCA Civ 2008. In that case, the Court stressed the fact that "all asylum appeals under section 69 of the 1999 Act … are hypothetical in the sense that they involve the consideration of a hypothesis or assumption, which is reflected in the wording of each of the subsections of section 8, namely that the applicant's removal or requirement to leave (as the case may be) '*would be* contrary to the United Kingdom's obligations under the Convention' [our emphasis]" [58].

236. The same hypothetical element as was contained in section 69 can be found in section 84(1)(g) of the 2002 Act, which states that "removal of the appellant from the United Kingdom in consequence of the immigration decision would breach the United Kingdom's obligations under the Refugee Convention …" The same hypothetical element is also present in Article 15(b) of the Qualification Directive, which refers to "torture or inhuman or degrading treatment or punishment of an applicant *in the country of origin*" (our emphasis). The hypothetical presence of the person concerned in the country in question is, admittedly, no more than implicit in Article 15(a) and (c).

237. The hypothesis which a tribunal is required to make, in determining the entitlement of a person to refugee status or other international protection, is, however, not limited to assuming the return to the country of origin only of the appellant. On the contrary, on a daily basis, judicial fact-finders determine appeals by reference to the hypothetical return along with the appellant of other persons, whether or not these are British citizens. There is, accordingly, no impediment to appellant MW pursuing her claim to be entitled to refugee status or subsidiary protection, on the basis that, if compelled to return to Somalia, it is reasonably likely that she would take her

children, including her daughter, and that she would suffer serious harm in the form of anguish, in the event that her daughter was subjected to FGM.

(b) Refugee protection for the persecutor?

238. Whether appellant MW would, in reality, take the daughter and whether appellant MW would, in fact, suffer such anguish are questions of fact, to which we shall turn in due course. But there is a final legal issue to address at this stage; namely, whether appellant MW is entitled to international protection if, as the evidence to which we have earlier referred suggests, she would be the person who mutilates her daughter.

239. There is a range of possibilities involved here. At one end, a person might be under imminent threat of death or serious harm, if she does not carry out the procedure. At the other, the decision to inflict FGM may be entirely voluntary. In between are societal and familial pressures, of varying intensities.

240. We doubt very much whether the States Parties to the Refugee Convention or the Member states of the EU intended to create international protection regimes which confer protection on potential persecutors or agents of serious harm on the very basis of that potentiality, save in exceptional cases involving duress or which are otherwise at the top end of the range we have just described. On the contrary, the existence of exclusion provisions in both instruments strongly suggests they did not. This is the basis upon which we shall, in due course, assess the evidence of appellant MW, when we shall also need to expand upon our conclusion that appellant MW is not entitled to refugee protection on this basis.

PART I

ASSESSMENT OF THE GENERAL EVIDENCE

Introduction

241. The recent history of Somalia is a catalogue of misery; a striking example of the human cost of a failed State. The warlordism and clan-related violence that followed the fall of the Barre regime in the early 1990s proved to be immune to international intervention and was curbed only by the emergence of other forms of conflict involving, variously, the Union of Islamic Courts and the Ethiopians, and, now, Al-Shabab and AMISOM, with the Transitional Federal Government making its (often ineffectual) mark. On top of all this, the climate in the Horn of Africa turned cruel, with what is now recognised as the most serious drought for 60 years, leading to the present famine conditions and resulting humanitarian crisis. One thing that has apparently not changed in all this time is the keenness of Somalis to inflict FGM on their daughters, with estimates of the prevalence of the practice being well over 90%.

242. And yet, in the light of all this, we have heard and read evidence that might be thought somewhat surprising. Both international and domestic air travel continues using Mogadishu Airport on a daily basis, without significant disruptions. Minibuses travel across southern and central Somalia, including to Kenya. All kinds of electrical and technological goods are available in Bakara Market, Mogadishu. The mobile telephone system not only continues to function but provides an instantaneous means of conveying money internationally, even to the remotest areas. Businesspeople continue to operate in southern and central Somalia, in some cases with a degree of financial success which would be impressive anywhere. As well as businesspeople flying in and out of Mogadishu International Airport, there are visitors, including Somalis from the Diaspora, coming for a variety of purposes, including – grotesquely – for the purpose of having FGM inflicted on their female children. Much of this evidence comes from the appellants' own witnesses, Laura Hammond and Tony Burns.

243. We should, at this point, say something about our overall approach to the evidence of these two experts, who gave oral evidence, and of Dr Mullen, whose family circumstances made him unavailable to attend the hearing. Mr Eicke, relying on Practice Direction 10 (expert evidence) submitted that the evidence of Drs Mullen and Hammond "fell well short of the standards anticipated both in the Practice Direction and the guidance given by the Tribunal". Dr Mullen was said, in his report, frequently to use language appropriate for an advocate, rather than expert. Dr Hammond was said to have criticised the UKBA Fact-Finding Mission for not following certain methodologies yet, as was apparent from cross-examination, failed to follow those methodologies in relation to her own evidence. She criticised the value of some United Nations sources, claiming they had a "political agenda" whilst refusing to acknowledge the position might be likewise in the case of various NGOs, upon whose views she relied. She also failed to take into account, as required by the Practice Direction, evidence tending to the opposite of the views expressed in her report.

244. Mr Burns, who leads a major NGO in Somalia and, although based in Australia, frequently visits Mogadishu, was said by Mr Eicke to be the provider of "raw data" rather than analysis. In some cases that data was based on anecdotes he heard from staff members.

245. The respondent's criticisms of Dr Mullen's evidence are of marginal significance. Dr Mullen has given oral evidence to the AIT on previous occasions (HH [301]), when the Tribunal formed a "generally positive impression" of his evidence. The fact that his expertise on Somalia has given him a certain viewpoint is apparent but, we find, not such as seriously to affect the value of his evidence to us.

246. We agree with the criticisms made of Dr Hammond and also consider that it would have been helpful had her report drawn upon the recent publication of the report "Cash and Compassion: The Role of the Somali Diaspora in Relief, Development and Peace-Building" (2011), of which she was the lead author and which painted a

somewhat different picture of Diaspora Somalis, both in relation to providing aid and returning to Somalia to assist in that regard, than was evident from her report prepared for these proceedings. We nevertheless have concluded that significant weight can still be attached to her evidence.

247. As for Mr Burns, in this jurisdiction there is long experience of hearing from persons in his position, who are the providers of "raw data" and eyewitness observation, rather than the kind of academic experts that Drs Mullen and Hammond are. We have, accordingly, taken Mr Burns's evidence for what it is.

248. In early August 2011, after the conclusion of the eight days of hearing the appeals, the BBC and other news organisations reported that Al-Shabab had withdrawn from its military positions in Mogadishu. The Tribunal issued directions to the parties to liaise with a view to placing before the Tribunal agreed proposals for the production of written evidence regarding this issue and written submissions as to the conclusions which the Tribunal was invited to draw from that evidence. The parties have done so, although the timescale has proved to be slightly more protracted than was originally envisaged. In the event, both the appellants and the respondent have submitted evidence not just on the position in Mogadishu but on other issues, including the military and humanitarian situations in central and southern Somalia, up to late September 2011. We have taken account of all of the most recent admitted evidence and the accompanying submissions.

249. With these introductory remarks, we turn to our assessment of the general evidence. Although we have for this purpose separated Mogadishu from the rest of southern and central Somalia, there is, as will be seen, some overlap in the issues regarding each.

(1) Mogadishu

Evidence and submissions

250. The starting point for our assessment is the country guidance set out in AM & AM, which was:-

> "*There is now an internal armed conflict within the meaning of international humanitarian law (IHL) and Article 15(c) of the Refugee Qualification Directive throughout central and southern Somalia, not just in and around Mogadishu. The armed conflict taking place in Mogadishu currently amounts to indiscriminate violence at such a level of severity as to place the great majority of the population at risk of a consistent pattern of indiscriminate violence. On the present evidence Mogadishu is no longer safe as a place to live in for the great majority of returnees whose home area is Mogadishu".*

251. It is common ground that the identification of an internal armed conflict by reference to IHL law, though subsequently found to be legally incorrect, did not vitiate the

Tribunal's findings that such a conflict did exist at the relevant time. What has happened since?

252. The UKBA Fact-Finding Mission interviewees reported civilians as at risk of being caught in the crossfire of the conflict in Mogadishu, rather than being targeted. Some of the civilian deaths are due to improvised explosive devices (IEDs) (United Nations, September 2010), together with suicide bombings and other bombings (such as an attack on a hotel in August 2010 and a vehicle bomb outside the TFG police training facility in February 2010). There were also accounts of civilians killed by landmine explosions (COIS 8.23). The Landinfo report of August 2010 suggests that the accuracy of reporting casualty figures in Mogadishu has been quite good. This contrasts with Mr Burns evidence, that casualty figures tend to be underestimated, a finding also contained in AM & AM [143]. What is certainly the case is that many reports do not distinguish (or accurately distinguish) between combatant casualties and civilian casualties (OCHA Humanitarian Overview September 2010).

253. The respondent submitted that the evidence indicated that the situation was no worse at the present time than it was at the time of AM & AM; if anything, the evidence, as reflected in a number of maps prepared by well-informed observers, made it clear that it was inappropriate to consider Mogadishu as a single and homogeneous entity when considering the security situation there.

254. According to the UNHCR (British High Commission, Nairobi letter of 1 June 2011, figures for the whole of Somalia indicated 1,286 killings in 2009 and 1,396 in 2010, with rapes rising to 709 from 463 and other physical assaults rising to 2,046 from 1,597. The COIS Report refers (again across Somalia) to 5,000 fatalities in 2010, of whom 20% were children. Congressional Research Service estimated 22,000 civilian deaths in the two years prior to December 2010, whilst the US State Department estimated 2,000 civilians killed across Somalia in 2010, of which 918 were in Mogadishu, together with 5,184 civilian injuries in Mogadishu alone. A Landinfo report of August 2010 referred to approximately 600 people killed in Mogadishu in the first seven months of 2010 in fighting, suicide attacks, roadside bombs and stray bullets, of which 250 were explicitly described as civilians. Interpolating from the US State Department figure of 2,000 civilians killed and 6,000 injured in 2010, the respondent submitted that this equated to only some 2.7% of all deaths in Somalia being civilian casualties caused by the armed conflict. Moving to the first two months of 2011, and taking figures of the International Institute for Strategic Studies, Armed Conflict Database that at least 224 people were killed and another 227 wounded, with more than half those killed being civilians, the respondent submitted that even if all the casualties were assumed to be civilians this would amount to an annualised figure of 1,120 killed and 1,135 wounded, which was lower than the figures referred to for 2010 or, indeed, the figures referred to in AM & AM for 2008. Additionally, two major hospitals in Mogadishu had recorded 1,756 conflict related injuries since January 2011 (OCHA Humanitarian Overview April 2011), which would give an annual figure of 5,258 injuries in Mogadishu and not confined to civilians.

255. It was the respondent's case that all these figures showed a trend, which was downwards. Although Dr Hammond ascribed the decline to the reduction in the population of Mogadishu since 2008, the Elman Institute sought to explain them by reference to a change of tactics by Al-Shabab. In addition, Dr Mullen asserted that 80% of the deaths/injuries in Mogadishu were in Bakara Market. It was, therefore, according to the respondent a "very significant development that AMISOM have recently declared Bakara Market a no fire zone" (Agence France-Presse, 20 May 2011). The indiscriminate retaliatory shelling and mortar fire carried out by AMISOM in the market area, in response to Al-Shabab attacks, could be regarded as at an end, which must have a significant effect upon the level of indiscriminate violence in Mogadishu. In addition, there was evidence from COIS that AMISOM was exercising a greater degree of control over its soldiery.

256. On occasion Al-Shabab distributed leaflets warning of attacks on specific areas, so that civilians could leave in advance (UNSC September 2010). Since a suicide bombing at the university in 2009, Al-Shabab was thought to have become more sensitive to the effect of civilian casualties on its public support. There was also evidence that fighting in Mogadishu was indeed generally occurring in districts where there were few civilians (Landinfo, August 2010). Although the UN had stated in April 2011 that Mogadishu "remains unstable and hostile", it had recently increased the numbers of its personnel operating on the ground, due to increased security in the city (UNSC April 2011). A UKBA Fact-Finding Mission interviewee said that one needs "to understand 'normal life' in a Mogadishu sense, where there is an acceptance of a mobile type of life created by displacement".

257. The respondent also relied on evidence to the effect that Mogadishu had recently experienced an increased influx of "drought-affected pastoralists" (COIS 21.15), in order to access cheaper cereal prices and aid (Humanitarian Overview OCHA February 2011). By April 2011 UNHCR could report that Mogadishu sheltered some 372,000 displaced persons and of the 33,000 displaced by conflict since February, around half were in Mogadishu (COIS 27.14). The greatest influx, according to the PMT Mogadishu Dashboard, had been to areas which appeared at the time to be the most disputed districts of Mogadishu, and which had been under Al-Shabab control in February 2011 but, at the time of the report, were wholly or partly under AMISOM/TFG control: Deynille, Hodan, Hawalwadag and Wardhigley.

258. Even those who left Mogadishu as IDPs returned regularly "to engage in petty trade, load trucks, drive taxis or do whatever they can to bring in some income in order to survive" (International Federation of Red Cross and Red Crescent, October 2010). Mr Burns confirmed in oral evidence that men and women travelled from the Afgoye Corridor into Mogadishu to buy food or to look for work and that businesses were relocating to the Afgoye Corridor, following the closure of Bakara Market. Indeed, there was evidence that the Afgoye Corridor was increasingly urbanised and that recent IDPs there were experiencing difficulties caused by an increase in land prices in the Corridor.

259. The respondent submitted that a consistent strand of the evidence was to the effect that TFG/AMISOM had for some time held in their control districts of Mogadishu in the south of the city, such as Hamar JaabJab and Hamar Weyne, as well as the district of Waaberi, which contains Mogadishu International Airport. Although Bakara Market was at the time located in an Al-Shabab controlled district, the OCHA map of Mogadishu identified some sixteen other markets around the city and Mr Burns' evidence was that some 30 markets existed there, albeit serving local, largely food-based needs, rather than catering for the wide range of goods found in Bakara Market.

260. According to COIS 2.44, Somalia was said to have maintained a "healthy informal economy, largely based on livestock, remittance/money transfer companies, and telecommunications" with agriculture being the most important sector. Hotels continued to operate, albeit supported with private security militia. A mobile phone company had invested US$10 million since 2000 and Somalia had better internet connectivity than several other African countries (COIS 2.07). This evidence was supported by Mr Burns, who said that any IT found in the UK could also be found in Mogadishu. Dr Hammond's Cash and Compassion report described the significant contributions made by the Somali Diaspora in terms of cross-clan support for IDPs, investment in schools, clinics, hospitals etc. Mr Burns admitted in oral evidence that businesses continued to operate in Mogadishu, some moving from Bakara Market to the Afgoye Corridor and other parts of the capital. He said the biggest businessmen in Somalia operated from out of the country (that is to say, those with turnover of US$50 million to US$100 million), those with a turnover of US$1 million to US$10 million apparently made visits to Somalia, whilst those worth US$50,000 to US$1 million continued to be present in the country, paying taxes both to the TFG and, where necessary, Al-Shabab. Dr Hammond confirmed that employment opportunities in the informal sector existed in Mogadishu, such as at the port directly accessible from Hamar JaabJab. Mr Burns considered that appellant FM could work in some way, for example by selling fruit in that district. In general, according to the British High Commission letter, many people in Somalia in one way or another "do get by", with many relying on small scale petty trade and casual employment. Only children from the poorest households worked.

261. Dr Hammond's "Cash and Compassion" report described the excellence of telecoms in Somalia, which facilitated the Hawala system, whereby Somali Diaspora could send money to family members displaced by war within a day or two of their dislocation, even to IDP camps. This had led Al-Shabab to ban mobile phones receiving such remittances because Al-Shabab could not get hold of the money themselves (Cash and Compassion, page 42).

262. There was a good deal of evidence to the effect that organisations were able to operate in Mogadishu, providing food and other humanitarian assistance (e.g. OCHA Somalia Weekly Humanitarian Bulletin March/April 2011; Nairobi Evidence: Representatives of INGO). The British High Commission letter set out a non-

exhaustive list of organisations providing such help. Thus, COIS 27.17 reported food assistance continuing to sustain 250,000 people a month in Mogadishu.

263. However, SAACID – Drought in Somalia (May 2011) reported that the city of Mogadishu had "little capacity to cope with" new families arriving from the drought-stricken countryside. A sample in January 2011 conducted in Mogadishu found that more than 70% of the population have been displaced at least once in the past two years, primarily from conflict. "Yet, communities in Mogadishu have opened their hearts to the new rural families, who are perceived as being even more desperate than families residing in Mogadishu." Mr Burns confirmed that other TFG-controlled districts had agreed to assist IDPs arriving "once the numbers of new arrivals had grown too high in Hamar Weyne and Hamar JaabJab".

264. SAACID's reports indicated that its project, which involved employing 1,100 people in ten districts of Mogadishu to clear tonnes of rubbish from the area, ran in all districts without security incidents in 2010/2011. The project was not targeted by anyone. The respondent relied on this as an indication of the current security situation in Mogadishu and the ability of people to move around the city.

265. The UN continued to support the development of a professional and accountable Somali police force (COIS 7.02), although the US State Department Report of 2010 described the police as being "ineffective, underpaid and corrupt". AMISOM troop strength rose at the end of 2010 to 8,000 and was now 12,000. There were several reports that TFG agents had committed arbitrary or unlawful killings (COIS 9.23), with the US State Department Report referring to "rogue TFG troops and militia". According to the USSD, however, there were in 2010 no reports of TFG forces engaging in torture or of police raping women. This was to some extent contradicted by the human rights organisation Coalition for Grassroots Women Organisations.

266. Dr Hammond suggested in oral evidence that areas under TFG/AMISOM control in Mogadishu were not genuinely under such control and that Al-Shabab and other militias moved into some areas at night. The respondent questioned this evidence. An ORBS poll of November 2010 indicated that, of women in Mogadishu, just under half were housewives and the other half comprised 2% business owners, 9% informal employment, 9% working part-time, 6% working full-time, 13% students and 13% unemployment. The majority of those working for Mr Burns' SAACID organisation were women and a thousand women were employed by the UN (UNSC April 2011). In Mogadishu and elsewhere, women who had lost male breadwinners as a result of the armed conflict assumed an economically active role, which included setting up small businesses (ICRC – Annual Report 2010 – Africa). According to Joakim Gundel, based on working and interviews in Somalia and studies of the country from outside it, there had been changes in the clan system in Mogadishu over the past eight years, whereby the Reer Hamar community was no longer subject to the kind of targeted violence by major warring clans, albeit that they were still subject to some discrimination. Mr Burns did not suggest that members of minorities encountered particular problems when migrating to Mogadishu. He said that rural people

travelled to Hamar Weyne and Hamar JaabJab, where most had clan connections. Mr Burns used the minority/majority terminology in the sense of whether particular clans were numerically in the majority or minority, rather than by reference to noble clans and traditional minorities. Dr Hammond's evidence was to the effect that persons who had once been powerful might not be powerful at the present time as the situation was "evolving". The respondent submitted, however, that this did not support a conclusion that clan relations were no longer relevant.

267. The respondent submitted that Mogadishu International Airport was safe. It catered for an average of 2,000 a month (incoming) with a similar number leaving. The airport was secured by AMISOM troops and Somali police and no flights have been cancelled for security reasons since 1990.

268. Reintegration support was available for failed asylum seekers who returned to Somalia from the United Kingdom voluntarily. The respondent relied on the finding at [178] of TK (Tamils, LP updated) Sri Lanka (REV1) CG [2009] UKAIT 00049, where it was held that there was "no basis for suggesting … that if required to return the appellant would not seek to avail herself of such a package". The expression "voluntary" ought, therefore, to be read in that light and a finding made that, if returned, the appellants would avail themselves of financial assistance, including up to £1,500 in order to help the person concerned settle back in their country, including – where appropriate – setting up a business. Caseworkers were available to assist in contacting friends and family in the country of return and planning onward travel (R/3/14/1520-1525).

269. Mr Toal submitted that the Tribunal in AM & AM had decided to make findings on the risk to civilians in the city of Mogadishu as a whole, even though it recognised that there were "safer districts within the city", which actually received IDPs, that the affluent northern parts of the city had been relatively unaffected by the fighting and that that fighting was mostly concentrated in only two particular districts [173] to [178]. By the same token, the ECtHR in Sufi & Elmi had declined to adopt a district by district approach to the Article 3 risk faced by civilians in Mogadishu, despite evidence from the UKBA Fact-Finding Mission and elsewhere, that it was supposedly possible to live in non-conflict areas of the city, which were considered to be safe. The ECtHR took this view because it considered that "the power balance in districts in urban areas could change almost from day to day and, as a consequence, information on area control could become out of date very quickly" [247].

270. So far as civilian casualties were concerned, the appellants submitted that the evidence as to casualties, relied on by the respondent to show an alleged decline since the time of AM & AM, varied very considerably. The ECtHR in Sufi & Elmi, in the face of evidence from the Elman Peace and Human Rights Organisation, indicating a decline in civilian deaths between 2008 and 2009, and acknowledging that the situation in Mogadishu appeared to have improved in 2009, nevertheless found that the parties to the conflict continue to engage in indiscriminate violence and that, in fact, the situation in Mogadishu had deteriorated in 2010 (Elman, citing

918 civilians dead and 255 injured in January to July 2010, as a result of increased fighting and shelling).

271. The ECtHR concluded at [246] that "whatever the precise figures, it is clear that since the beginning of 2010 the ongoing fighting in Mogadishu has resulted in thousands of civilian casualties and a displacement of hundreds of thousands of people". We were urged to adopt the same approach and to continue to recognise, as did the Tribunal in AM & AM, that there was a likelihood of considerable underreporting. This was because the UN Office for the Coordination of Humanitarian Affairs (August 2010) had stated that there was no systematic gathering of data about conflict related deaths and injuries in Somalia; the reporting by individuals and institutions, such as hospitals and the Mogadishu Ambulance Service, upon which the data were based, necessarily had a limited impartial reporting capacity, as could be seen from the evidence from Lifeline Africa Ambulance Service's spokesman that "many people are buried where they die and many injured are looked after by relatives unable to get them to hospital" (IRIN Report, December 2010); but in the nine months January to September 2010, three Mogadishu hospitals reported 5,485 weapons-related injuries (UN, September 2010); that any downward trend in casualty figures was indeed due to the depopulation of Mogadishu, such that the figures by themselves were not a reliable basis for assessing the intensity of violence and the extent to which it gave rise to a risk of serious harm to people still in the city; that a press statement of 31 May 2011 from the World Health Organisation indicated that the main causes of death among under 5's were burns, chest injuries and internal haemorrhaging caused by blast injuries, shrapnel and bullets; that of the 1,590 reported weapons-related injuries in May 2011, 46% related to children under the age of 5; and that a spokesman for Peaceline told IRIN that numbers would be even higher, if one took into consideration that many families were unable to access hospitals and therefore treated children at home as best they could.

272. Mr Toal submitted that the displacement of people from Mogadishu was, as well as casualty figures, an important indicator of the level of risk posed by indiscriminate violence. That was the approach taken in AM & AM [172, 178] and it should likewise be the approach that we should take. Mr Toal submitted that [248] of Sufi & Elmi also indicated that this was the approach adopted by the ECtHR.

273. UNHCR Population Movement Tracking Monthly Reports of January to September 2010 disclosed that, in the months respectively under consideration in those reports, tens of thousands of displacements occurred, in the form either of people leaving Mogadishu or moving to another area within it. Looking at the period October 2010 to May 2011, the figures dipped below 10,000 in November, December and January 2011 but rose in February 2011 to just under 10,000, with 17,960 displacements in March, 6,100 in April and 16,500 in May.

274. The appellants described these figures as indicating "continuous, mass displacement from and within Mogadishu as a result of the violence and insecurity there". They were an indicator of the nature and level of violence in Mogadishu. The UNHCR,

concerned about the possible exaggeration of IDP figures, utilised satellite imagery and remote sensing techniques to reassess the IDP population of the Mogadishu periphery, as a result of which reassessment the figures were in fact revised upwards, so far as those in the Afgoye Corridor were concerned.

275. The appellants contended that, if anything, the evidence before us showed the risk to civilians in Mogadishu had increased, compared with the evidence that was before the ECtHR in Sufi & Elmi. The respondent acknowledged that fighting in Mogadishu had intensified in 2011, with a major offensive by TFG/AMISOM beginning in February. Moreover, the COIS Report of 27 May 2011 quoted sources stating that all parties in the conflict had engaged in indiscriminate attacks, resulting in civilian casualties. This includes Al-Shabab launching mortar attacks from hidden sites, using civilians as human shields, which frequently destroyed civilian homes but rarely struck military targets; TFG/AMISOM responses that sometimes resulted in shelling civilian areas; and suicide bombings, landmines and IEDs.

276. The UKBA Fact-Finding Mission recorded informants as stating that most civilian casualties were attributed to AMISOM shelling residential areas, including Hodan, Hawlwadag, Wardhigley, Al-Ashabya, K-13, Bar Huba and Bakara Market [170f].

277. The appellants strongly challenged the respondent's assertion that there had been any significant "change of tactics" by Al-Shabab, which might have reduced the casualty figures. On the contrary, the evidence indicated that Al-Shabab continued to use tactics that occasioned very significant civilian casualties, including launching attacks behind civilian human shields, roadside bombs, IEDs and suicide bombings. The ECtHR had noted in Sufi & Elmi that "although there were reports that Al-Shabab's tactics had become more sophisticated following the recruitment of foreign fighters, none of the reports suggested that the use of new tactics had in any way reduced the risk to civilians" [246]. In fact, according to the Nigerian Directorate report, these changes had resulted in Al-Shabab acting with "greater brutality".

278. The closure of Bakara Market, also relied on by the respondent, was not, according to the appellants, of any material significance, since neither the TFG/AMISOM nor Al-Shabab had defeated the other. Bakara Market remained an Al-Shabab-controlled part of Mogadishu at the time of the hearings. There was also "a real risk that the relocated market will be a new locus of conflict".

279. As for the declaration by AMISOM of a "no-fire" zone in Bakara Market, the appellants submitted that such declarations had been made in the past and plainly had no material effect (report, bundle C, P266). The declaration of 2 December 2010 had not stopped Bakara Market being targeted by AMISOM artillery, with resulting civilian deaths since that time.

280. The supposed distinction, sought to be drawn by the respondent, between Al-Shabab targeted and indiscriminate violence was, the appellants contended, unjustifiable in the light of HM (Iraq) CG [2010] UKUT 331 (IAC), where the Upper Tribunal rejected

as unhelpful the proposal that a distinction should be drawn between a real risk of targeted and of incidental killing of civilians during an armed conflict. In any event, the appellants submitted, Al-Shabab had, in fact, often used what were plainly indiscriminate methods in order to kill their enemies, such as could be seen from the roadside bomb intended for a minister's car, which killed five other people (21 December 2009), the attack on the Muna Hotel in Mogadishu on 24 October 2010 when, as well as those targeted, an 11 year old shoeshine boy and a woman selling tea were also killed; eight civilians killed by a roadside bomb intended for AMISOM troops on 31 August 2010; at least 70 killed following a botched suicide bomb attack on government facilities on 5 March 2011; and the bombing of the house of a police officer in Wadajir district, which caused five deaths on 6 April 2011.

281. The appellant submitted that there were, in fact, no properly identifiable safe areas in Mogadishu. As the ECtHR had held in Sufi & Elmi, the situation could change from day to day and Dr Hammond in her evidence had reiterated that point. Furthermore, even the so-called safer districts were, according to Mr Burns, the subject of weekly mortar attacks. Examples of civilian casualties in areas identified as "relatively untouched by the major conflict" included:-

(a) Daynile – civilians killed and wounded on 16 and 24 November 2009, 21 July 2010, 67 wounded in districts including Daynile on 26 March 2011 and 'massive shelling' of Daynile on 9 April 2011, killing nine civilians and injuring 26;

(b) Hamar JaabJab – woman and two children killed by a mortar on 20 December 2009; four civilians killed and ten wounded on 13 January 2010; ten civilians wounded by heavy artillery on 14 June 2010; eleven people, including civilians killed and 40 injured by suicide bombing on 21 February 2011; two boys killed after explosive device with which they were playing blew up, 23 April 2011; one civilian killed by crossfire on 31 May 2011; ten civilians wounded by fighting between TFG and police on 13 June 2011;

(c) Waaberi – three civilians killed by landmine on 18 April 2010; several civilians wounded by retaliatory fire on 11 September 2010; civilians wounded during clash between rival TFG soldiers on 13 March 2011; five killed and six wounded by similar fighting on 26 April 2011; seventeen civilians killed and seventeen wounded by mortar attack on 25 May 2011;

(d) Hamar Weyne – mortar attack killing two civilians and injuring three on 20 May 2010; eleven people including three children killed by a mortar attack on a hospital on 11 September 2010; roadside bomb intended for Finance Ministry official killing five people, 4 July 2010; ten schoolchildren injured by mortar landing on their school on 19 July 2010; Al-Shabab suicide bombing at Muna Hotel killing 31, 24 August 2010;

(e) Yaaqshid – three civilians killed by artillery barrage on 27 March 2011; four civilians killed by bombardments on residential areas on 2 June 2011;

(f) Karaan – 22 killed and 37 wounded in clashes on 24 October 2010; three killed and two injured on 28 October 2010 (it is unclear whether all or any of these were civilians);

(g) Wadajir/Medina (the so-called 'green zone') – four civilians wounded by AMISOM firing on 25 January 2011; sixteen killed and 56 injured (mostly civilians) shopping at Benadir Market as a result of fighting between TFG police and soldiers on 3 February 2011; five injured when a police officer's house was bombed on 6 April 2011; Medina Hospital hit by mortar rounds in April 2011; two civilians wounded when TFG soldiers clashed among themselves on 26 June 2011.

282. The appellants took issue with the submission that areas within TFG control were safe, from the TFG forces themselves, despite the evidence regarding attempts to improve discipline. Reference was made to various of the incidents just described, involving fighting between TFG elements. In addition, two people were killed and six injured when TFG soldiers turned on each other in Dharkanley in a dispute over possession of a car on 7 March 2011; five were killed, including civilians, when TFG soldiers clashed over money robbed or extorted from passengers on civilian buses on 26 April 2011; two civilians killed by TFG soldiers when they refused to pay "taxes" to soldiers in Dharkanley on 14 May 2011; ten civilians wounded by fighting between TFG police and troops in Hamar JaabJab on 13 June 2011; and one woman killed and one injured when TFG soldiers clashed over control of the central Mogadishu IDP camps on 28 June 2011. On the same day businessmen were reported as complaining that they had been ordered to pay money by TFG soldiers, or leave the area.

283. In addition, the appellants relied on the evidence of Mr Burns that criminal violence was pervasive, even in areas where the conflict was said to be relatively low, as a result of the operation of freelance criminal militias. Mogadishu was, in fact, incapable of supporting its current population, with unemployment according to a recent SAACID survey standing at 70%, since the closure of Bakara Market. At the same time there was increasing demand, as a result of the arrival of large numbers displaced by the drought.

284. The appellants denied that the increased number of AMISOM troops was indicative of a change for the better in the security situation. The UN staff in the city were accommodated in secure accommodation "within the AMISOM protected area at the Aden Adde International Airport", according to the UN Secretary General on 24 April 2011. This was consistent with Dr Hammond's evidence of a "bunkerised presence" on the part of TFG/AMISOM in Mogadishu. The airport base was in fact unique in terms of security and it would be wrong to draw inferences about the security position elsewhere in the city from the position at the airport.

285. In early August 2011, most, if not all, of Al-Shabab's conventional fighting forces left Mogadishu. The details are unclear; and there is debate as to the motivation behind

the withdrawal. What is, however, apparent is that there is no longer a "front-line" in Mogadishu, separating the areas respectively controlled by Al-Shabab and the TFG/AMISOM. Agence France Presse quoted the Somali President as stating that "Mogadishu has been fully liberated from the enemy", whereas Al-Shabab were reported as describing the measure as a change in military tactics. A dead Al-Shabab leader was said to have had on his person documents advising Al-Shabab to "go back to their old ways of hit and run insurgency and underground operations and to disband the areas that they control" (The Nation, 7 September 2011).

286. The UN Secretary General's Special Representative said on 6 August that, whilst Al-Shabab's departure was a positive development, it was "important that we acknowledge that real security risks, including from terrorist attacks, remain and must not be underestimated". There was a need "to avoid a vacuum in the areas vacated by the insurgents" and law enforcement measures needed to be put in place as a matter of urgency to avoid "warlords and their militias from taking advantage of the situation". The likelihood was that Al-Shabab would "employ asymmetrical, hit-and-run terrorist tactics, such as suicide bombings. Indications are that some of the insurgents simply 'melted away' by mingling with the residents of Mogadishu. These remnants of the insurgency, therefore, present a continuous challenge."

287. The appellants' evidence included the following instances of what was asserted to be continuing armed conflict in the city, following the withdrawal of Al-Shabab. On 7 August 2011 five civilians were killed and eleven civilians wounded by heavy shelling as government forces attempted to enter the district of Daynille. On 9 August there were armed clashes between Al-Shabab and the TFG/AMISOM involving light and heavy weaponry in northern parts of Mogadishu, involving at least three civilians killed and five injured. Al-Shabab were said to have launched hit-and-run attacks on bases that had been seized earlier in the day by the TFG/AMISOM. On 16 August there were "heavy battles" in Yaqshid and Qaran, involving four killed and dozens wounded and the following day AMISOM said Al-Shabab were shelling populated areas. In return, AMISOM shelled Daynille and Huriwa, killing three civilians and injuring seven. On 21 August in Dharkanley, six people including three children were injured by grenades thought to have been thrown by Al-Shabab. On 21 August 2011 it was reported by Emergency Humanitarian Action, in its weekly highlights of 20 to 26 August, that 455 casualties from weapon related injuries had been treated in three Mogadishu hospitals.

288. Further reports from late August described heavy fighting involving an exchange of shelling on Industrial Street after an Al-Shabab attack on an AMISOM base; further deaths after Al-Shabab attacks on bases in Afgoye, Huriwaa and Daynille districts of Mogadishu, with residents fleeing or lying on floors in fear of stray bullets; two children killed after a bomb they were playing with exploded; a woman killed by an Al-Shabab bomb near an IDP feeding centre, involving an attack on an AMISOM convoy; and ten deaths and fifteen injuries involving attacks on bases of AMISOM in Dharkanley, Karan, Fageh, Gubta, Towfik, Hamarweyne and Waaberi districts. Six of the dead and ten of the wounded were civilians.

289. On 7 September, at least six civilians were reported to have died as a result of mortar attacks in the Karan district, with three people killed by shelling. Two days later four people were killed and ten injured by an explosion in Yaqshid. On 17 September at least two civilians were killed by an IED in Dharkanley. On 17 September, two civilians were killed and four wounded when a mortar hit an IDP settlement in the same district during fighting between Al-Shabab and the TFG/AMISOM. On the same day a civilian was killed and two injured following a mortar attack in Daynille.

290. According to Somalia Report of 31 August, Al-Shabab are maintaining a covert presence in Mogadishu, where they seek to rely on fear instilled by a policy of executing "collaborators" in order to deter civilians from informing on them. The organisation was attempting to compensate for reduced military and political capacity by terrorising the civilian population. Thus, on 21 August, an Al-Shabab leader issued a fatwa ordering the killing of anyone opposed to Al-Shabab, including those loyal to the TFG. According to Somalia Report, the leader said that anyone who asserted Al-Shabab was defeated would be "silenced (will be shot in the head)" and that, whilst Al-Shabab used to protect civilians "from now on we shall not spare them, whoever is supporting the infidels have the right to die". On 23 August three males were executed in Mogadishu, one being accused of working for Kenyan intelligence and the others of working and spying for the TFG. Two days later, a report on Shabelle.net described the decapitated body of a Somali boy who had been abducted being left at the pasta factory in north Mogadishu. The same day, there was a report that Al-Shabab had kidnapped two men in Garasbaley and that the beheaded body of one of them was found in what was described as the Al-Shabab controlled area of Suqaholaha, where five other headless bodies had been found in recent days.

291. On 2 September 2011 it was reported that Al-Shabab had beheaded ten people in Huriwa and Daynille districts over the past few days, including a woman accused of spying. Those two districts were described by the District Commissioner as having been transformed "into butcheries" by Al-Shabab. On 6 September two decapitated bodies were found in Hiliwaa.

292. The appellants' most recent evidence contained a number of reports, said to relate to fighting between different armed groups within or associated with the TFG. On 5 August 2011 at least four civilians were killed in Hamarweyne when forces clashed and on the same day eleven were said to have been killed and twenty wounded as Somali soldiers looted food at Badbado Camp for IDPs. On 20 August three were killed and six were wounded as soldiers in Dharkanley fought amongst themselves and the following day there was further fighting involving TFG military and police in Wadajar. There were also reports of rape by TFG soldiers in IDP camps in Mogadishu, as well as further reports of looting. A Somalia Report of 29 August described an increase in the number of checkpoints and roadblocks in Mogadishu, following the withdrawal of Al-Shabab.

293. As for the humanitarian situation in Mogadishu, on 20 July famine was declared in a number of further areas of central and southern Somalia, including in the IDP camps of Mogadishu (UN Secretary General's Report). During July and August 100,000 IDPs fleeing from drought and famine arrived in Mogadishu, joining the 370,000 people already displaced to the city.

294. The respondent's latest evidence sought to emphasise what the appellants conceded had been a decrease in levels of violence since the withdrawal of Al-Shabab. In particular, Bakara Market was now in control of the TFG/AMISOM. As previously noted, fighting in and around this market had been the cause of the highest civilian casualties.

295. Even before the August 2011 withdrawal, the respondent contended that, as indicated in the earlier evidence, the TFG/AMISOM had, in effect, gained the upper hand in Mogadishu and that Al-Shabab had been militarily defeated, rather than deciding deliberately on a tactical withdrawal. Some 300 Al-Shabab reinforcements had been sent to Mogadishu in the days before 28 July 2011, to no avail. The IASC Protection Cluster Update of 1 July 2011 had already indicated that clashes between the two sides had subsided "to be replaced by sporadic incidents of mortar shelling".

296. By 20 August 2011 TFG/AMISOM had fourteen-fifteen districts of Mogadishu firmly under control and Al-Shabab resistance remained only in pockets near the pasta factory in the north of Yaqshid district and Dharkanley. According to the UN Security Council, TFG/AMISOM had established control of 90% of Mogadishu by 15 August. By 13 September, they controlled every district except Daynille and Huriwa. AMISOM was also securing the international airport and the seaport. On 23 September, the UN Special Representative said the TFG were in control of 96% of the capital. The situation was, according to the representative, "something that has never happened before in the past 20 years. Mogadishu was either in the hands of warlords or the insurgents, the Al-Shabab" (Relief Web).

297. In an IASC update of 9 September, Sheikh Godane, described as the leader of Al-Shabab, was cited as vowing that his fighters "will continue launching new attacks against the TFG/AMISOM in Mogadishu". The Protection Monitoring Partners Report suggested that "The protection environment faced by residents of the capital has changed little despite the Al-Shabab withdrawal in August. Insecurity remains a major protection concern due to the high number of explosive devices planted in vacated areas by Al-Shabab, including continued fighting between pockets of Al-Shabab insurgents and the TFG/AMISOM troops."

298. Professor Menkhaus in August 2011 considered that "Shabab is splintering now. The famine has been a source of tension within the organisation and the hope is that we'll see some breakaway wings again that would say 'Our people are starving and we welcome aid'. It would be very risky for those splinter groups, but desperate times call for desperate measures." Menkhaus speculated that Al-Shabab's withdrawal was linked with social pressure on the organisation from clans which were "rebelling".

Famine had been disastrous for Al-Shabab in that by blocking food aid and blocking people from getting out of the affected areas "they have just shredded what little credibility they had left".

299. Landinfo reported in August 2011 that, apart from the fighting, civilians had enjoyed greater safety in areas of Mogadishu that had been controlled by Al-Shabab, compared with the TFG. The higher crime experienced in TFG areas "is partly due to undisciplined soldiers who commit robberies, rapes of women of all ages and from all clans, and extortion. However it is difficult to say anything about the extent of such abuses, and whether they are systematic."

300. The respondent contended that, whilst challenges still existed for TFG/AMISOM in terms of providing security in the newly taken areas of Mogadishu, numerous sources indicated that there had been an overall improvement since Al-Shabab's withdrawal. Thus, according to SMN on 2 September 2011, residents reportedly said that "The security crackdowns in the capital could help restore peace after more than two decades of civil war and conflict". A government minister said the TFG were slowly regaining control of the city, although he accepted that the government might not have moved as quickly as many people had wanted. Nevertheless, the fact that people were returning to re-taken areas was indicative that the transitional government was doing something about the security situation. The minister said the TFG "are well aware that the job is not yet done until we can comfortably say that Mogadishu is totally safe from [Al-Shabab] and from opportunistic criminals".

301. As regards that matter, there were reports of militias dressed in government military uniforms causing problems in Mogadishu.

302. The UNHCR visit to Mogadishu on 14 September was described as passing buildings destroyed by warfare or damaged by weaponry. There was, however, "a lot of life on the streets and many shops doing a brisk business – encouraging signs of a city attempting to recover after years of conflict and chaos". The UNHCR was concerned about the spread of diseases such as cholera in the IDP settlements. The meeting "expressed its deep sympathy to Somalia in the face of the severe drought and famine afflicting the country".

303. A Somalia Report of 25 September described life in Mogadishu as "slowly returning to normal following the withdrawal of the militant group Al-Shabab". TFG/AMISOM had "seemingly succeeded in keeping the Islamist fighters at bay, at least for now". A kiosk owner in Mogadishu said that he was "receiving a good number of customers as people can walk any time of the day through into the night. I can say this is my new life after eight years of living in agony." Landinfo reported that electricity worked in cities for those who could pay and that "23% of the residents of Mogadishu are online or worked daily". The same organisation reported that although random detention and harassment of civilians occurred in government controlled areas, this was more limited than in 2007-2008. Amnesty International's briefing acknowledged that indiscriminate artillery attacks had reduced. It was

unclear whether AI's figures for those treated in Mogadishu hospitals in August 2011 for weapons related injuries included combatants.

304. Mr Mahiga of the UN commented on 24 September 2011 that front lines were no longer visible in Mogadishu and the situation was more complicated. What had been happening was conventional warfare, interspersed with guerrilla and urban warfare: "but now that the conventional part of it has been receding into the background, we believe, and already there are signs that [Al-Shabab] will be resorting to bombs, improvised explosive devices. There have been many examples since their withdrawal on 6 August, many cases of such. And some of the Shabab elements have melted into the civilian population, they have been carrying out rear-guard actions."

305. Nevertheless, the respondent submitted that since post-withdrawal Al-Shabab attacks had been centred on TFG/AMISOM positions, this reduced the indiscriminate nature of the violence, so far as civilians were concerned.

306. An African Union report of 13 September described the remaining pockets of insurgents in Mogadishu as having "resorted to asymmetrical warfare, including grenade, IED and other forms of attacks targeting AMISOM positions and government installations. In August, over 20 incidents involving grenade and IED attacks were registered in Mogadishu and the surrounding areas. The insurgents also carried out beheadings in some parts of Mogadishu to intimidate a population suspected of supporting the TFG."

307. The respondent submitted that post-withdrawal evidence regarding IED etc. attacks did not suggest any significant change in the situation as it had been up to July 2011. The evidence as to asymmetrical warfare did not contradict the general conclusion that, overall, the situation had improved. It was certainly not any worse. The respondent emphasised the evidence as to AMISOM's internationally recognised commitment to the application of international humanitarian law principles to reduce civilian casualties and the real significance of the capture of Bakara Market. There had been no shift in emphasis by Al-Shabab to kidnappings, since there had been indications of such things in the earlier evidence.

308. The loss to Al-Shabab of Bakara Market was, according to the respondent, significant in that it had been the "financial hub of the movement" ([48] of later submissions). The second largest market in Mogadishu, Sukh Ba'ad in Yaqshid district, held for the last two years by Al-Shabab, had been captured by AMISOM and was officially reopened for business in early September. This market also had been "an important revenue stream" for Al-Shabab (Somalia Report).

309. The UNOCHA PMT Monthly Report for August 2011 stated that in July 2011 alone there had been 730 reported deportations from Saudi Arabia to Mogadishu "with no reports of difficulties for those returnees".

310. A report of 30 August described a large number of infrastructure and other engineering projects underway in Mogadishu and its environs, with "men and women clearing the rubble and cleaning up the pathways. People now talk freely, as they hold public debates on open grounds. This, analysts say, would be unheard of in the recent past."

311. The respondent stated that there had been a dramatic increase in the number of IDP camps in districts of Mogadishu between 28 July and 22 August 2011 "suggesting an increasing perception in Mogadishu as a safe place of refuge" [59]. There were, for example, 12 new IDP camps in Hodan, 10 in Hamarjaabjab and five each in Hawl-Wadag and Wardhigley. A UNOSAT Report of 22 August stated that, as at that date, "there were a total of 226 spatially distinct IDP shelter concentrations located within the urban extent of Mogadishu". There was also an increase in the number of IDP camps in the north-east of Mogadishu, following Al-Shabab's retreat from those areas. According to IRIN on 9 September 2011, the UNHCR was "scaling up its presence in the capital and in the border regions". The UAE had food kitchens in and around Mogadishu, according to the Emirates News Agency. There was no evidence that the TFG had deliberately tried to restrict aid in Mogadishu, or anywhere else. Nor was there evidence that the TFG had been taking "excessive cuts from aid deliveries at Mogadishu Airport". TFG had denied charges that it was diverting food aid, according to a report of 15 August. TFG had, in fact, set up committees based on civil society groups in order to deal with the humanitarian disaster. Although there were limitations on the provision of aid in the capital and elsewhere, this was in part due to limitations on the amount of international funding that had been made available. Infrastructure problems were also hampering the delivery of aid to affected areas. A report in August 2011 indicated that a lack of fuel at Mogadishu Airport was having an effect on aid distribution. According to a report in Allafrica.com, as at 31 August 2011, some 23,000 IDP shelters had been identified in Mogadishu, mostly in the city's western districts, following satellite surveillance on behalf of the UN Institute for Training and Research.

312. Whilst noting the evidence regarding checkpoints and roadblocks in Mogadishu, following Al-Shabab's withdrawal, the respondent submitted that this did not indicate the kinds of freelance criminal checkpoints referred to in the previous country guidance decisions. There was no extortion, etc. by TFG groups on anything amounting to a significant scale. The UNOCHA Mogadishu influx maps of 22 August 2011 demonstrated significant internal movement throughout the capital for IDPs, with one resident being reported on 29 November as saying that "I leave for Hawlwadaag district early in the morning to work and I am able to come back home in the afternoon. That would have been a nightmare during the time of Al-Shabab."

313. Laura Hammond provided an addendum of 26 September 2011 to her main report, to which she had spoken in evidence in July. Commenting on evidence to which we have earlier referred, Dr Hammond speculated in her Addendum as to the reason for Al-Shabab's withdrawal but concluded that, whatever the reason, there had been a shift "to more indiscriminate, less predictable bouts of violence", including attacks

on civilians in areas under TFG control. The Globe and Mail of 16 September 2011, in an article entitled "Fear of Al-Shabab brings Mogadishu to a standstill", stated that "hardly anyone is declaring victory over the militia" and that many Somalis feared the civil war had entered "a new phase in which an urban conflict with demarcated frontlines was turned into one with none, filled by Al-Shabab sympathisers who easily blend into the population".

314. As at 26 September, according to Dr Hammond, Bakara Market remained closed to civilians, even after Al-Shabab's withdrawal "reportedly so that AMISOM/TFG forces can ensure that those traders remaining behind do not have any ties to Al-Shabab" (Washington Post, 19 September). The Mayor of Mogadishu said Bakara would open once all shopkeepers had been checked for weapons and for sympathies towards Al-Shabab. "They don't need to infiltrate. They are there in Bakara," the Mayor said. Dr Hammond confirmed that the second largest market, Sukh Ba'ad, had re-opened, although the price of most staple foods there was significantly higher than they had been during Al-Shabab's control of Bakara.

315. Dr Hammond's conclusion, that the risk of indiscriminate violence "is as great, if not greater because of their unpredictability, than it was before Al-Shabab's pullout" was challenged by the respondent in her latest submissions. Citing the Globe and Mail article, Dr Hammond submitted that Islamist militants were still active in the city and that there had been "occasional car bombs and grenade attacks, and there have been a series of nearly a dozen mysterious beheadings of ordinary civilians". The beheadings had "terrified people here", according to the article. Many Somali exiles were holding back from returning, fearing that the insurgents simply blended into the civilian population "spying on the streets, identifying enemies and preparing for more attacks".

316. According to the Henry Jackson Society (accessed 26 September 2011), Al-Shabab still controlled certain neighbourhoods in Mogadishu and the retreat "was not unanimous and pockets of fighters stayed in areas such as Huriwa and Suuqa Hoolaaha.

317. The clashes between the TFG and persons dressed in government military uniforms, already referred to, were said by Dr Hammond to be seen by some as involving Al-Shabab's having obtained access to these disguises, so as to get closer to key TFG targets, as well as to give the impression of divisions within the TFG. Alternatively, TFG support was "splintering" and the uniformed militia were loyal to a particular TFG leader. Whatever the reason "the result has been that no area is considered safe, since even those areas supposedly under TFG control may be infiltrated at any time".

318. Dr Hammond also thought there were indications that Al-Shabab "may be changing some of its tactics to include kidnapping". She referred to an article in Shabelle News of 25 August where a businessman on his way to Mogadishu disappeared after he had failed to give Al-Shabab money. Reference was also made to the murder and kidnap of British tourists in a Kenyan resort near the Somali border.

319. Dr Hammond concluded that it was "too soon to know for sure what the significance of Al-Shabab's withdrawal from parts of Mogadishu will mean in the long term" and that there have been "many false dawns in the past, occasions when analysts and policy makers have had their hopes that the tide may finally be turning in Somalia only to … be bitterly disappointed when the violence grew more, rather than less, destructive. However, for the moment, the situation in Somalia remains precarious and from my perspective unsafe for those who return to Somalia, particularly if they lack armed protection."

320. On 26 September 2011 Amnesty International released a briefing paper entitled "Somalia: The Humanitarian and Human Rights Catastrophe". The first part of the Briefing concerns what AI describe as the "desperate humanitarian situation. In July and August this year, the United Nations declared famine in six areas of southern and central Somalia: Bakool, Bay, Lower Shabelle, Middle Shabelle, the Afgoye Corridor displaced persons settlement and the Mogadishu displaced community."

321. As regards the humanitarian situation in Mogadishu, AI stated that since the beginning of 2011 civilians' lives in Mogadishu have been threatened by a combination of fighting, obstacles to the delivery of humanitarian aid and the deterioration of the humanitarian situation. Although the "much publicised withdrawal of Al-Shabab armed factions from Mogadishu on 6 August 2011 has raised hopes", AI considered the humanitarian situation in the city to remain "dire. Humanitarian operations are being scaled up in Mogadishu but aid does not reach all those in need." During August 2011, 3092 out of the 7109 cases of acute watery diarrhoea in south and central Somalia occurred in the Banadir region of Mogadishu. In September, the Banadir Hospital reported 296 cases, 60% of which concerned children under 5 years. The following week, the same hospital reported 274 cases, with 72% involving such children.

322. Humanitarian access in Mogadishu was said to be hampered by several factors "including insecurity, which hampers aid operations, concerns for the safety of international humanitarian workers who are not able to move freely within the capital, the sheer number of people in need of assistance; and regular movement of populations in need within the city". Both humanitarian aid workers and the recipients of such aid "also remain at risk of being targeted in Mogadishu. There have been several incidents of violence and looting in camps for internally displaced persons in Mogadishu, and in food distribution sites, causing civilian casualties, in TFG held areas of Mogadishu." Various specific instances were given.

323. So far as concerns violence in Mogadishu between armed factions, AI noted the UN Special Representative of the Secretary-General as having "pointed out to the likelihood that Al-Shabab would increasingly resort to asymmetrical warfare, including hit-and-run attacks, suicide bombings and the detonation of explosives in civilian-populated areas of Mogadishu". On 13 August the President of the TFG imposed a state of emergency on all areas of Mogadishu that had been vacated by Al-

Shabab. "Both sides to the conflict have made declarations that fighting will restart further underscoring the extreme volatility and unpredictability of the situation." Despite the announced withdrawal, insecurity remained high for civilians with the World Health Organisation recording 570 casualties from weapon-related injuries in three hospitals in Mogadishu during August 2011. AI considered these statistics to be "only indicative, as the number of deaths on site is not known". Although indiscriminate artillery attacks were said to have reduced, "pockets of fighting between Al-Shabab fighters and the TFG and its allies still remain, notably in the Darkhenley and Karan districts". Various specific instances were described, taken from the Protection Cluster Update of the Interagency Standing Committee. On 4 September, mortars were fired near the Presidential Palace, where the consultative meeting between Somali political actors and the international community was taking place. Further mortar fire was reported on 7 September. Hand grenade incidents occurred on 22 August and on 27 August a child was killed and two others injured when an IED detonated in Karan Market. IEDs have been found by TFG forces in areas vacated by Al-Shabab.

324. Fighting between rival TFG units was said to have occurred on 30 August, when seven people at least were killed, including a civilian, and on 4 September, as TFG forces and militias clashed over the dismantlement of checkpoints (Protection Cluster Update).

325. AI noted the reports of Al-Shabab executions in Mogadishu, including decapitations, as well as the killing in Karan of a man and his mother.

326. A TFG military court established in 2009 was said increasingly to be handing down death sentences, with two TFG soldiers executed in Mogadishu on 22 August. AI was concerned that the trials did not respect basic fair trial standards.

The Tribunal's findings

327. Although it is conventional, in assessing an individual's entitlement to international protection, to begin with the Refugee Convention, moving on to consider subsidiary protection under the Qualification Directive only if entitlement to refugee protection is not found, we have decided that this would not be the most appropriate method of presenting our findings on the general evidence. The way in which the appeals were argued, the weight of the evidence and the significance of Sufi & Elmi all pointed, as regards Mogadishu, towards an analysis that concentrated upon Article 15(c) and Article 3 of the ECHR. So far as the position is concerned elsewhere in southern and central Somalia, the Refugee Convention loomed much larger, and is engaged in the case of several of the appellants; but we have decided to adopt the same order of analysis of the general evidence, partly for consistency, but mainly because the significance of RT (Zimbabwe) in the case of those at risk of living under Al-Shabab is best appreciated once one has examined the position in terms of Article 3.

(a) Article 15(c)

328. One might have thought that, in the light of Elgafaji and QD (Iraq) the law on Article 15(c) was now reasonably settled, so far as the United Kingdom was concerned. That law was conveniently summarised at [67] of HM (Iraq):

> "a. The Article seeks to elevate the state practice of not returning unsuccessful asylum seekers to war zones or situations of armed anarchy for reasons of common humanity into a minimum standard (QD at [21]).
>
> b. The scope of protection is an autonomous concept distinct from and broader than Art 3 protection even as interpreted by the European Court of Human Rights (ECtHR) in NA v United Kingdom (Elgafaji at [33]-[36]; QD at [20], [35]); HH and Others) at [31]).
>
> c. It is concerned with '"threat .. to a civilian's life or person" rather than to specific acts of violence .. the threat is inherent in a general situation of .. armed conflict…The violence that gives rise to the threat is described as indiscriminate, a term which implies that it may extend to people irrespective of their personal circumstances' (Elgafaji [34]).
>
> d. The Article is intended to cover the 'real risks and real threats presented by the kinds of endemic acts of indiscriminate violence - the placing of car bombs in market places; snipers firing methodically at people in the streets - which have come to disfigure the modern world'. It is concerned with 'serious threats of real harm' (QD at [27] and [31]).
>
> e. 'Individual' must be understood as covering harm to civilians irrespective of their identity where the degree of indiscriminate violence characterising the armed conflict taking place reaches such a high level that substantial grounds are shown for believing that a civilian …would solely on account of his presence on the territory… face a real risk of being subjected to the serious threat' (Elgafaji [35]).
>
> f. 'The more the applicant is able to show that he is specifically affected by reason of factors particular to his personal circumstances, the lower the level of indiscriminate violence required' (Elgafaji [39]).
>
> g. A consistent pattern of mistreatment is not a necessary requirement to meet the real harm standard. 'The risk of random injury or death which indiscriminate violence carries is the converse of consistency' (QD at [32]).
>
> h. There is no requirement that the armed conflict itself must be exceptional but there must be 'an intensity of indiscriminate violence great enough to meet the test spelt out by the ECJ' and this will self evidently not characterise every such situation (QD at [36]).
>
> i. 'The overriding purpose of Article 15(c) is to give temporary refuge to people whose safety is placed in serious jeopardy by indiscriminate violence, it cannot

matter whether the source of the violence is two or more warring factions (which is what conflict would ordinarily suggest) or a single entity or faction' (QD at [35]).

j. 'Civilian' means all genuine non-combatants at the time when the serious threat of real harm may materialise (QD [37])."

329. The ECtHR's judgment in Sufi & Elmi has, however, cast some doubt over the proposition summarised at [67b] of HM. In order to understand the issue it is necessary to remind ourselves of what the CJEU said in Elgafaji:-

"31. … it is appropriate to compare the three types of 'serious harm' defined in Article 15 of the Directive, which constitute the qualification for subsidiary protection, where, in accordance with Article 2(e) of the Directive, substantial grounds have been shown for believing that the applicant faces 'a real risk of [such] harm' if returned to the relevant country.

32. In that regard, it must be noted that the terms 'death penalty', 'execution' and 'torture or inhuman or degrading treatment or punishment of an applicant in the country of origin', used in Article 15(a) and (b) of the Directive, cover situations in which the applicant for subsidiary protection is specifically exposed to the risk of a particular type of harm.

33. By contrast, the harm defined in Article 15(c) of the Directive as consisting of a 'serious and individual threat to [the applicant's] life or person' covers a more general risk of harm.

34. Reference is made, more generally, to a 'threat ... to a civilian's life or person' rather than to specific acts of violence. Furthermore, that threat is inherent in a general situation of 'international or internal armed conflict'. Lastly, the violence in question which gives rise to that threat is described as 'indiscriminate', a term which implies that it may extend to people irrespective of their personal circumstances.

35. In that context, the word 'individual' must be understood as covering harm to civilians irrespective of their identity, 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 the serious threat referred in Article 15(c) of the Directive.

36. That interpretation, which is likely to ensure that Article 15(c) of the Directive has its own field of application, is not invalidated by the wording of recital 26 in the preamble to the Directive, according to which '[r]isks to which a population of a country or a section of the population is generally exposed do normally not create in themselves an individual threat which would qualify as serious harm'.

37. While that recital implies that the objective finding alone of a risk linked to the general situation in a country is not, as a rule, sufficient to establish that the conditions set out in Article 15(c) of the Directive have been met in respect of a specific person, its wording nevertheless allows by the use of the word 'normally' for the possibility of an exceptional situation which would be characterised by such a high degree of risk that substantial grounds would be shown for believing that that person would be subject individually to the risk in question.

38. The exceptional nature of that situation is also confirmed by the fact that the relevant protection is subsidiary, and by the broad logic of Article 15 of the Directive, as the harm defined in paragraphs (a) and (b) of that article requires a clear degree of individualisation. While it is admittedly true that collective factors play a significant role in the application of Article 15(c) of the Directive, in that the person concerned belongs, like other people, to a circle of potential victims of indiscriminate violence in situations of international or internal armed conflict, it is nevertheless the case that that provision must be subject to a coherent interpretation in relation to the other two situations referred to in Article 15 of the Directive and must, therefore, be interpreted by close reference to that individualisation.

39. In that regard, the more the applicant is able to show that he is specifically affected by reason of factors particular to his personal circumstances, the lower the level of indiscriminate violence required for him to be eligible for subsidiary protection."

330. In Sufi & Elmi, the ECtHR said:-

"225. In *Elgafaji* the ECJ held that article 15(c) would be violated where substantial grounds were shown for believing that a civilian, returned to the relevant country, would, solely on account of his presence on the territory of that country or region, face a real risk of being subjected to a threat of serious harm. In order to demonstrate such a risk he was not required to adduce evidence that he would be specifically targeted by reason of factors particular to his personal circumstances (*Elgafaji*, cited above § 35). Nevertheless, the ECJ considered that such a situation would be 'exceptional' and the more the applicant could show that he was specifically affected by reason of factors particular to his personal circumstances, the lower the level of indiscriminate violence required for him to be eligible for subsidiary protection (*Elgafaji*, cited above, § 39).

226. The jurisdiction of this Court is limited to the interpretation of the Convention and it would not, therefore, be appropriate for it to express any views on the ambit or scope of Article 15(c) of the Qualification Direction [sic]. However, based on the ECJ's interpretation in *Elgafaji*, the Court is not persuaded that Article 3 of the Convention, as interpreted in *NA*, does not offer comparable protection to that afforded under the Directive. In particular, it notes that the threshold set by both provisions may, in exceptional circumstances, be attained in consequence of a situation of general violence of such intensity that any person

being returned to the region in question would be at risk simply on account of their presence there."

331. Article 3 of the ECHR provides that "no-one shall be subjected to torture or to inhuman or degrading treatment or punishment". Article 15(b) of the Qualification Directive provides that serious harm consists of "torture or inhuman or degrading treatment or punishment of an applicant in the country of origin". Given the identical wording, so far as concerns treatment etc in the country of origin, we are apparently left in the position that the CJEU has held that there is a difference between Article 15(b) and (c), whereas the ECtHR, in effect, does not consider there to be a difference between the ambit of Article 3 ECHR and Article 15(c) of the Qualification Directive. That, at least, seems to be so, if one reads "under the Directive" in [226] as referring to Article 15(c) rather than Article 15(b), as it seems one must.

332. As the ECtHR acknowledges at [226], it is not the jurisdiction of that Court to interpret the Qualification Directive. That is the job of the CJEU, which they have discharged (for the present at least) in Elgafaji. However, the difficulty remains, that the ECtHR appears in Sufi & Elmi to be giving Article 3 ECHR a wider "field of application" than the CJEU is prepared to give Article 15(b) of the Qualification Directive (even making allowances for the different wording designed to prevent Article 15(b) being used in "ill-health" cases where the risk is said in part to arise from the lack of host State treatment).

333. Having said this, it is, as the ECtHR states, established that a general situation of violence in a place of destination *can* cross the Article 3 threshold. In NA v United Kingdom, the Court reviewed its case law, concluding that it had "rarely found a violation of Article 3 on that ground alone" [114]. Having surveyed its case law the Court held that it "has never excluded the possibility that a general situation of violence in a country of destination will be of a sufficient level of intensity as to entail that any removal to it would necessarily breach Article 3 of the Convention. Nevertheless, the Court would adopt such approach only in the most extreme cases of general violence, where there was a real risk of ill-treatment simply by virtue of an individual being exposed to such violence on return" [115].

334. The position appears, therefore, to be that, on a particular set of the facts, general violence in a place is so serious and intense as to cross the Article 3/Article 15(b) threshold and, in so doing, it would also necessarily cross the threshold required for Article 15(c). The binding case law of Elgafaji, however, makes it plain that the converse is not true; in other words, Article 15(c) can be satisfied without there being such a level of intensity of violence as is required for Article 3 to apply as a general matter. How this is achieved is not precisely articulated by the CJEU, but seems to involve the fact that, as the Luxembourg Court found at [33] of Elgafaji, Article 15(c) covers "a more general risk of harm" than does Article 3 of the ECHR. To this may be added the observation that the nature of the harm in Article 15(c) includes matters less severe than encompassed by Article 15(b)/Article 3 ECHR.

335. At first sight, the use of the test of exceptionality, inherent in the ECtHR's language in [115] of NA v United Kingdom and explicit in [38] of Elgafaji might seem to confine the application of Article 15(c) and Article 3 in situations of generalised violence to the same narrow ambit. But that this is not, in reality, the case can be seen, not only from what we have just observed about the nature of the risk and of the harm, but also from what Sedley LJ held in QD (Iraq):

> "Nor, however, has the judgment [in Elgafaji] introduced an additional test of exceptionality. By using the words "exceptional" and "exceptionally" it is simply stressing that it is not every armed conflict or violent situation which will attract the protection of art 15(c), but only one where the level of violence is such that, without anything to render them a particular target, civilians face real risks to their life or personal safety" [25].

336. The appellants contended that the AIT in GS (Article 15(c): indiscriminate violence) Afghanistan CG [2009] UKAIT 00044 were wrong to hold at [71] that relevant forms of harm protected against by Article 15(c) should not extend to questions of "dignity". Reliance was placed on Recital (10) to the Qualification Directive:-

> "(10) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular this Directive seeks to ensure full respect for human dignity and the right to asylum of applicants for asylum and their accompanying family members."

337. Also relied on by the appellants was Article 61 of the consolidated version of the EU Treaty, which mandates the progressive establishment of "an area of freedom, security and justice" which includes "safeguarding the rights of nationals of third countries". As we have already indicated, the law as expounded in Elgafaji, which we must follow, together with QD (Iraq), which we must also follow, makes it apparent that Article 15(c) has a wider sphere of application than Article 15(b). That sphere or "field of application" was articulated by the CJEU in its judgment. In doing so, the CJEU made no reference to Recital (10) and concepts of "dignity", whether in relation to Article 15(c) or more generally. Nor did it refer to the EU Treaty. We agree with Mr Eicke that Recital (10) does more than acknowledge that the substantive provisions of the Directive are regarded as meeting this aim. Still less do we find that Article 61 of the Treaty has any relevance.

338. We have carefully considered all the evidence, in particular the statistics relating to civilian deaths and injuries in Mogadishu, in the period since that considered in AM & AM. We have not, however, excluded from our consideration statistics regarding combatants and those statistics which do not make plain whether the casualties were combatants. Whilst combatants are of course not "civilians" within the ambit of Article 15(c), combatant casualties in an urban area in which many civilians are present can help in assessing the risk to civilians of indiscriminate violence. They are part of the holistic assessment of all the relevant evidence, which must lead to the

value judgement of whether there exists a sufficiently serious risk of Article 15(c) harm.

339. On the state of the evidence as it was in July 2011, before Al-Shabab's withdrawal from Mogadishu, we have concluded that, for most returnees from the United Kingdom, having to live or stay for a significant period of time in Mogadishu would have exposed them to Article 15(c) risk. Whilst we accept the respondent's evidence that the CIA World Fact Book gives a "crude death rate" for Somalia at June 2011 as 14.87 per thousand, which is lower than various African countries including Nigeria and South Africa, and also lower than Russia, the statistical evidence regarding Mogadishu, together with the evidence regarding the behaviour of the combatants, indicated plainly that the armed conflict was one which affected the lives of civilians in the way encompassed by Article 15(c). That was so, notwithstanding the evidence which indicated that most civilian casualties arose in and around Bakara Market and that the TFG had recently announced it would no longer shell that area whenever it came under attack from Al-Shabab elements situated there.

340. Although we accept the respondent's evidence regarding the battle lines that had formed in Mogadishu, prior to Al-Shabab's withdrawal, as a result of which TFG-controlled areas in the south of the city were not part of the main conflict zone, the appellants' evidence, which we have cited above, indicated not only that – immediately before that withdrawal - such areas were not "safe" (a standard far lower than that required for Article 15(c)) but that they remained places where civilians could properly be said to run Article 15(c) risks, both from the asymmetrical warfare which Al-Shabab was even then tending to use in those areas but also from undisciplined elements of the TFG's forces.

341. We agree with the appellants that it is not possible to derive any positive conclusion, so far as Article 15(c) risk is concerned, from recent influxes of IDPs into Mogadishu. The fact that Mogadishu might have been perceived by a starving person from the countryside as a better option than remaining at home to suffer and possibly die in the current famine was more indicative of the extremely serious nature of the humanitarian position in southern and central Somalia, outside Mogadishu, than it was evidence of any improvement in Article 15(c) risk, prior to the Al-Shabab withdrawal.

342. It is common ground between the parties that Al-Shabab's military withdrawal from Mogadishu is of significance; but both sides nevertheless contended that it made no difference to the stance they had respectively adopted at the hearing and in their closing written submissions. The appellants submitted that there were still Article 3 ECHR and QD Article 15(c) risks in the city; the respondent submitted that there were still no such risks.

343. So far as Article 15(c) is concerned, the main consequence of the withdrawal is that there are currently no longer any military "front lines" cutting across Mogadishu, with resultant risk to civilians of being caught in crossfire between contending

conventional fighting forces. In particular, there is no longer any need for the TFG/AMISOM to shell Bakara Market (or any temptation to do so), since there is no longer any (or any significant) Al-Shabab military presence in that part of the capital.

344. Given the preponderance of civilian casualties were in the Bakara area, this development clearly has a bearing on the assessment of Article 15(c) risk, of more significance than the previous evidence, which depended on taking a view as to whether the TFG/AMISOM would honour their word not to shell the Market, if attacked from there. We have, however, concluded that an Article 15(c) risk continues to exist for the majority of those returning to Mogadishu after any significant period of time spent abroad. Our reasons are as follows.

345. Despite our rejection of the appellants' submissions to the effect that the respondent bears a legal burden of showing that a place previously unsafe has become safe, it is the case, as the Tribunal said in EM and others, that any assessment that material circumstances have changed, will need to demonstrate that "such changes are well established evidentially and durable". The durability of the situation brought about by Al-Shabab's withdrawal is clearly problematic, viewed as at October 2011, which is no doubt why the respondent contended that the position had essentially changed earlier, with the announcement of the TFG/AMISOM "no retaliation" policy regarding Bakara Market, coupled with the relatively stable position of the Southern districts of Mogadishu, which were already in the control of the TFG/AMISOM. However, we have serious doubts whether the policy would have been maintained, or would be maintained if Al-Shabab were to return, given the clear evidence as to past promises being broken. We have already explained why, for the ordinary inhabitant, there is still a significant risk of harm from conflict-related incidents in the southern districts. Thus, the only factor to which it is at present appropriate to have regard is the recent withdrawal of Al-Shabab; and that cannot yet be said to be durable, however much one might hope it will be.

346. In fact, the latest evidence indicates that conventional fighting between Al-Shabab and the TFG/AMISOM may not have entirely ceased in Mogadishu, in that there are reports of clashes, involving mortars, in certain northern districts of the city. Elsewhere, there are plainly significant and disturbing reports of the kind of asymmetrical warfare which Al-Shabab was using to an extent, behind the government forces' lines, even before the withdrawal, and to which there is good reason to fear they may make greater resort, following the withdrawal. We entirely understand the respondent's criticisms of Dr Hammond's updated report, insofar as it might be interpreted as being based on assertion instead of hard evidence. But, given the recent history of Mogadishu and the starting point provided by the conclusions in AM & AM, it would be wrong to rush to the conclusion that there is no real risk of Al-Shabab adopting and being able to implement such a tactic.

347. As part of the holistic assessment we must make, regard clearly has to be had to the current humanitarian crisis in Mogadishu. The most recent evidence includes the declaration of famine in the IDP camps located in the city. Although the distribution

of food is proceeding in a commendable fashion, there are still serious problems regarding malnutrition and disease, as well as gross overcrowding. These factors bear on Article 15(c) risk in two ways. First, they make it impossible to find, as a general matter, that someone involuntarily returned to Mogadishu is not at risk of ending up in one of the districts where conventional (in any event, significant) fighting is still occurring. Second, as regards all but the better-off or best-protected citizens, the direct and indirect effects of the humanitarian crisis are likely to be such as to diminish their capacity for vigilance, as regards such things as IEDs, unexploded ordinance, opportunistic criminals and continuing Al-Shabab elements intent on spreading fear by intimidation, kidnapping and beheading.

348. We are conscious of the evidence, disputed by the appellants, that returnees from the United Kingdom may be given up to £1,500 by the United Kingdom in order to assist resettlement and reintegration. We are, however, unable to find that a person who stands to get such funds will thereby be able, as a general matter, to surmount the problems we have just mentioned, at least in all but the immediate term.

349. As well as the latest evidence of such behaviour on the part of Al-Shabab, there is evidence of a far smaller, but nonetheless material, risk from rogue elements of the TFG, operating in Mogadishu, who may seek directly to harm ordinary people, such as by robbery, or else may pose an indirect risk, by fighting amongst themselves or with official elements.

350. Putting all this together, we conclude that, as at the present time, an Article 15(c) risk exists, as a general matter, in respect of the majority of those in Mogadishu and, as a general matter, as to those returning there from the United Kingdom.

351. Who might fall within an exception to that finding? Reference has already been made to the evidence regarding voluntary returnees to Mogadishu, such as businessmen. The appellants urged us not to draw from this evidence any conclusion favourable to the respondent's position, contending that the fact that certain individuals were prepared to run a high degree of risk, for example to make a profit, was not evidence that the risk did not exist. That risk should not be borne by those, such as the appellants, who were not willing to run it.

352. We also note the appellants' criticism of the finding in AM and AM that those connected with extremely powerful actors would not run an Article 15(c) risk by returning to Mogadishu. The ECtHR in Sufi & Elmi decided, in any event, to circumscribe that category by reference to powerful actors at the "highest level".

353. Whilst we fully accept that some returnees, whether businessmen or those Somalis from the Diaspora returning to engage in NGO work, may well do so in the teeth of a real risk of serious harm, the evidence regarding returnees is, we consider, such as to make it inconceivable that it is only those risk-takers who choose to return to Mogadishu.

354. The evidence regarding the busy nature of Mogadishu International Airport has already been mentioned. In her "Care and Compassion" report, Dr Hammond described a survey of private investors in Somaliland (40) Puntland (29) and south/central Somalia (18):-

> "One of the most interesting findings from this survey was that 88.9% of the respondents in south/central Somalia had lived abroad at some time. The main countries that they had lived in were the United Arab Emirates and United Kingdom (each with four respondents) as well as Canada (two respondents)."

The report continues:-

> "Respondents from the private sector included hotel owners, cosmetics importers, sales companies, electricity providers, care organisations, fuel providers, medical and drug vendors, furniture importers, barbers, sweet sellers, transport operators, telecommunications companies, export agents, fishing companies, media representatives, a cell phone repairer, a banking company, an electronics importer, a remittance company, agricultural investors, a goldsmith, stationers, importers of construction materials, educational providers, restaurant owners, water providers, and other trades and businesses. Organisations in Somaliland tended to be older (37.5% had been operating for at least ten years), whereas in Puntland and south central they were younger (68.9% in Puntland and 70.6% in south central had been operating for less than ten years)."

Earlier in the same report we find:-

> "Interviewees who are involved in the private sector stressed that some space for business can be negotiated for business in Somalia despite the threats from militias, Al-Shabab, and corrupt TFG officials. Businesses are generally able to rely on clan support to deter criminal attacks on their holdings, and can work out arrangements to move goods across insecure zones. Remittance companies, for instance, are able to work with very large sums of cash and rarely experience armed robbery. However, as discussed below some people in the Diaspora said that the insecurity dissuaded them from becoming involved in business."

355. We have already referred to Mr Burns' evidence regarding businessmen and also other travellers. Mr Burns said in oral evidence that he travelled to Mogadishu once every eight weeks. He "confirmed that people did return to join their families for holidays and younger Somalis who had never been to Somalia wanted to come and see what it was like. Others came for marriage and some brought their daughters to be circumcised." When it was put to him that there was no evidence that those returning for family visits were badly treated, Mr Burns "agreed that he had not seen any such evidence but stated that such returnees did not travel around, would remain in the family compound and then leave. He stated that when he visited Somalia he never left the compound."

356. It is simply not possible to conclude from this evidence that all who choose to return to Mogadishu at the present time do so against the background of a real risk to life or

person. We accept that many of those who come would be prepared to tolerate living in confined circumstances, such as a residential compound, for a limited period of time, but that to expect a person to return permanently to such a situation is a different matter (a point noted at [173] of AM and AM).

357. Nevertheless, the evidence before us points to there being a category of middle class or professional persons in Mogadishu who can live to a reasonable standard, in circumstances where the Article 15(c) risk, which exists for the great majority of the population, does not apply. A returnee from the United Kingdom to such a *milieu* would not, therefore, run an Article 15(c) risk, even if forcibly returned. Into this category we place those who by reason of their connection with "powerful actors", such as the TFG/AMISOM, will be able to avoid the generalised risk. The appellants argued that no such category exists; but we reject that submission. Indeed, the category that emerges from the evidence is wider than the "powerful actors" exception, and covers those whose socio-economic position provides them with the requisite protection, without running the risk of assassination faced by those in or associated with the TFG.

358. The significance of the category we have identified should not, however, be overstated. For most people in Mogadishu the Article 15(c) risk persists, at the present time. In the case of a claimant for international protection, a fact-finder would need to be satisfied that there were cogent grounds for finding that the claimant fell within such a category.

359. We have had close regard to the views of the UNHCR which are that Article 15(c) conditions pertain across the entirety of southern and central Somalia, including Mogadishu, such that **all** civilians are at risk of indiscriminate violence, by reason only of their presence there. We note that, in areas taken by pro-TFG militias, whether in Mogadishu or outside, there is evidence that Al-Shabab "have reverted to guerrilla-style attacks … including roadside bombs, which is again reminiscent of the insurgency against the TFG and Ethiopian army between 2007 and 2009" (June 2011 update to the Eligibility Guidelines, para 3.5).

360. Although we accept, *per* Mr Hickman, that UNHCR holds the view it does about Article 15(c), it is not the case that the Eligibility Guidelines themselves specifically state that such an Article 15(c) risk pertains in southern and central Somalia. At Part IVA of the May 2010 Guidelines, which sets out the "General Approach" to eligibility for international protection, the only specific international Convention cited is the OAU Convention of 1969. Article 1(1) of that defines "refugee" in terms replicating Article 1(A) of the Refugee Convention. For those not meeting these criteria, the Guidelines recommend that they "should be granted international protection under the extended refugee definition in Article 1(2) of the OAU Convention. In States in which the OAU Convention does not apply, a complementary/subsidiary form of protection should be granted under relevant national and regional frameworks."

361. Article 1(2) of the OAU Convention is, upon inspection, in very different terms from that of Article 15(c):-

> "2. The term 'refugee' shall also apply to every person who, owing to external aggression, occupation, foreign domination and events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refugee in another place outside his country of origin or nationality."

362. In Part I (Armed conflict in Southern and Central Somalia), there is a specific reference to Article 15(c), in the context of UNHCR's conclusion that an Article 15(c) risk extends across the whole of that part of the country. But the source cited in the footnote in support of this proposition is AM & AM, which, as we have seen, found that it was only in Mogadishu that the level of severity of the conflict was so grave as to place the great majority of the population at risk of the harm described in Article 15(c). Be that as it may, we do not consider that we should go beyond having very careful regard to the UNHCR's views, and "accept the assessment set out in the Eligibility Guidelines on Somalia update", as Mr Hickman contended at [35] of his written submissions. Nor do we accept the submission that those Guidelines represent "the most comprehensive analysis of the security situation in Somalia". Their methodology is sound, the range of external sources wide and the organisation itself well placed to give its own highly-informed view. The Guidelines nevertheless form only a part of the evidential matrix which the parties to the present proceedings have assembled.

363. Before leaving the issue of Article 15(c) in Mogadishu, it is necessary to say something with an eye to the use that will be made of our country guidance findings in the next few weeks and months. In assessing cases before them, judicial fact-finders will have to decide whether the evidence is the same or similar to that before us (Practice Direction 12). To the extent it is not, they are not required to regard our findings as authoritative. As we have emphasised, it is simply not possible on the evidence before us to state that the changes resulting from Al-Shabab's withdrawal from Mogadishu are sufficiently durable. Far too much is presently contingent. As time passes, however, it may well be that judicial fact-finders are able to conclude that the necessary element of durability has been satisfied. How, if at all, that impacts on the assessment of risk on return will, of course, depend on all the other evidence.

(b) Article 3

Armed conflict

364. Even before the recent withdrawal of Al-Shabab forces from Mogadishu, we consider that the evidence we have been given as to the position in that city, up to July 2011, is such that we are entitled to make a different finding regarding Article 3 and Mogadishu, than that of the ECtHR in Sufi & Elmi. Before that withdrawal, the evidence before us, in particular the oral and written evidence of the expert

witnesses, was not such as to show that anyone in the city was at real risk of Article 3 harm by reason only of their presence there. Although the ECtHR had before it evidence regarding returns to Mogadishu International Airport, this was largely contained in the UKBA Fact-Finding Mission report, which, as we have seen, the ECtHR regarded as carrying less weight than we have seen fit to give it. More particularly, however, it does not appear that the ECtHR was aware of the extent and scale of businesses operating in Mogadishu or of voluntary returns from the Somali Diaspora, including the reasons for such returns.

365. We are mindful that [178] and [179] of AM & AM suggested that, in the period examined in that case, an Article 3 risk existed in Mogadishu by reason of the armed conflict then prevailing in that city. However, the evidence before us makes it sufficiently clear that, before August 2011, the position had for some time been materially different. A front line across Mogadishu had emerged, with conventional fighting increasingly being confined to certain areas. In more recent times, there had been an absence of the large-scale displacement of civilians out of Mogadishu, about which the Tribunal in AM & AM received evidence, and which it regarded as significant indicators of the high level of risk faced by civilians in the capital at that time.

366. In any event, the Al-Shabab withdrawal in August 2011 in our view constitutes evidence which means that it can no longer be said that any person in Mogadishu, regardless of his or her circumstances, is at Article 3 risk from the armed conflict there. As we have already explained, we do not consider that the evidence of the withdrawal means, as at the present date, that it can safely be said that the generality of the population no longer faces an Article 15(c) risk. Those reasons, however, do not apply in relation to Article 3. This is so despite the issue of the "durability" of the new situation being, at first sight, the same for both provisions. It is plain from NA v United Kingdom that the circumstances required in order to make good an Article 3 claim purely by reference to a general situation of violence need to be exceptionally grave. There is on any rational view a significant and immediately apparent difference between an armed conflict between opposing forces, contending for a city (albeit with attendant asymmetrical attacks by one of the parties) and the absence (or relative absence) of overt conventional conflict. There is no evidence we have seen to indicate that Al-Shabab's conventional forces remain poised outside Mogadishu, ready to re-enter the city at any time. The situation is, thus, sufficiently "durable" to compel us to find that – even if (contrary to paragraph 364 above) an Article 3 risk had existed immediately before Al-Shabab's withdrawal - it does not exist at present.

367. The consequence of the latest turn of events seems to us to be a good illustration of the different "field of operation" for Article 15(c), identified by the CJEU in Elgafaji, as examined by us at paragraphs 328 to 335 above. The availability of Article 15(c) enables international protection to be afforded in circumstances where the truly exceptional circumstances required by NA v United Kingdom do not pertain. There is thus no justification for succumbing to the temptation of diluting the test for

finding an Article 3 risk by reason of generalised violence (or, we might add, of the corresponding test for Article 15(b) harm).

Humanitarian situation

368. The humanitarian situation in Mogadishu, though very serious, is not so grave as in the countryside, despite the declaration of famine conditions in the city's IDP camps. Aid is being delivered to those in such camps much more easily than in other areas, particularly those where difficulties are still being experienced with Al-Shabab. It is rural refugees, rather than established residents of Mogadishu, who are having to live in such camps. A returnee from the United Kingdom may be able to avoid having to go to an IDP camp, even though, as we have earlier found, the overcrowding in the safer districts of the city may well cause him or her to live in some other district. Someone with family connections in Mogadishu or who is fit for work could avoid the camps, where, as a general matter, risk of Article 3 harm currently pertains.

369. Conversely, a returnee could face real risk of a violation of Article 3, by reason of his or her vulnerability. For example, a woman with children returned without any family and without family support in Mogadishu from those already there, may well suffer treatment proscribed by Article 3, regardless of any financial assistance provided by the United Kingdom Government, given her increased susceptibility to opportunistic attack.

(c) Refugee Convention

370. A striking feature of the present appeals was the absence in the evidence before us of anything to suggest that, certainly in comparison with the time before the rise of the Union of Islamic Courts, a returnee to Mogadishu, of whatever clan, would face a real risk of persecution by reason of his or her clan. The Gundel reports indicated that a community such as the Reer Hamar was no longer the subject of targeted violence, albeit that they might still be the subject of discrimination. Mr Burns spoke in his evidence of majorities and minorities, not by reference to powerful or impotent clans but, rather, by reference to who was numerically in the majority in a particular area of the city. Dr Hammond's evidence regarding Diaspora aid suggested that, in many cases, such aid was provided without regard to the clan of the recipient. The continuing importance of clans in Mogadishu, accordingly, appears at present to lie primarily in the clan as possible means of support for a returnee.

371. Accordingly, except as regards the issue of FGM, it is unlikely that a proposed return to Mogadishu at the present time will raise Refugee Convention issues. Fact-finders will, nevertheless, need to be alive to the possibility of such issues emerging in the future if, for example, the city were (as in the past) to become prey to powerful clans, enforcing their rule over weaker clans by means of armed militias.

(2) Southern and central Somalia, outside Mogadishu

Evidence and submissions

372. So far as conflict outside Mogadishu is concerned, Mr Hickman, for the UNHCR, submitted that Article 15(c) protection should extend throughout southern and central Somalia, on the basis of the UNHCR's conclusion in the Eligibility Guidelines of May 2010 that:-

> "The widespread disregard of their obligations under international humanitarian law by all parties to the conflict and the reported scale of human rights violations make it *clear* that *any* person returned to southern and central Somalia would, solely on account of his/her presence in southern and central Somalia, face a real risk of serious harm."

373. We have already examined this issue in relation to Mogadishu (see above). As regards the position outside the capital in southern and central Somalia, the ECtHR in Sufi & Elmi did not accept the UNHCR's proposition. At [270] the Court held that "it would appear that it is the conflict in Mogadishu which is primarily responsible for Somali civilian casualties and widespread displacement" and that "reports describe the fighting outside Mogadishu as sporadic and localised around key strategic towns … consequently, while there is fighting in some areas, other areas have remained comparatively stable". Accordingly, at [271] the Court was:-

> "…prepared to accept that it might be possible for a returnee to travel from Mogadishu International Airport to another part of southern and central Somalia without being exposed to a real risk of treatment proscribed by Article 3 solely on account of the situation of general violence. However, this will very much depend upon where a returnee's home area is. It is not possible for the court to assess the level of general violence in every part of southern and central Somalia and, even if it were to undertake such an exercise, it is likely that its conclusions will become outdated very quickly. Consequently, if the applicant's home is one which has been affected by the conflict, the conditions there will have to be assessed against the requirements of Article 3 at the time of removal."

374. In the present proceedings, the respondent likewise pointed to the UKBA Fact-Finding Mission as indicating that the level of conflict outside Mogadishu was much reduced in most areas and most areas were described as stable. This was supported by the written statement of Mr Burns and confirmed in his oral evidence. The OCHA Protection Cluster Update suggested fighting in Lower Juba and Gedo, with the COIS Report referring to clashes on the Ethiopia-Kenya-Somalia border and armed conflict in Bula Hawa and to a lesser extent in the vicinity of Beletweyne and Dolo. In April 2011 the UN Security Council referred to fighting in Doolow, Bulo Hawa, Lwq, Elwaaq, Dhoobley, Diif and Taabdo.

375. Conversely, there was little evidence of fighting in Kismayo or in Lower Shabelle, including Merka/Marka. According to Mr Burns, in May 2011 there was acute armed conflict in Gedo, moderate armed conflict in Hiraan and Galgaduud regions

and low armed conflict in the rest of southern/central Somalia. There was no evidence, the respondent contended, of conflict in the Afgoye Corridor (e.g. Nairobi evidence: R M Ali). The most recent evidence points to a continuation of significant fighting in Gedo, some in Hiran and problems beginning to appear in parts of Puntland.

376. Not all territorial gains and losses involved combatant casualties. Thus, the TFG captured one town after Al-Shabab pulled out (COIS 8.37) whilst conversely Al-Shabab retook a TFG town after the latter's forces vacated it, owing to a dispute over salaries (8.40 – 8.41).

377. As will already have become very apparent, the appellants sought to advance their claims to international protection by reference to the evidence regarding the actions of Al-Shabab towards those living or coming within areas of its control in southern and central Somalia. Although such areas included those in the north of Mogadishu, the subsequent withdrawal of Al-Shabab from the capital means that it is necessary to consider this aspect of the cases by reference to Al-Shabab areas outside Mogadishu. Mr Eicke submitted that Al-Shabab should not be regarded as a monolithic force, acting in the same manner in all the places it held. Furthermore, the evidence (e.g. UNSC monitoring December 2008/December 2009; Landinfo August 2010) suggested that there were not enough Al-Shabab fighters to run their areas on their own, so that it was necessary for Al-Shabab to form alliances with local clans and councils of elders. This fitted with the evidence from the Nairobi informants, that Al-Shabab would come to a village and then move on, leaving two or three people to control it.

378. Although Al-Shabab's core leadership was ideologically aligned with Al-Qaeda and global jihad, there was evidence that rank and file fighters had not shown a strong affinity for jihad (COIS 10.05). The same report suggested that Al-Shabab was losing support by its alienation of fellow Islamists and harsh interpretation of Sharia, based on the radical Wahabi strand of Islam. Dr Hammond, it was said, had apparently accepted the view in the British High Commission letter that different and sometimes contradictory Sharia based decrees were given, which may or may not be enforced.

379. Human Rights Watch World Report 2011, whilst referring to the grinding depression that characterised daily life and the harsh and intolerant measures taken in the name of Sharia law, nevertheless indicated that Al-Shabab rule in many areas brought relative stability and order, a fact not lost on residents. The UKBA Fact-Finding Mission also contained evidence to the effect that there could well be over reporting of human rights abuses in Al-Shabab-controlled areas by NGOs. The appellants' suggestion that the contrary was likely to be the case, owing to the difficulties in reporting, was not, according to Mr Eicke, born out by the many reports coming from the like of Shabelle Media News. Furthermore, Dr Hammond had given evidence of an instance where Al-Shabab had allowed men and women to be educated together in school, when this was a condition of a funding organisation.

380. Nor, according to the respondent, did the evidence suggest that Islamic groups had restricted people's ability to carry out business in such a severe way as to prevent them from supporting themselves. Furthermore, there was evidence that Al-Shabab itself provided certain services to the people under its control (Accord – Issue 21).

381. It was an important part of the appellants' case that a Somali who had spent even a relatively short period outside that country would immediately stand out as such by reason of changed language, clothing and gait, as well as the fact that they would be better fed, and that this would cause them, if in one of Al-Shabab's areas, to be regarded by Al-Shabab as being a spy for TFG/AMISOM or for Ethiopian or Western powers, or at least of having un-Islamic sympathies. The respondent contended that it was inherently improbable that the way persons spoke their own language would change perceptibly after an absence of only a few years, let alone a period of a few months, as Dr Hammond had asserted. An inability to understand the latest slang was more credible, but likely to be temporary. Also temporary were wearing different clothes and weighing more than others in the area. Mr Burns could provide no examples of a Diaspora person having difficulties with Al-Shabab and the evidence indicated that 68% of social service providers were from the Somali Diaspora. Furthermore, Mr Burns had no reasonable explanation for why there were no reports of the 16,000 persons who, it was common ground, had been returned from Saudi Arabia, being subjected to mistreatment by Al-Shabab. Bearing in mind Dr Hammond's evidence regarding remittances, the respondent submitted that there must be many Somalis in Al-Shabab-controlled areas receiving remittances from relatives in the West and, although Al-Shabab might wish to "tax" such remittances, there was nothing to suggest that people receiving them had come to the adverse attention of Al-Shabab due to their connections with Western countries. The expert evidence to the contrary was, according to Mr Eicke, based on speculation and interpolation from the fact that Al-Shabab was said to be "hypervigilant" of espionage by foreign forces.

382. Although the respondent accepted reports in the evidence of individuals being mistreated by Al-Shabab after being accused of spying, no details were given of these incidents; nor was there was anything to suggest they were connected with a person being away from Somalia. The same was true of the evidence regarding punishments meted out for violations of Al-Shabab's code of dress and behaviour. Any temporary differences occasioned by being away from Somalia could be addressed with the aid of the large UK Diaspora population, before the returnee went back to Somalia.

383. The respondent accepted that a returnee from abroad might be suspected of having money but there was no real evidence that this would lead to an increased risk of extortion of kidnapping. Indeed, there was no reason why a returnee, as opposed to someone receiving remittances from abroad, would be treated differently in this regard. This was particularly so, given the absence of evidence that the 16,000 Saudi Arabian returnees had suffered any problems.

384. Despite possible suggestions to the contrary, the respondent said there was no clear evidence that Al-Shabab immediately imposed requirements as to dress, beards, etc. on every person who was merely passing through one of its checkpoints. There was evidence of commuter traffic between the Afgoye Corridor and Mogadishu, with persons passing from the Corridor to the capital in order to work or transact business. The Bakara Market was also said to be in the process of relocating to the Afgoye Corridor, suggesting further visits to the Al-Shabab-controlled area that included the Afgoye Corridor. Nor was there any direct evidence to suggest a person who came to live in an Al-Shabab-controlled area was not allowed the required time to adjust to local requirements. Having family connections in the Al-Shabab area would also, according to the respondent, tend to negate any adverse interest that there might be in the returnee as a result of having lived abroad.

385. As for the position of women in Al-Shabab-controlled areas, the evidence of Dr Hammond and Mr Burns was both to the effect that women did, in fact, work in such areas and were also able to set up businesses there. Indeed, since as a result of the conflict, many women were now the breadwinner for their household, working was an imperative. There was also material in the Nairobi evidence that confirmed that Al-Shabab permitted women to work, although INGO in Somalia indicated that this varied from place to place. A report of January 2011 relating to Kismayo, which asserted that Al-Shabab had banned women from working completely, went on to state that they had in fact been "banned from working cafeteria" (sic) and "selling khat in the centre of town". A ban on selling khat, which also appears to have occurred in Bardhere, was disproportionately affecting women who were the main khat sellers, but was not, Mr Eicke submitted, evidence of a total prohibition on women being able to work.

386. Although some evidence indicated that women in Al-Shabab-controlled areas had to be veiled, there was no clear evidence, according to the respondent, of the degree of veil required and a photograph in appellants' bundle A, comprising an FSNAU Quarterly document, showed a woman in Shabelle in April 2011 who was clearly not veiled. The area was then Al-Shabab-controlled.

387. Nor was there evidence that suggested women generally had been stopped from travelling in Al-Shabab areas or restricted to Muhrem (having to stay home unless with an adult male). There was one report (allheadlinenews.com) from the Afgoye Corridor suggesting that there were such restrictions and a report also stated that women's ability to access markets was constrained by limitations on access to transportation because of rules regarding sex segregation. The problem appeared, rather, to involve women not accompanied by adult males, which, Mr Eicke submitted, could be solved by a clan member or friend, or by the driver of a minibus being likely to be male. In any event, evidence such as the SAACID report on the drought in Somalia made it plain that there were large-scale movements of women and children from Bay/Bakool to Mogadishu, which was inconsistent with the suggestion that women could not travel unless accompanied by an adult male. According to UNSC November 2010, although less than 5% of cases of sexual

violence were said to have been carried out by parties to the conflict, the continued fighting had rendered women and children more vulnerable to sexual violence because of displacement, destitution, the breakdown of the rule of law and the re-emergence of armed groups and freelance militias. Nevertheless, the respondent contended that there was no clear evidence the situation had deteriorated since AM & AM or that there was any greater risk in this regard to women in Al-Shabab-controlled areas. A conclusion that a real risk existed in the case of a woman said to be prone to sexual violence was actually based on factors personal to her. A woman returning to an area where she had clan support or other resources would plainly be in a different position to a lone woman in some IDP camps with no protectors or resources. There was, furthermore, evidence that rape was not an Al-Shabab policy and not condoned.

388. Dr Hammond's evidence confirmed that divorce is a practice known in Somalia and, due to the deaths of husbands or otherwise, the respondent contended that it was plainly not uncommon for women to be single parents. Indeed, one of the present appellants claimed in oral evidence he had left his wife and children in Somalia. Appellant ZF said she did not leave Somalia after her husband's death because she was looking after her sister's two children.

389. As for forced recruitment, there was some evidence of this, including in the UKBA fact-finding report, also involving the recruitment of children (COIS 22.26) but the prevalence of the practice was questionable. Mr Burns's report acknowledged forced recruitment was not common and that the tactics for recruitment appeared to favour indoctrination and wages. This was supported by the Landinfo report of June 2009. Mr Burns said it was not current Al-Shabab policy to recruit forcibly at gunpoint and the main risk at checkpoints was, he conceded, the payment of tolls. In fact, Mr Burns' description of Al-Shabab checkpoints suggested, according to the respondent, a structured and disciplined behaviour. Dr Hammond stopped short of saying that there would be forced recruitment at gunpoint although there might be "pressure".

390. Mr Eicke submitted that not all IDPs in southern and central Somalia lived in IDP settlements. According to the UKBA fact-finding report, IDPs tended to live with family members and the British High Commission letter quoted a source as saying that IDPs who had "higher levels of assets do not live in IDP camps".

391. UNOCHA indicators reproduced in the COIS Report showed that compared with 2010, there had been an increase in GDP per capita in Somalia and improvements in life expectancy, measles immunisation and population using improved drinking water. There had, however, been a deterioration in some indicators, including adult and under-5 mortality, as well as numbers of IDPs and refugees. In 2010, 43% of the population earned less than US$1 a day and inflation and continuing insecurity led to a decreased standard of living in all areas. Nevertheless, Somalia maintained a healthy informal economy said to be "partially based on livestock, remittance/money transfer companies and telecommunications". Dr Hammond's "Cash and Compassion" report described the powerful effect of the Diaspora in

terms of cross-clan support for IDPs and investment in infrastructure such as schools and hospitals. The Landinfo report of 22 August 2010 suggested that "most" Somalis were dependent on remittances from relatives abroad. Hawilaad (remittance) companies were able to count on the entire community to protect them from theft. The "Cash and Compassion" report also indicated that Diaspora could send money to family members displaced by war within a day or two of their dislocation, anywhere in Somalia, even to IDP camps. The use of electronic communications technology was confirmed by Mr Burns.

392. In AM & AM, the Tribunal noted that the humanitarian crisis in southern and central Somalia was widely said to be the worst in seventeen years, with 3.2 million people (43% of the population) dependent on assistance. The respondent submitted that, following AM & AM, the figure had reduced to about 2 million, and although this had risen, numbers were said still to be below those of AM & AM. At the end of 2010 the figure was 2.4 million, according to a COIS Report. Malnutrition rates had increased from 17.9 to 25% in Gedo and 25 to 30% in Juba region in less than six months.

393. The main reason for the rise in those needing food assistance had been the poor rains. This was a temporary phenomenon, although rainfall in 2011 was expected to be less than average (reliefweb.int). Shortfalls in funding had meant that the World Food Programme was only feeding 66% of the 1 million people who needed it, according to a BBC report. Many organisations undertaking humanitarian services in southern Somalia had ceased or reduced activities due to the security situation or problems in dealing with Al-Shabab (COIS/High Commission letter). The evidence still indicated that there were organisations providing food and humanitarian assistance, both in Mogadishu and elsewhere. The appellants' own expert evidence provided confirmation of NGOs operating in the Afgoye Corridor, notwithstanding Al-Shabab control.

394. In AM & AM the Tribunal found at [156] to [161] that the humanitarian crisis had not "reached the threshold where civilians per se or Somali civilian IDPs per se can be said to face a real risk of persecution or serious harm or treatment proscribed by Article 3 ECHR". Whether a person could be returned would need to be assessed on an individual basis. The respondent contended that there was no need to revise this assessment. Evidence of NGO's working in Al-Shabab areas could be found in many places in the Nairobi evidence and Dr Hammond accepted that NGOs were operating in the Afgoye Corridor. Assistance in Al-Shabab-controlled areas was also provided by Islamic, charitable and other organisations (Landinfo - 16 June 2009). The "Cash and Compassion" report instanced Diaspora using clan elders to make room for aid in Al-Shabab areas and the Daynille Hospital, in an Al-Shabab area, was built by North American Somali Diaspora.

395. At [186] to [190] the Tribunal in AM & AM considered that, whilst many residents had been displaced from Mogadishu and become IDPs, an equally sizeable number appeared to have made their way to areas of southern Somalia where they had

traditional clan connections. IDPs from more influential clans or sub-clans appeared to have a better chance of being tolerated in the area to which they had fled and IDPs who had a traditional clan area, especially if they had family or friends there, had better prospects of finding safety and support, although not if the area was already saturated with other displaced people. Those who lacked recent experience of living in Somalia appeared likely to have difficulty dealing with the changed environment, and those returning to their home area from the UK might be perceived as having relative wealth and be more susceptible to extortion. Whether the IDP was female was a significant factor, given the evidence of additional risks women and girls face of abduction, rape and harassment. Also relevant would be the evidence about prevailing economic conditions [160].

396. The respondent submitted that the evidence of Mr Burns strongly suggested that clan protection was still relevant, even in Al-Shabab-controlled areas. Landinfo were told (June 2009) that "great efforts are still made to help relatives and neighbours". It was common to find families consisting of six to eight members opening their homes to a further six to eight relatives and sharing what little they had; although without money transfers from abroad the very difficult living conditions would be significantly worse for most of the population. More recent population movement tracking reports confirmed, according to the respondent, that people did look for clan/social support in times of difficulty.

397. The appellants supported and adopted the submissions made by UNHCR in relation to the whole of southern and central Somalia being within the ambit of Article 15(c) at the present time.

398. As for the behaviour of Al-Shabab towards those it controlled, the appellants submitted that the only evidence relied on by the respondent for saying that enforcement of requirements and restrictions was not uniform was the Human Rights Watch Report "Harsh War, Harsh Peace", which merely referred to rules being imposed "in many areas". There was, however, no positive evidence about particular areas where the rules were not enforced. By the same token, the assertion that Al-Shabab was not a monolithic entity was undermined by the respondent's acceptance that Al-Shabab shared a common agenda – of defeating AMISOM-TFG – and sought justification in Sharia for its system of laws and conduct. The Human Rights Watch Report had been quoted at [165] of Sufi & Elmi, where the Court noted that Al-Shabab exerted "enormous control over personal lives and devotes remarkable energy to policing and penalising conduct that it deems idle or immoral" and that "no detail is too minute to escape the group's scrutiny". In many areas administrators have banned public gatherings, dances, musical ringtones, western music and moves, khat chewing and cigarette smoking. Men were prohibited from shaving beards and moustaches or wearing long hair or long trousers. Sometimes being "idle" involved playing soccer or talking among friends.

399. The Human Rights Watch Report also made reference to Al-Shabab leaders in many areas having "embraced amputations and executions as punishment and turned them into public spectacle.

400. Amongst the evidence relied upon by the appellants to demonstrate the harshness of Al-Shabab and, in particular, its paranoid fear of "spies" was the following. In July 2009, Al-Shabab beheaded several people in Baidoa who were accused of spying for the TFG. On 28 September 2009 Al-Shabab publicly executed two young men in Masla, having accused them of spying for the US, TFG and AMISOM (Amnesty International). A traditional elder in the Bakool region was beheaded on 7 September 2009 for allegedly making telephone contact with a TFG official (USDOS). The same USDOS report described Al-Shabab torture of TFG members and individuals suspected to be sympathetic to the TFG. In October 2009 people in Kismayo were forced by Al-Shabab to watch amputations. In Merka on 25 October 2009 people were forced to watch the executions of two people accused of spying. It was said of this incident that the executions were in retaliation for a reported US helicopter attack. Amnesty International in November 2009 described Al-Shabab as almost invariably carrying out its executions, floggings and amputations in public, thereby asserting their control through displays of cruelty and violence aimed at intimidating and instilling fear. In March 2010 Al-Shabab beheaded two employees of a telecommunications company, accusing them of spying for the TFG by helping direct TFG shells towards Al-Shabab positions. In April 2010 Al-Shabab was suspected of beheading five builders for having worked on the construction of the Parliament building in Mogadishu. In June 2010 there was a description of an Al-Shabab officer beheading an alleged spy. In October 2010 Al-Shabab executed two girls in Beletweyne having decided that they were spies. Residents were forced to watch. On 24 October 2010 Al-Shabab killed four men accused of spying for AMISOM/TFG. Two teenage boys were executed in Benadir in November 2010, one having been accused of sexual assault, the other of spying. Two teenagers in Beletweyne were executed on 22 March 2011, whilst on 10 April in Kismayo four men were beheaded, having been accused of espionage. 23 others were also accused of espionage and "crimes against Islam". Also in Kismayo, twelve days later, a mentally handicapped man accused of espionage was detained and tortured by Al-Shabab. On 3 May 2011 Al-Shabab arrested seven people accused of collaborating with humanitarian agencies. Six were killed. In Baidoa on 4 May 2011 Al-Shabab publicly executed two men accused of spying for the TFG near Baidoa. On 8 May 2011 Al-Shabab arrested at least ten people, including women, in Beletweyne, accusing them of having loyalty to TFG forces. On 4 May 2011 Al-Shabab executed two men in Baidoa for allegedly spying on behalf of Ethiopia, Kenya and the TFG. A Baidoa resident speaking anonymously said that "Al-Shabab has no evidence for what they did this afternoon. It is an awful crime against humanity to kill innocent people."

401. As for Al-Shabab religious rules, in October 2009 in Merka Al-Shabab ordered men not to shave beards, or they would be punished. Using unsterile tools, Al-Shabab in the same town began removing the gold and silver teeth of residents, alleging they

were a sign of vanity (August 2009). In October 2009 Al-Shabab sent men with whips to Bakara Market (in Mogadishu) to flog women found not wearing socks. They also detained women not wearing the Al-Shabab prescribed veil. In April 2010 in Jowhar Al-Shabab banned the use of bells in schools "saying they sounded like Christian church bells". In June 2010 30 people were detained in Afgoye for watching the World Cup on television. In August 2010 hundreds of men were arrested by Hisbul Islam for having shaved their beards and grown moustaches. In August Al-Shabab were reported to be checking people's mobile phones at a checkpoint and forcibly shaving heads. In October 2010 in Jowhar more than twenty men were arrested for refusing to grow beards or having trousers longer than to their ankles. The arrests were said to be "part of a wider operation in the regions". In January 2011 in Jowhar Al-Shabab banned men and women shaking hands and walking and talking together in public, this to be enforced by floggings. On 10 May 2011 a pregnant woman was beaten nearly to death in Kismayo by Al-Shabab for wearing a headscarf which was not the Al-Shabab decreed dress.

402. The Human Rights Watch Report, "Harsh War, Harsh Peace" (April 2010), has already been mentioned. It is also noteworthy, however, that that report spoke of a "climate of fear" preventing most people from speaking out against abuses of power and that the Al-Shabab rules and their enforcement "often seem to depend partly on the whims of the militiamen who enforce them". It could be beatings and detention for having an appearance disapproved of by Al-Shabab or because of the contents of one's telephone. No excuse was acceptable to Al-Shabab for appearing in public other than going to the mosque during the five daily prayer times. Thus, an old woman was whipped for being on the street at this time, as was a man in Medina. The same report described Al-Shabab as often threatening to kill people they suspected of harbouring sympathies for their opponents or who resist recruitment. Women were said to "bear the brunt of the group's repression and abuse". Women were said to need to be fully veiled and to wear the "particularly thick and bulky abaya that touches the ground and hides all physical contours". A former Al-Shabab fighter described patrolling in order to enforce women's dress codes and whipping those who were not dressed properly. One woman was detained and whipped for rushing out of her house, uncovered, to grab her young son.

403. The same report also referred to Al-Shabab having issued numerous death threats and carrying out many other killings that have received "scant publicity". Testimony gathered from refugees included a description of two brothers having their throats slit for carrying a camera in Ras Kamboni and of a woman seeing her husband and other men taken from a bus by Al-Shabab, being accused of supporting the TFG. They were never seen again.

404. There were numerous recorded incidents of Al-Shabab exacting "taxes", often by means that plainly amounted to extortion. A report on 5 August 2010 described those who refused to pay as being "harassed and often killed" with armed Al-Shabab personnel "demanding money from traders and jewellery from women". On 9 August 2010 Al-Shabab in Jowhar were said to be collecting farm products and

goods from local farmers by force. Al-Shabab claimed the money would be used to finance their war against TFG/AMISOM.

405. On 18 October 2010 Al-Shabab were reported as having banned "mobile phone banking" which was thought to be intended to block what was perceived as a rival to traditional money transfer schemes, known as Hawala, which Al-Shabab could influence – that is, tax – more easily.

406. On 7 January 2011 a camel herder was killed by Al-Shabab for refusing to hand over five camels. On 27 February 2011 the TFG's Minister of Agriculture and Livestock condemned the extremists for stealing animals from pastoralists under the pretext of collecting zakat. On 24 April 2011 Al-Shabab imposed "fees" on pupils and teachers in Jowhar, stating that students must select one of two options to pay the money or else to contribute personally to jihad and anyone who did not do either of these "will be seen as anti-Islam", according to the Al-Shabab commander in charge of finance. In Afgoye in May 2011 many business owners were said to have closed their shops because they were unable to pay the "fees" imposed by Al-Shabab. In the same month, 40 traders in Baidoa were said to have been arrested after they refused to pay tax.

407. According to Dr Hammond, an individual stopped at an Al-Shabab checkpoint could expect to be asked where they were going to or from, the nature of their business and how much money they had with them. Mr Burns considered that travellers "acting out of the ordinary" were detained at such roadblocks for questioning. Dr Mullen described to us trivial personal items such as dental fillings and sunglasses as determining passage or interrogation at Al-Shabab checkpoints.

408. The appellants relied on the evidence of Mr Burns that a returnee from the West would easily be identified by Al-Shabab security and political structures and viewed with significant suspicion. If the returnee could not provide satisfactory responses to questioning, indefinite imprisonment would be the normal course or execution if thought to be a spy. Dr Hammond also spoke of executions by Al-Shabab of those suspected of spying for Western governments or the TFG/AMISOM.

409. The appellants contended that there was, in fact, significant evidence of forced recruitment by Al-Shabab. Human Rights Watch in April 2010 reported that Al-Shabab had kidnapped and killed young men for refusing offers to join the group as fighters. Several of those interviewed by Al-Shabab for the purposes of recruitment had fled to Kenya after being threatened. In May 2010 UNICEF and the UNSG's Special Representative on Children and Armed Conflict were "appalled to learn that the recruitment and use of children as soldiers by armed groups in Somalia is rising". In November 2010 the UN Secretary General confirmed a "considerable increase" in the scale of recruitment and use of children during the previous two years, describing the practice as having become "more systematic". On 12 May 2011 an Al-Shabab official, learning that the TFG was recruiting fighters in recently seized

towns, stated that the best way to deal with this was to prevent youth from travelling from Al-Shabab areas.

410. There was evidence of forced marriage and the killing of those who refused to comply. In October 2010 Amnesty International received reports of girls being forced to marry Al-Shabab members, whilst in the same month it was reported that a woman had "attempted suicide by drinking rat poison" after Al-Shabab had tried to force her to marry. They dismissed her claim that she was already married "saying that her husband was a TFG spy".

411. All this, according to the appellants, underscored the finding at [159] of AM & AM, where the Tribunal acknowledged as "significant" the evidence of Alex Tyler, the UNHCR's Protection Officer, that "Al-Shabab cells are likely to investigate any newcomer to their areas to determine whether the individual is connected with the TFG or otherwise opposed to them". At [160] the Tribunal also noted that "those who lack recent experience of living in Somalia appear more likely to have difficulty dealing with the change in environment".

412. The appellants urged us to accept the evidence of Dr Hammond and Mr Burns, that a variety of clues, such as gait, speech, clothes worn, a healthy and well-fed appearance, and so forth, would show a person to be a returnee. Even if some of these were temporary characteristics, the risk as a returnee would be immediately present. Although the respondent had stressed the absence of evidence regarding harm coming to the 16,000 Somalis returned there from Saudi Arabia, she had produced no evidence about the numbers of Somalis removed from Europe or the West generally and no evidence about what had happened to them. This suggested no significant numbers of Somalis had in fact been removed. There was, simply, a lacuna regarding the evidence as to the fate of the Saudi returnees. Furthermore, Dr Hammond stressed that there was a difference between the perception on the part of Al-Shabab of someone coming from an Islamic country and someone coming from the West.

413. It was likely, according to the appellants, that if a returnee from the United Kingdom received money from the United Kingdom Government to assist in return, Al-Shabab would learn about this, bearing in mind the evidence that they monitor remittances. Al-Shabab's finding that the person had received money from the UK Government would create or compound suspicion that the person was working for that government against Al-Shabab.

414. The appellants submitted that the humanitarian situation in central and southern Somalia had deteriorated significantly since the ECtHR received submissions and evidence in Sufi & Elmi. For instance, the Food Security and Nutrition Analysis Unit on 30 June 2011 updated the number of people in crisis from 2.4 to 2.85 million (January to June). The overwhelming majority of the 2.85 million were in the south where there was "extremely limited food assistance due to insecurity". The 1.75 million people in crisis in the south included rural, urban and IDPs, an increase from

1.4 million in January. Poor farmers in lower Shabelle and Bay regions were joining the numbers of people in crisis due to the very poor Gu harvest outlook. On 30 June Oxfam GB, writing of lower Juba, described the "devastating drought and ongoing conflict" as having left people "facing starvation". One elderly man told the Oxfam official of a Somali proverb: "You use your feet to escape during war and drought". Many were fleeing to Kenya but parts of that country had had as little rain as Somalia. On 1 July 2011 the Danish Refugee Council described Somalia as being on the brink of disaster, with war and drought forcing more than 30,000 people to flee Somalia every month. On 20 June 2011 FSNAU estimated that the total number of people in need of humanitarian assistance would increase in the second half of 2011, with the main driving factors being the worsening food security situation, including unfavourable prospects for the Gu season harvest. The UNHCR on 5 July 2011 noted that the "devastating drought has forced more than 135,000 Somalis to flee so far this year. In June alone, 54,000 people fled across the two borders [Kenya and Ethiopia], three times the number of people who fled in May". UNHCR estimated that a quarter of Somalia's 7.5 million population was now either internally displaced or living outside the country as refugees. The organisation was "particularly concerned by unprecedented levels of malnutrition", especially among refugee children. On 5 July 2011 the Famine Early Warning Systems Network was reported as stating that localised famine could be witnessed in some of the worst drought-affected areas in southern Somalia in September.

415. At this point it is convenient to refer to some of the more recent documentary evidence adduced by the respondent. On 30 June 2011 allafrica.com reported information given to IRIN that relief agencies were looking at the option of cash transfers, saying that the system helped beneficiaries by giving them freedom of choice. In February 2011 a family in Baran started receiving cash, rather than food, thereby enabling the head of the family (a mother of seven) to decide how to spend the aid. The protection cluster update weekly report of 1 July 2011 reported the UN as recently stating that Somalia was experiencing "the worst drought in over 60 years", with over a million Somalis located in "nearly unreachable areas … for humanitarian aid". Save the Children reported an average number of 1,300 Somali refugees arriving everyday at Kenya's Dadaab Camp, many of them children, having travelled weeks on foot to reach the camp. On 6 July, a news report described how the Somali Diaspora were helping the nation through its crisis. Interviewed in London, the CEO of Dahabshiil, a global money transfer company which "sends more than US$1 billion to Somalia every year" described how, when there was a crisis, individual people who were in the Diaspora wanted to send money back home. The CEO said that remittances were an important way for people to make sure those they love get through hard times.

416. On 6 July 2011 Al-Shabab was reported, from Mogadishu, to be calling upon "both Muslims and non-Muslims to act quickly to deliver humanitarian assistance to the drought-infected Somali people". The spokesman, Sheikh Ali Mohamed Rage, said that those wanting to help the starving should contact Al-Shabab officials. Shortly after, Reliefweb referred to the suspension in 2009 of US$50 million of US

humanitarian assistance for Somalia "out of concern that it might benefit Al-Shabab, designated as a terrorist organisation". Humanitarian assistance to populations under the control of Al-Shabab was "under close scrutiny by the United Nations Security Council since its Resolution 1916 of March 2010, as the group represents a threat to peace and security and is suspected of diverting humanitarian aid to fuel its own war efforts". On 6 July, BBC News also reported the lifting of the ban on foreign aid agencies by Al-Shabab; however, an article accessed on 13 July 2011 described Al-Shabab fighters as having detained in Baidoa personnel working for international relief organisations, namely, UNICEF and the Red Cross. The aid personnel were taken to an unknown location and at the time of writing the reason for the incident was not known. This "comes as Al-Shabab said last week it was lifting the ban on aid agencies to help the starving people".

417. BBC News Online July reported the accounts of individuals who had reached the Kenyan border from south Somalia. Weheleey Haji and her five children trekked for several weeks from their homeland in Somalia, walking for 22 days, drinking only water. Her baby had been born under a tree in the Dadaab Refugee Camp, just after arriving. Rukiyo Noor had been travelling for twenty days with a 1 month old baby. Told about the Al-Shabab ban on foreign aid agencies being lifted, Mohamed Abdi, walking with his wife and children towards Dadaab, was sceptical. He said that Al-Shabab militiamen had told the family to turn back, saying "it was better to die in our motherland. They wanted us to pray for the rains." Mr Abdi, however, said he had no choice and set out on the journey. Although there was "relative peace in Somalia where I live", the family had still decided to flee because of the drought.

418. On 11 July it was reported in Washington DC that USAID would contribute approximately 19,000 metric tons of food to assist Somalis in need. On 13 July, the BBC reported that UK charities were poised to boost aid to Somalia and that the Organisation of Islamic Cooperation Aid Agency had started distributing aid in Mogadishu, following the lifting of the ban by Al-Shabab.

419. The appellants submitted that the ECtHR's finding at [292] of Sufi & Elmi, that having to seek refuge in an IDP camp would constitute Article 3 ill-treatment, was made in spite of the evidence regarding the supposed "urbanisation" of the Afgoye Corridor:-

> "The Government submitted that there is evidence of increased urbanisation of the Afgoye Corridor. Although this assertion is supported by a number of the country reports, it is not clear to the Court whether or not urbanisation has improved conditions for the majority of IDPs. In fact, some reports suggest that IDPs are experiencing increasing difficulties in finding shelter in the Afgoye Corridor as landlords are either selling land that IDPs live on or are charging rent that they cannot afford."

420. As for domestic authority, in NM, the Tribunal found that "any person at real risk on return of being compelled to live in [an IDP camp] as having little difficulty in making out a claim under Article 3, if not under the Refugee Convention also" [102].

In HH, the Tribunal said that a person who had been displaced from his or her home in Mogadishu "without being able to find a place elsewhere … with clan members or friends, and who, as a result, is likely to have to spend any significant period of time in a makeshift shelter along the road to Afgoye, for example, or in an IDP camp, may well experience treatment that would be proscribed by Article 3 of the ECHR". In AM & AM the Tribunal considered that having to live in the dire humanitarian conditions of an IDP camp could amount to treatment in breach of Article 3 and, in doing so, according to the appellants, rejected a submission from the respondent, similar to that now advanced, that "of and by itself, poor humanitarian conditions in Somalia, even if in an IDP camp, would not establish an Article 3 breach" [87].

421. The appellants submitted (citing Limbuela v Secretary of State for the Home Department [2005] UKHL 66 and Moldovan v Romania No 2 (2005 App. 41138/98) that whilst a mere failure to provide a basic level of support which resulted in destitution and degradation would not, without more, engage Article 3, the positive institution of a regime which resulted in such destitution and degradation could amount to "treatment" within Article 3. Thus, dealing with the evidence regarding displacement from Mogadishu as a result of the armed conflict there, the predicament of those displaced was not a consequence of naturally occurring phenomena or lack of resources in Somalia but a consequence of the treatment by agents of serious harm. The conflict was also responsible for the destruction of physical and social infrastructure, indispensible for people in such a position to sustain themselves adequately. That breakdown had diminished if not extinguished the capacity of state and non-state institutions, including traditional systems such as elders, clan leaders etc., to provide protection to IDPs, thereby leaving the latter particularly vulnerable to criminal violence. The actors were also responsible for denying or substantially restricting humanitarian access to the displaced.

422. Looking at humanitarian circumstances in the context of Article 15(c), the appellants referred to [94] of AM & AM where the Tribunal found that "within the context of Article 15(c) … the serious harm involved did not have to be a direct effect of the indiscriminate violence; it was sufficient that there was causal nexus of some kind", not including, however, the situation where the consequences were only remotely connected with the violence.

423. As we have already indicated, in the aftermath of the events in Mogadishu of August 2011, the appellants and the respondent chose to put in updated evidence regarding the position outside Mogadishu. So far as armed conflict was concerned, both sides pointed to instances of fighting between the TFG and Al-Shabab, in various places outside the capital. The appellants noted that there was now fighting in the Gedo region, an area previously perceived to be relatively free from conflict. According to the appellants, this underlined the volatility of the situation and pointed to there still being a risk of serious harm by reason of indiscriminate violence. Amongst other things, on 27 August 2011 Al-Shabab were reported to have set fire to two engines used to draw water from wells in Garbaharrey, Gedo, thereby exacerbating the situation for residents who were already suffering from the effects of famine. On 29

August, pro-government forces seized four villages in Gedo, previously held by Al-Shabab.

424. In August 2011 there were reports of Al-Shabab fighters who had left Mogadishu arriving in Kismayo and Baidoa in Lower Juba. Fighting was taking place with government forces near Afmadow. On 21 August, plans to launch "a massive offensive" against Al-Shabab in Lower and Middle Juba regions were said to be at their last stage of preparation. On 6 September, US drone attacks in Kismayo were followed by reports of Al-Shabab suspecting people near their bases there of spying, leading to the arrests of many.

425. There was a report on 21 August of fighting between Al-Shabab and another faction in Hiran, whilst in both late July and August, there were reports of targeted killings and roadside bombs in Puntland, with the Puntland Minister of Security expressing concern that Al-Shabab, having withdrawn from Mogadishu, would relocate to his region. On 3 September 2011 in Galkayo, 60 people were killed and 75 wounded (mostly civilians) following two days of fighting between Al-Shabab and security forces.

426. Analysing the latest positions regarding armed conflict outside Mogadishu, the respondent considered that it remained the case that fighting was confined to certain areas. That finding had led to four of the six districts of Gedo coming under the TFG's control, with Garbaharey and Bardere remaining with Al-Shabab. Elsewhere, pro-TFG militias were said to have gained further ground in Hiran, Galgaduud, Bay and Bakool, and Lower Juba (African Union, 13 September). The same report considered that the security situation in Puntland and Galmudud had deteriorated. In Puntland, there was fighting between the region's security forces and pro-Al-Shabab militias, whilst in Galmudud, rival clans had been fighting each other. On the other hand, the respondent contended that the evidence showed security had improved in border areas between Somalia and Ethiopia/Kenya.

427. The AI Briefing described fighting outside Mogadishu in southern Somalia as "sporadic". There were suggestions that Al-Shabab fighters from Mogadishu had mobilised in the Gedo region, whilst there were tensions reported amongst the TFG militia controlling areas of southern Somalia. In the Mudug region of central Somalia, fighting had erupted at the end of August in Galkayo, causing massive displacement from Galkayo Town to nearby villages (Protection Cluster Update).

428. In the latest evidence served by the appellants, there are various reports of Al-Shabab ill-treatment of those under its control. On 23 July Al-Shabab were said to have beheaded two animal herders in Afgoye and announced that a further three would suffer the same fate. The herders had refused to surrender their animals to Al-Shabab. On the same day Al-Shabab arrested four teenagers in Lower Shabelle, accusing them of activities against Islamic religion because they had been watching films on their mobile telephones. On 25 July Al-Shabab imposed a ban in Afgoye on the slaughter and sale of domestic animals, whilst a day later Al-Shabab arrested 30

women in the Afgoye Corridor because they had allegedly broken a rule relating to the wearing of thick and broad veils. On 15 August Al-Shabab executed a man accused of collaborating with the TFG in Hiran and on 16 August they arrested and tortured a 72 year old man accused of supporting the TFG. On 18 August there was a further report of women being charged with not wearing appropriate veils in public in Afgoye. On 24 August there were said to be increased threats and harassment of civilians in Kismayo from Al-Shabab and that anyone coming to the city would be interrogated because the organisation wished to know the motive behind their movements. On 29 August Al-Shabab were said to be maintaining checkpoints on the outskirts of Mogadishu, and behaving antagonistically towards those who say they knew nothing of the situation in Al-Shabab's former strongholds. On 27 August there was a report of young men fleeing the Afgoye Corridor, following the kidnap and beheading of a young person by Al-Shabab.

429. The respondent maintained her submission that there was not a reasonable likelihood of ill-treatment at Al-Shabab checkpoints for the majority of Somalis using them. Support for this was identified in the August 2011 Landinfo report which concluded that people could travel relatively freely, both in government controlled areas and in areas controlled by other groups including Al-Shabab. This was so even though both sides had reintroduced some checkpoints, mainly at the entrance to Mogadishu. Some Al-Shabab checkpoints were said to be manned by children as young as 12 years old. Refugees arriving at the Dadaab camps in Kenya told Landinfo that they had not suffered an excess of attention from the Al-Shabab checkpoints in Lower Juba. In March 2011, however, several interviewees said there could be some risk in travelling to the south but that people travelled in spite of this. The main challenges related to the crossing of frontlines "not least entry into Shabab areas where newcomers risk accusations of espionage. People who are most at risk in Shabab-controlled areas are young men and to some extent young women. But given Shabab's need for revenue, people are generally quite safe, as long as they can pay for themselves at checkpoints. Women usually travel with a male relative or in groups."

430. The respondent also relied on a Landinfo report in support of the proposition that those living in Al-Shabab areas who had relevant clan links could be in a better position. Al- Shabab administration was said to be able to grant "some influence to local people and clan elders, but only to a certain extent and only to the extent that it does not threaten Shabab's political goals on the local level or otherwise. The influence of the council of elders remains restricted even here. According to various international sources and Somali representatives, the expulsion of international aid organisations is a good example of this lack of influence." Later in the same report there was reference to examples "indicating that the authority of the elders is undermined and eroding in areas controlled by Al-Shabab". Some detected that, behind the religious rhetoric of Al-Shabab, there were "also the expression of social inequalities and desires for political power among rival clans and groups".

431. A Landinfo report of July 2011 indicated that some families saw the benefit of having a son-in-law affiliated with Al-Shabab "as this can provide protection and opportunities, especially amongst minority groups and minor clans". However, this category of marriage differed little from the so-called "black cat" marriages of the days of the warlords. Many Al-Shabab soldiers belonged to marginalised minority groups. Those who escaped Al-Shabab areas for having transgressed the organisation's rules were unlikely to find Al-Shabab devoting resources to look for them. The figure of 3,570 IDP movements from Mogadishu to Afgoye in June to September 2011 undermined, according to the respondent, the contention that there were high risk and difficulties at checkpoints for the ordinary Somali.

432. As for the position of women, the Protection Cluster Update of 26 August 2011 reported that 130 women in Jowhar had received scholarships, including accommodation in the vocational training centre. The respondent contended that the situation in Al-Shabab areas was in practice far more flexible than suggested by the appellants. Women did work, since they needed to do so to support their families. The Landinfo report of July 2011 described women who did not comply with the organisation's strict dress code as being "at risk of harassment". Nevertheless, Shabab was said to have to some extent to tolerate women being visible in public. There was some evidence that Al-Shabab dress codes for females were related to revenue raising, in that women were forced to buy new clothes or fabric. Much of the evidence related to forced marriages was anecdotal and needed to be treated with caution.

433. The latest evidence on forced recruitment disclosed a complex picture. Religious arguments were "consistently used in the context of recruitment, while threats and violence, according to well-informed sources, are currently not usual or necessary yet no-one has ruled out cases involving the use of force". Although there were instances of older men being approached, "the most important target group is still young boys aged 12-16 years. The children are lured and instructed to fulfil their duty as devout Muslims."

434. The AI Briefing stated that, although the large scale movement of Somalis across the Ethiopian and Kenyan borders had reduced since June/July 2011, many people continued to seek refuge in countries neighbouring Somalia and that there were "many instances of human rights abuses against people in flight, such as looting, extortion, and sexual violence". Those, particularly men, fleeing towards Puntland had been refused passage at checkpoints and either deported or arrested.

435. Turning to the wider humanitarian situation outside Mogadishu, the appellants pointed to the further declarations by the UN of famine, so as to cover most regions of southern Somalia. The appellants pointed to recent evidence that, despite earlier announcements to the contrary, Al-Shabab continued to prevent or restrict aid agencies from operating in areas they controlled. This had resulted in agencies being unable to reach an estimated 2.2 million Somalis (US Secretary General's Report of 30 August). Thus, for example, on 21 July, Al-Shabab allegedly refuted the UN's

declaration of famine in Somalia, saying that Somalis had no need of assistance from non-Muslims. The lifting of the ban on aid agencies did not, according to the report, include those who had been banned earlier, because Al-Shabab regarded them as "spies" (Somalia Report). The appellants also pointed to various pieces of evidence regarding Al-Shabab preventing people from fleeing its areas, to escape the consequences of the famine.

436. For those who, nevertheless, managed to travel, the UN Secretary General's Special Representative on sexual violence in conflict stated on 11 August that, during the journey from Somalia to the Kenyan camps, "women and girls are subjected to attacks, including rape, by armed militants and bandits" and that Al-Shabab militants were said to be abducting girls for forced marriage to fighters. On 23 August, a 6 year old girl was taken by hyenas, whilst travelling. On 3 September five people were killed and five injured when bandits opened fire on a minibus travelling from Bal'ad to Jowhar.

437. On 20 July, famine was declared in southern Bakool and Lower Shabelle and on 3 August famine was declared in parts of middle Shabelle and the Afgoye corridor. The criteria for a declaration of famine required acute malnutrition exceeding 30% in a given area – the actual malnutrition rates were as high as 58% in some areas; a crude death rate exceeding two in 10,000 per day – in some parts the rate was fifteen per day; and food access below 2,100 calories per day for at least 20% of the population. Malnutrition rates in the Somali famine-declared areas were "the highest in the world, with peaks of 50%. Nearly half of the Somali population, 3.7 million, is now in crisis and an estimated 2.8 million of those people reside in the south" (Somalia: Famine and Drought Situation Report 23 August).

438. Although the appellants acknowledged that the evidence clearly showed that some people were being provided with some assistance, it was submitted that it would be wrong for the Tribunal to conclude that this sufficiently ameliorated the situation in which the appellants in the present appeals would find themselves if returned.

439. The appellants reiterated their submission that it would be wrong to treat humanitarian considerations as analogous to another naturally occurring phenomenon, notwithstanding that climate conditions played a significant part in the current crisis. The human conduct involved could, the appellants contended, be described as "treatment" within the meaning of Article 3 of the ECHR.

440. According to Professor Menkhaus (8 August) all of Africa was relatively used to droughts and floods and the local population historically had developed "pretty elaborate coping mechanisms. But those coping mechanisms have been overloaded in recent decades by a wide range of factors". The coping mechanisms had become broken; "particularly in Somalia". According to Menkhaus "a big part of the crisis in Somalia is not just that people used to be able to farm for subsistence and now can't; there are lots of people whose purchasing power has been badly eroded". The Professor identified a "perfect storm" in Somalia, involving the worst drought for 60

years and people displaced by years of warfare. He attributed the fact that Somaliland had not seen famine to that region's reasonable level of security and stability, in contrast to Somalia. That view was supported by Professor Samatar, who noted that neither the drought of the mid 1970s nor that of 1984 produced famine in Somalia "because the Somali state was able to mobilise the population and to seek the assistance of the international community to deliver aid to the needy". The last time Somalis suffered major famine was in 1992 which, according to Samatar, was not caused by drought, but by marauding warlords. As for the present position, Professor Samatar considered that the Somali people had been "made vulnerable to ecological disturbances" because of the US war on terror, and consequent backing of the Ethiopian invasion; the TFG, which was "known for its corruption, incompetence and internal strife"; and Al-Shabab, who obstructed the provision of international assistance and whose existence led to the US blocking aid to what is identified as a terrorist group.

441. The TFG prime minister acknowledged that the insurgency and the violence that Al-Shabab imposed were "a fundamental cause of the famine we are suffering". However, the UN Secretary General's report on Somalia noted that "deforestation and land degradation in southern areas of Somalia have increased exposure and vulnerability to the effects of natural hazards and climate change, such as drought and floods. Much of the deforestation can be attributed to the charcoal trade as the land where the acacia forests have been cut down for charcoal, such as between the Juba and Shabelle rivers, often becomes unsuitable for grazing, leading to increased conflict over land and water and the displacement of local population".

442. The respondent pointed to recent evidence that, it was submitted, showed improved aid access in southern Somalia. This extended not only to Mogadishu but to the Afgoye corridor. OCAJ's Humanitarian Overview of August 2011 stated that food assistance had been scaled up significantly, from 730,000 people in July to 1.3 million in August. In the south, 648,000 people had benefited from food distributions in August, which was double the number of people reached in July. Emergency water services for each 1.7 million people in August, and 140,000 in July. Coverage of areas facing famine was, however, still a major challenge for the humanitarian community. Operations had been scaled up substantially in Gedo and parts of Lower Juba. According to a UNSC Report of 30 August, during the past two months over 23,300 severely malnourished children in central and southern Somalia had been provided with ready-to-use therapeutic foods. Continued support for the drinking water systems, including in Mogadishu and the Afgoye corridor, was providing safe drinking water to more than 1.9 million people. Thirteen hospitals across southern Somalia received enough emergency health kits to assist a catchment area of 130,000 for three months. Over 24,500 farmers and pastoralists had, according to the United Nations, refused agriculture and livelihood interventions to prepare for the coming rains in October to December.

443. According to Relief Web, the ICRC had been able to provide food aid in Al-Shabab areas outside Mogadishu. A Relief Web map showed that all 470,000 of those

targeted in Mogadishu for aid had been reached. In the central regions, of a target of 320,000, 313,488 had been reached; in southern regions the figures were 440,000 and 415,326.

444. Al-Shabab had recently allowed Turkey to distribute assistance to people living under the organisation's control. Turkish humanitarian organisations were providing relief in Bay and Bakool regions, in cities like Baidoa and Kismayo. Constraints on the provision of aid included limitations on international funding and infrastructure problems. Professor Menkhaus was quoted as saying that the "challenge right now is just to get food aid in" but that the second challenge was towards rebuilding livelihoods. The question of governance of Somalia remained outstanding. Although Al-Shabab "may be crumbling, ….the TFG remains irrelevant and is just the source of massive corruption". The Professor reported in August that there had been a shift in US policy, which now involved protecting NGOs from being prosecuted under the Patriot Act for doing business with Al-Shabab. Nevertheless, Al-Shabab continued blocking food aid.

445. The respondent submitted that problems of access for the UN World Food Programme had not been experienced by all international aid agencies. Thus, the ICRC was able to operate in Al-Shabab areas.

446. AI's briefing described the humanitarian crisis in southern and central Somalia as having already claimed tens of thousands of lives, of which the majority were children. The crisis has now affected some four million people including three million living in south and central Somalia "and is predicted to worsen, with the onset of the rainy season. Aid agencies are concerned that contagious diseases, including cholera and measles, will spread further".

447. AI noted Médicins Sans Frontières as stating that many areas in southern and central Somalia remained without access to humanitarian aid and that Al-Shabab, " already suspicious of western agendas, has placed bans on foreign staff, on the supply of medicines and materials by air, and on vaccination activities" (5 September). There continued to be reports of humanitarian workers being abducted and held temporarily by Al-Shabab, as well as temporary arrests of relief workers in areas controlled by the TFG militia. In Mogadishu, Turkish relief workers had been held by TFG forces after returning from delivering aid to Al-Shabab controlled areas. Al-Shabab was reported to be preventing populations in need of assistance from moving to areas controlled by the TFG, both in Bay and Bakool and in lower Shabelle. Persons who had fled from famine stricken villages to Baidoa were reportedly turned back by Al-Shabab in late September.

The Tribunal's findings

(a) Article 15(c)

448. On the evidence before us, we do not consider that the internal armed conflict which obtains in southern and central Somalia (outside Mogadishu) is at present at such a level as to place everyone there who is a civilian at real risk of the harm described in Article 15(c). We acknowledge that the starting point in AM & AM in effect requires us to identify a material change. The evidence of the intervening years, including large Al-Shabab territorial gains, constitutes such a change, albeit that there are areas where the organisation's rule is being challenged. The current fighting, as that of the recent past, is both sporadic and localised. Like the ECtHR, our assessment of the evidence does not accord with what appears to be the thrust of the UNHCR Eligibility Guidelines and there is nothing in the update to those Guidelines which suggests a different stance is called for. There is copious evidence to the effect that large parts of southern and central Somalia are relatively peaceful, in the sense that there is no conflict taking place there. In Al-Shabab areas there is a dark side to that peace, as we have seen and will shortly have to address.

449. Also like the ECtHR, we stress that, in individual cases, it will be necessary to establish where a person comes from and what the background information says is the position in that place. If fighting is going on, whether symmetrically or asymmetrically, that will have to be taken into account in deciding whether Article 15(c) is applicable. Although an armed conflict may exist across an area, without there having to be actual fighting in every part of that area, the assessment is ultimately a fact-sensitive one; and we consider the present reality to be as we have found.

450. Like the Tribunal in AM & AM, we take the view that indirect forms of harm, such as may be encountered by an IDP in an IDP camp, fall to be taken into account for the purposes of Article 15(c), provided that the person's circumstances (such as finding themselves in such a camp) can properly be said to have as an operative cause the armed conflict. This would be the position for those who have to flee a real risk to life and person in Mogadishu, by moving into the countryside. As can be seen from the evidence, however, the more recent picture in 2011 is of people fleeing the drought by moving into Mogadishu.

(b) Article 3

451. As is apparent from Sufi & Elmi, there are three elements to Article 3 risk in southern and central Somalia: the armed conflict, the risks inherent in living under Al-Shabab rule; and the humanitarian position, consequent upon the prolonged drought. We address each in turn.

Armed conflict

452. In view of our finding regarding Article 15(c), there can be no question of a returnee being at real risk of Article 3 harm in southern and central Somalia solely on account of the situation of armed conflict or "general violence" (Sufi & Elmi [271]). An individualised assessment is required, depending on the location concerned.

Living under Al-Shabab

453. At [277] the ECtHR in Sufi & Elmi concluded that "a returnee with no recent experience of living in Somalia would be at real risk of being subjected to treatment proscribed by Article 3 in an Al-Shabab-controlled area". It did so on the basis of the evidence before it regarding Al-Shabab's enforcement of "a particularly draconian version of Sharia law" [273] and the impossibility of predicting the fate of a returnee who came to the attention of Al-Shabab for failing to comply with that organisation's rules, having regard to reports that "Somalis have been beaten or flogged for relatively minor infringements" [276].

454. In these proceedings, the respondent urged the Tribunal to draw somewhat different conclusions from the evidence that was before us. It was submitted that this evidence disclosed that Al-Shabab was not, in fact, a monolithic organisation and that its practices varied from place to place. There was evidence of Al-Shabab tempering its behaviour, as for example in Dr Hammond's evidence regarding mixed education being permitted. Furthermore, the nature of Al-Shabab's organisation and its relative lack of manpower resulted, at least in various places, in it having to forge working relationships with existing governing structures, such as elders, which had the result of tempering the harshness of its social controls.

455. All this is true; but we do not find that it much assists the respondent's case. It is, in practice, extremely difficult indeed to identify with any degree of precision the places where a more moderate Al-Shabab rule pertains. Furthermore, there was evidence that Al-Shabab leaders rotate from place to place on a regular basis, presumably in part to ensure that that leadership remains unsullied by what is perceived as un-Islamic ways of life. It may, of course, be the case that, as matters unfold, evidence regarding a particular area will, indeed, show the requisite stability created by a permanent, "moderate" Al-Shabab governance. However, that is not the position at present.

456. Both the appellants and the respondent contended that the picture of what goes on in Al-Shabab areas was not an entire or true picture. The respondent submitted that, based on certain evidence, it was likely that Al-Shabab atrocities were over-reported. It is certainly the case that, looking at the various bundles of evidence before us, the same incident occurs in more than one news report. The fact that that is clear to us suggests that information gatherers, such as Human Rights Watch, are likewise able

to identify such cases and ensure that anything they say on the matter is not thereby exaggerated.

457. The appellants, again on the basis of a certain amount of evidence, submitted that it was likely there was under-reporting of Al-Shabab atrocities and other bad behaviour. As a matter of common sense, one might imagine that an individual beating of a person in a remote village in Somalia is less likely to be reported than the beating of a person in a city, town or village in the United Kingdom. But, be that as it may, we do not need to have recourse to any supposition as to under-reporting. It is abundantly plain from the evidence before us, only a part of which we have specifically mentioned above, that Al-Shabab regularly behaves in a way which seriously violates fundamental human rights.

458. This does not mean that everyone present in an Al-Shabab area faces a real risk of Article 3 ill-treatment. The ECtHR did not so find; and nor do we, on the evidence before us. Plainly, those who are of the same ideological persuasion as Al-Shabab are not at the same risk as those who are not. In so saying, we are mindful of the evidence which suggests that a majority of the population falls in the latter category.

459. The ECtHR considered that persons who were able to "play the game" (to use a phrase borrowed from the UKBA FFM report) would also not be at real risk; but that a person without recent experience of living in Somalia would be unlikely to be able to do this. We will examine in due course the significance of "playing the game" in the context of the Refugee Convention. First, however, we must assess the evidence, in order to determine whether it can be said returning after a significant absence from Somalia would, indeed, preclude a person from conforming with Al-Shabab's requirements.

460. Mr Eicke submitted that the extremely strong links that exist between the Somali Diaspora and people in southern and central Somalia, particularly assisted by modern means of telecommunications, meant that it would be perfectly possible for a Somali in the United Kingdom to enquire, either directly or through Diaspora organisations or groups, as to what was necessary, by way of compliance with Al-Shabab requirements, in the area to which the person concerned would be returning. To some extent, this is so, however, there are two reasons why it does not materially carry matters forward for the respondent.

461. First, there is the problem of Al-Shabab's rotating leadership, to which we have just referred. It is, accordingly, reasonably likely that – despite the potential returnees' best efforts – any information gleaned would be out of date before he or she was actually able to return. Secondly, there is the issue of the alleged heightened vulnerability to adverse Al-Shabab interest of a person returning from the United Kingdom or other countries of the West.

462. It was in relation to this issue that the appellants drew particular attention to the evidence regarding Al-Shabab's generally paranoid behaviour and, in particular, its

apparent fear of spies. There is sufficient of this evidence, often of a harrowing nature, to support the appellants' contention that one of the ways in which a person may most seriously fall foul of Al-Shabab is by being suspected of being a spy, whether for TFG/AMISOM, the Ethiopians, the USA or other western interests.

463. The key question, however, is whether this risk, which appears to exist to some extent for everyone living in Al-Shabab areas, becomes a real risk of harm in respect of those returning from the United Kingdom. Mr Eicke submitted that there was no evidence to suggest that it did. He pointed to the absence in the news and other reports regarding execution etc. for "spying" of anything to suggest that the victims were chosen because they had recently arrived in the area. He also drew particular attention to the 16,000 Somalis whom Saudi Arabia had last year returned to Somalia and the absence of any evidence that they had been harmed (the most recent evidence indicates thousands more were returned this summer). For their part, the appellants submitted that there was, in fact, no evidence one way or the other as to what had happened to the returnees from Saudi Arabia and that the absence of any evidence that those returned from the West had suffered difficulties in this regard could well be due to the fact that few if any such persons were being returned.

464. It is true that there is no specific evidence one way or the other. However, given the fact of Al-Shabab's paranoia, its violently anti-Western stance and its (perhaps justified) feeling of insecurity in recent times, as funding has become more difficult and military reverses more common (including what appears to have been a forced withdrawal from positions in Mogadishu), we do not consider that it is engaging in speculation to conclude that the fact of having come from the United Kingdom is, as a general matter, likely to elevate the risk to a person of being branded a spy, which carries the very real risk of serious ill-treatment or death. The only exception we would make is where the returnee is seeking out Al-Shabab in order to join its ranks as a fighter for international jihad. There was evidence before us that, regrettably, some of those joining Al-Shabab come from this country.

465. Would a returnee from the United Kingdom be identifiable as such? Mr Eicke said, in effect, that there was no hard evidence to indicate a positive answer; the experts' testimony was anecdotal and speculative. In any event, the matters the experts had identified, such as linguistic differences, gait and physical appearance, would be of only temporary duration.

466. We very much doubt whether persons who have been away from Somalia for only a short period of time, and certainly only since the emergence of Al-Shabab as a major actor in southern and central Somalia, would have undergone linguistic changes and changes in his or her deportment, such as to draw Al-Shabab's attention to them. We are, however, prepared to accept, having regard to the lower standard of proof, that a person who has been outside Somalia for a longer period could have undergone such changes. It is also plainly the case that an overweight or even well-nourished man or woman is likely in the present sad state of affairs to be noticeable in southern and central Somalia.

467. As for these characteristics being only temporary, we agree with Mr Toal that the adverse attention is likely to come to pass immediately or soon after return, before the individual can lose those characteristics. Mr Eicke did not seek to suggest that, as a general matter, there might be some place in Somalia where returnees could "re-acclimatise" before venturing into an Al-Shabab area.

468. The position of women in such areas calls for specific mention. Although there was some evidence that a woman's ability to work might be restricted by Al-Shabab, the stronger evidence indicated that women are, in fact, allowed to undertake employment in Al-Shabab areas, particularly where they are the breadwinners and the consequences of any other attitude would be to make the woman and her family utterly destitute. The evidence on forced marriages was too exiguous to draw any meaningful conclusion. There was, however, evidence that in certain Al-Shabab areas at least women were compelled to dress in a way that involved them wearing hoods and extremely heavy clothing such that, as Ms Short submitted, it would be in itself inhuman treatment to expect a woman to do any kind of activity during a Somali summer.

469. The evidence that this is what women are, in fact, required to do by Al-Shabab was, however, somewhat sparse and contradicted, both by the photographic evidence to which Mr Eicke drew our attention as well as by the evidence of women being able to work and look after their families, and the evidence regarding the significant journeys made on foot by women seeking respite from the drought. None of the news reports to which our attention has been drawn mentioned such women claiming to have been compelled to dress in the way just described. We accordingly conclude that a female returnee to an Al-Shabab area from the United Kingdom is not reasonably likely to face treatment that is materially different from that faced by a man.

470. We do not find the evidence shows that a returnee from the United Kingdom runs any significant risk of forced recruitment into the ranks of Al-Shabab. Mr Burns' evidence was to the effect that such recruitment was not common and the latest evidence tends to support his view. Nor do we consider that a returnee from the United Kingdom would be at any greater material risk as a result of a perception that he or she would have money, whether or not from United Kingdom Government sources. Indeed, we are not persuaded at all by the expert evidence, which sought to suggest that there was some degree of animosity as between current residents in Somalia and the Diaspora. On the contrary, the evidence points to an extremely strong degree of connection between the two groups, not least financially. There is only very limited evidence that Al-Shabab has successfully stopped people from using mobile telephones etc. in order to get funds, and we do not consider it can be said that there is a reasonable likelihood of a person returning to an Al-Shabab area being identified as a returnee on the basis of his or her use of a mobile telephone.

471. Our conclusions on this issue are, accordingly, with some nuances very much like those of the ECtHR in Sufi & Elmi: in general, a returnee with no recent experience of living in Somalia would be at real risk of being subjected to treatment proscribed by Article 3 in an Al-Shabab controlled area. We consider that "no recent experience" in this context means that the person concerned left Somalia before the recent rise of Al-Shabab, and its territorial gains in the region, which occurred in 2008. This does not, however, mean that a person with such recent experience will be unable to make good a claim to international protection. Even in such a case, the person concerned will, of course, be returning from the United Kingdom, with all that that may entail. However, in general it will be less likely that such a person would be readily identifiable as a returnee. Even if he or she were, the evidence may point to him or her having struck up some form of accommodation with Al-Shabab, whilst previously living under their rule

472. Although having family in the Al-Shabab area of return may, depending on the circumstances, alleviate the risk, the rotating nature of Al-Shabab leadership and the fact that punishments are meted out in apparent disregard of local sensibilities mean that, in general, it cannot be said that the presence of family is likely to mean the risk ceases to be a real one.

473. We consider that the general findings we have just made encompass those who are reasonably likely to have to pass through Al-Shabab areas. Although the evidence regarding behaviour at checkpoints was mixed, and we accept that in some areas, such as the Afgoye Corridor, there has been (at least until very recently) considerable traffic to and from the Al-Shabab-controlled area, the unpredictability of Al-Shabab behaviour, the extremely grave and immediate likely consequences of being categorised as a spy and the assumption that one of the functions of checkpoints is to serve what Al-Shabab regards as its security concerns, point clearly towards including travellers within the general finding, just as the ECtHR did at [277] of Sufi & Elmi.

Humanitarian situation

474. We have considered in Part H of this determination the judgment of the ECtHR at [278] to [283] of Sufi and Elmi and its use of MSS v Belgium and Greece. In essence, the use which the ECtHR made of that case was that because Greece was responsible for the Article 3 infringement on its own territory, (not least because it had detained the applicant but also because of the way of life to which it effectively condemned him after release), there was no need, when assessing whether Belgium had breached Article 3 by removing the applicant to Greece, to apply the "very exceptional" test or standard found in the case of N v United Kingdom.

475. At [282] of Sufi & Elmi, the Court found that if "the dire humanitarian conditions in Somalia were solely or even predominantly attributable to poverty or to the state's lack of resources to deal with a naturally occurring phenomenon, such as drought,

the test in *N v United Kingdom* may well have been considered to be the appropriate one". The Court, however, found that the drought was only a contributory factor to the humanitarian crisis, which was "primarily due to the direct and indirect actions of the parties to the conflict".

476. As we have already held, whilst we consider it right to have close regard to the Court's findings of fact, to which it then applied its jurisprudence, we are in no sense bound by section 2 of the 1998 Act or its attendant domestic jurisprudence to make the same findings of fact.

477. On the evidence before us, we conclude that it is not the actions of the parties to the conflict which have caused the state of famine in southern and central Somalia and the present international humanitarian crisis but, rather, the worst drought there has been for 60 years. Although the effects of the drought have been noticeable for some time, and discussed in previous country guidance cases, the predominant factor behind the decision of families to leave their homes and trek long distances, in often appalling conditions, either to Mogadishu or to neighbouring countries, has been because their livestock have perished, and their subsistence farming is no longer sufficient to support them. It is impossible to accept the suggestion that the parties to the conflict have caused a breakdown in infrastructure, which has led these families to leave.

478. There is no suggestion that, even before the Somalia civil war started in the 1990s, there was much in these areas by way of infrastructure. There is more force in the point that systems of clan support have broken down as a result of the fighting and still more force in the submission that the activities of Al-Shabab, not least in prohibiting foreign non-Muslim aid, have made the situation worse. But, the fact remains in our assessment that it is the drought that is the predominant cause of what the world was witnessing in Somalia in the summer of 2011.

479. In so finding we have had regard to the very latest evidence, including the observations of Professor Menkhaus, that Somaliland is also affected by the drought but has avoided famine because it has social peace and governance. But the requirement of "predominant cause" cannot be so easily satisfied; and the evidence points to that cause being a natural one, albeit helped on by human beings. Thus, for example, the UN Secretary General's report referred to deforestation exacerbating peoples' vulnerability to drought and flood.

480. This does not, however, mean that, because they are not a predominant cause, the direct and indirect actions of the parties to the conflict fall to be left out of account in deciding whether the humanitarian conditions in southern and central Somalia are such as to bring Article 3 into play. On the contrary, as we have already indicated, it seems to us that those actions have a very real role in the assessment of whether, in terms of the law as set out in N v United Kingdom, the present situation is one of those "very exceptional cases" in which humanitarian conditions trigger Article 3.

Looking at the evidence in this holistic way, we find that the present situation in southern and central Somalia is, indeed, one of those "very exceptional cases".

481. In so finding we have reminded ourselves of Mr Eicke's submissions, as recorded in Part H, which were effectively reiterated in the respondent's October written submissions, to the effect that one must beware of diluting the N test by bringing into account such things as the incompetence or corruption of a government of a State, as a factor in making its inhabitants more prone to the effects of climate and disease, than are those in the developed world. There are, regrettably, very many countries whose system of government could be said to aggravate the adverse effects of natural phenomena. But it is the very prevalence of such cases that, we consider, answers Mr Eicke's objection: they are not capable of underpinning a finding that a "very exceptional" situation exists.

482. The contrast between such cases and that of southern and central Somalia is stark, as the evidence shows. A test founded on exceptionality must still be capable of being met; otherwise it is bogus. We consider that the widespread famine, unique to our planet at the present time, coupled with the exacerbating factors we have described, discloses a situation of sufficient exceptionality to cross the threshold set in N. It is this mix of factors that makes the situation exceptional, not the predominance of the parties' actions that causes the threshold to be lowered.

483. We need to say something about the position of IDPs and IDP camps. In Sufi & Elmi, the ECtHR regarded the Afgoye Corridor as, in effect, one large IDP camp, in which conditions for the majority of IDPs were such as to engage Article 3. The Court reached that conclusion in part by a comparison with the Dadaab Camps in Kenya, about which there was more background evidence [291].

484. In their closing submissions of July, the appellants drew attention to what our predecessor tribunals have said about the likely situation of a person, displaced by fighting, having to subsist in a Somali IDP camp. We agree with what was there said. It is, nevertheless, important to observe that the ECtHR appears, on the evidence before it, impliedly to have accepted that the Afgoye Corridor settlement is not a place where every inhabitant, or even everyone who might be designated an IDP, is at real risk of Article 3 violations. At [286] the Court relied upon evidence that IDPs were "experiencing increasing difficulties in finding shelter in the Afgoye Corridor as landlords are either selling land that IDPs live on or are charging rent that they cannot afford". There was similar evidence before us.

485. The inexorable conclusion from this is, of course, that the Afgoye Corridor, the satellite photographs of which do indeed indicate significant recent expansion and ordering, is a place where persons of varying economic means live. The evidence regarding commuting between the Afgoye Corridor and Mogadishu, for the purpose of conducting business in the city, is not compatible with a blanket finding that everyone in the Afgoye Corridor settlement is effectively destitute. That is so, notwithstanding the recent designation of famine in such camps. These are places

where the appellants' own evidence indicates that there is food to be had, albeit at a high price. We find that, as with the Dadaab Camps, there are various kinds of persons who may be labelled IDPs. Some of these – indeed, it would seem a significant number – have achieved some form of socio-economic security, enabling them to buy land and undertake businesses. It is, however, highly likely that, for many more, life remains highly precarious, and the famine conditions have made matters worse than they were before.

486. Our conclusion on the humanitarian position in southern and central Somalia (excluding Mogadishu) is as follows. Like the ECtHR at [296] of Sufi & Elmi (but by a different route) we have concluded that as a general matter a returnee who would find themselves in an IDP camp, following a return to southern and central Somalia at the present time, would be at real risk of exposure to treatment contrary to Article 3 on account of the humanitarian conditions there.

487. However, we go further. Given the severe nature of the humanitarian crisis, worse even than when the ECtHR considered the position, a person who would in normal conditions have had the ability to go to his or her home village, which is unaffected by the fighting but which is within an area in which there has been a declaration of famine, should at present and as a general matter be assumed to face in that village the kind of desperate situation as is disclosed in the background evidence, with the result that, lacking means of sustenance, he or she would have to try to take refuge somewhere else, such as many thousands of others are doing. Leaving aside for this purpose the issue of Al-Shabab, we do not consider that even the possible availability of the United Kingdom Government money for return (as to which there is an evidential dispute) is likely materially to affect the position in this regard. In areas where there simply is no food, having money is unlikely to put a person in a better position; everyone in such areas is reasonably likely to be reliant on international aid. (We note Professor Menkhaus' comment that "there is food on the market in much of Somalia", but we are here considering a rural person, where the only food was from the land and that land is now barren.) Thus, although we have, like the Strasbourg Court, used the likelihood of ending up in an IDP camp as a general touchstone for Article 3 harm, the basic position is, rather, that the generality of those hypothetically removed to southern and central Somalia at the present time will face Article 3 violations by reason of the humanitarian conditions prevailing in the region.

488. It is necessary to emphasise that these are *general* findings. There may be cases where the evidence indicates that a person is from, say, a town in southern and central Somalia (other than Mogadishu) where the drought is having less of an impact than in the countryside, and where a person has family or clan support. If the town in question is under Al-Shabab control, there are likely to be other problems, as we have indicated above. But, purely by reference to the humanitarian position, such a person would, nevertheless, be returnable without Article 3 breach. Judicial fact-finders will need to be satisfied that the evidence supports such a conclusion (see further paragraphs 503 to 507 below).

489. The likelihood of going to an IDP camp in the Afgoye Corridor may not involve an Article 3 risk, even given the present humanitarian position, where the person concerned is not reasonably likely to find themselves at the bottom of the socio-economic ladder but, rather, is someone who owns property and has a business. That is highly unlikely to be the case, however, with a person who has been in the United Kingdom for any significant length of time. Indeed, absent special factors, such a person is highly likely to be in a vulnerable position in such a camp, notwithstanding money from the United Kingdom government.

490. Finally, it is necessary to make it clear that the generalised Article 3 risk, which exists by reason of the famine, is likely to be temporary in duration. The international effort seen in the past months has undoubtedly begun to make an impact; and it is to be hoped and expected that, once the dangers of the rainy season are passed, the humanitarian position will reach the point where the exceptional "N situation" is over. As we have said in relation to the conflict in Mogadishu, judicial fact-finders will need to have close regard to whether the evidence shows a sufficient change to depart from our findings on this particular issue. Even then, however, absent some more fundamental change in the picture, there are still likely to be Article 3 issues if, notwithstanding the end of the famine, the potential returnee is still reasonably likely to end up at the bottom of the socio-economic ladder in an IDP camp.

(c) Refugee Convention

491. As can be seen from Part H of this determination, the subject of living under Al-Shabab control gave rise to a number of legal submissions from the parties. The appellants were keen, in oral evidence, to assert they had genuine religious differences with Al-Shabab, stemming from their different interpretation of the Muslim faith. The submission made in consequence was that, even if the appellants, following return to an Al-Shabab area, were able to "play the game" demanded by Al-Shabab, they would nevertheless suffer a violation of their right to freedom of religion. They also asserted that they had a conscientious, if not religious, objection to paying Al-Shabab "taxes".

492. At Part M of this determination, we set out our findings as to the credibility of the evidence of the appellants on these and other issues.

493. Whilst we do not rule out the possibility of a person suffering a flagrant breach of his or her right to freedom of religion, as a result of finding themselves having to obey the norms imposed by those who follow a far stricter (indeed, in the view of the person concerned, abhorrent) version of the same basic religion, the kinds of requirements imposed by Al-Shabab, about which we heard evidence, objectionable as many of them are, do not readily lend themselves to such a conclusion. However, as we have indicated in Part H, the question of whether the Refugee Convention is engaged in practice is unlikely to turn on such matters, and does not in the case of the present appellants. It is abundantly plain from the evidence, that Al-Shabab's

reasons for imposing its requirements and restrictions are religious. It is also plain from the evidence that those who transgress and are punished are regarded by Al-Shabab, not merely as people who have transgressed what it sees as its laws, but who have thereby demonstrated that they remain in a state of kufr (apostasy), as described in the International Crisis Group report. This is not to say that every such punishment by every Al-Shabab member in every place will be so motivated; but it is, on the evidence, likely enough to constitute a real risk.

494. There is, accordingly, the required religious element under Article 1(A) of the Refugee Convention, existing in the potential refugee; namely, imputed religious opinion.

495. The remaining issue, therefore, is whether there is a real risk that the punishment inflicted will be sufficiently serious to satisfy Article 9 of the Qualification Directive. On the basis of the evidence we have seen, we are fully satisfied there is a real risk that it would be.

496. At this point, the principle in RT (Zimbabwe) locks firmly onto the factual/legal matrix and provides the answer to the question of whether those returnees who, for whatever reason, would be able to "play the game" and who are reasonably likely to do so, nevertheless fall to be treated as refugees. On the basis of RT (Zimbabwe), they do. We remind ourselves of what the Court said at [36]:-

> "36. It may be said that there is marked difference in seriousness between the impact of having to lie on isolated occasions about political opinions which one does not have, and the 'long-term deliberate concealment' of an 'immutable characteristic', involving denial to the members of the group their 'fundamental right to be what they are' (see per Lord Hope para 11, 21). We are not persuaded, however, that this is a material distinction in this context. The question is not the seriousness of the prospective maltreatment (which is not in issue) but the reason for it. If the reason is political opinion, or imputed political opinion, that is enough to bring it within the Convention. In this case, we are concerned with the 'imputed' political opinions of those concerned, not their actual opinions (see para 4 above). Accordingly, the degree of their political commitment in fact, and whether political activity is of central or marginal importance to their lives, are beside the point. The 'core' of the protected right is the right not to be persecuted for holding political views which they do not have. There is nothing 'marginal' about the risk of being stopped by militia and persecuted because of that. If they are forced to lie about their absence of political beliefs, solely in order to avoid persecution, that seems to us to be covered by the *HJ(Iran)* principle, and does not defeat their claims to asylum."

497. As for the issue of Al-Shabab "taxes", we have already indicated that we agree with Mr Toal's submission that, whilst a genuine conscientious objection to such payment is a prerequisite for the purposes of the Refugee Convention, in practice it would take little to persuade a judicial fact-finder that someone did indeed find it genuinely against their conscience to make financial contributions, however unwillingly, to a proscribed terrorist organisation, such as Al-Shabab. Having said that, however, we

do not believe that the present appellants have any such genuine objections (see Part M below).

(3) Internal relocation

498. As we have explained in Part H(4) of this determination, we do not find that any formal burden of proof rests on the respondent to show that internal relocation is reasonably available to an appellant. Depending on the nature of the case, however, the respondent may (indeed, usually will) be required to raise the issue, so as to put it "in play" in any appellate proceedings, but it is then for the appellant to discharge the burden, as part of the requirement to prove, to the lower standard, that he or she is entitled to international protection. What sort of evidence will be required to demonstrate that it would not be reasonable to expect the person to relocate will, of course, depend on all the circumstances.

(a) To Mogadishu

499. In the light of our earlier findings regarding Mogadishu, that persons currently there are, as a general matter, running an Article 15(c) risk, it would plainly be unreasonable to expect a person whose home is elsewhere in southern and central Somalia to relocate to Mogadishu. The limited qualification we have made to the assessment of Article 15(c) risk is highly unlikely to have application to a person whose home area is not Mogadishu because the necessary accommodation and social support to alleviate the risk of indiscriminate violence are unlikely to be available.

500. Another factor in assessing the reasonableness of relocation to Mogadishu is the present humanitarian situation in the city, including the state of famine that has been declared in the IDP camps. A person with significant contacts may be able (absent Article 15(c) issues) to avoid having to live in such a camp and thus have a viable relocation alternative.

(b) To an IDP camp in the Afgoye Corridor

501. On the basis of our earlier findings, it would, as a general matter, be unreasonable/unduly harsh to expect a returnee to live in an IDP camp, unless there was evidence that he or she would be able to achieve the lifestyle of those better-off inhabitants of the Afgoye Corridor settlements. That would depend, we consider, on the returnee having family or other significant connections with such better-off elements. In the absence of these, we do not consider that even the likelihood of United Kingdom money for the returnee would be enough to eliminate the risks inherent in IDP camps, including threats against the person. This is, of course, particularly relevant in the case of a female returnee.

(c) To an area controlled by Al-Shabab

502. For the reasons we have already given, a returnee from the United Kingdom to an Al-Shabab area, certainly if he or she had no history of having lived under Al-Shabab in that area, faces at the present time a real risk of serious harm. Internal relocation to such an area is, accordingly, out of the question. Although Al-Shabab appears to be losing ground outside Mogadishu to the TFG, it still remains dominant in large parts of southern and central Somalia.

(d) To an area not controlled by Al-Shabab

503. As we have found, the current humanitarian crisis in southern and central Somalia is, at present, in general sufficiently grave as to engage Article 3. It therefore follows that internal relocation to a place stricken by famine or near-famine would not be possible, even if that place is not under the control of Al-Shabab. Nevertheless, we have found that there are certain exceptions to the Article 3 risk, as regards a person's home area in central and southern Somalia (paragraph 468 above).

504. Although a person returning to a place that was his or her former home is likely to be in a better position than someone who has not previously lived there, the importance of clan connections remains, as it did in AM & AM, notwithstanding the enormous strains placed on the clan system. Landinfo (June 2009) suggested that clan protection "is still relevant, albeit primarily in relation to ordinary crime" and that clans continue to be important in relation to where a person flees. The evidence of Tony Burns suggested this was true even in Al-Shabab-controlled areas. The Landinfo report quoted one source as follows:-

> "Scarce resources and natural disasters such as floods and droughts limit the possibility for and willingness to support new arrivals in an area, even where they belong to the same clan. However, great efforts are still made to help relatives and neighbours. …it is common to find families consisting of six to eight members, opening their homes to a further six to eight relatives. They share the little they have, but without the money transfers from abroad, the already difficult living conditions would be significantly worse for the large majority of the population."

505. Population movement tracking reports from UNOCHA estimate the numbers of journeys carried out on the basis of seeking clan/social support. Monthly figures range between 11,000 and 22,000 but with 69,000 in January 2010 and 48,000 in March 2010. Albeit looking at a slightly earlier time, the Danish Immigration Service in 2007 recorded an international organisation as saying that "any Somali has the opportunity to attain security within his or her clan. This is even applicable if a person does not have any close relatives in the country. As long as a person is living inside the traditional area of the clan he or she enjoys the protection of that clan."

506. A senior researcher in the Institute for Security Studies, reporting on 11 July 2011, stated that, following the failure of the Somali state "over the years, a variety of local

and smaller government structures have emerged in that country – as opposed to large-scale actors – which are often to a considerable extent effective in governing smaller parts of the country. In recent times, what has emerged along the coast could be likened to a loose bunch of city states."

507. A person who has a clan or strong family connection with a particular area in south or central Somalia, not controlled by Al-Shabab, particularly a town, may, in the light of all this, have an internal relocation alternative to that place. In the light of the present humanitarian crisis, the cogency of the indicators pointing to such a position would need to be powerful. However, as the nature of that crisis diminishes, as we all hope it must, the importance of such an internal relocation alternative is likely to grow. The same is true if Al-Shabab continues to lose territory to the TFG/AMISOM and/or those aligned with them.

(4) Travelling home or to another place of safety

508. In AM & AM, the Tribunal considered that the method and route of return of the appellants to their respective home areas were not legally relevant to the Tribunal's task of determining their entitlement to international protection. That approach was questioned in HH & Others and we have concluded that, in the present appeals, the issue of risk whilst travelling home or to another place of safety is one which we need to address in order to decide the appellants' claims to international protection.

509. To this end, we received a good deal of evidence and submissions regarding methods and routes of return, including from Mogadishu to the appellants' home areas (in those cases where that was different). In all five cases, the respondent's intention is that the appellant should be returned to Mogadishu. Precisely the same stance was taken by the respondent in Sufi & Elmi, notwithstanding that Sufi came from Qoryoley, a town under Al-Shabab control, and Elmi from Somaliland [302] [311]. The ECtHR at [311] was clearly puzzled as to why the respondent was not proposing to return Elmi to Hargeisa, the main town of Somaliland. The Court thought that her decision not to do so appeared to contradict the assertion that Elmi would, in fact, be admitted to that self-governing area. As we have already seen, appellant ZF, despite her protestations to the contrary, has in practice been held to come from Somaliland. The respondent's stance was, in effect, that it was up to appellant ZF, if she saw fit, to get from Mogadishu to Somaliland. It is, however, for the Tribunal to decide whether it is reasonably likely that she will suffer serious harm getting there. If she would, appellant ZF would be entitled to international protection, subject to the issue of being able to live elsewhere in Somalia. In this regard, Article 8 of the Qualification Directive is not apt to exclude an assessment of "risks to life and limb", as opposed to mere "technical obstacles to return" (QD [83]).

510. The same is true of appellant AMM (who comes from Jowhar) and appellant MW (who comes from Merka) and, indeed, of the other appellants, who need to get from Mogadishu International Airport, the point of return, to the city of Mogadishu.

511. We have already made findings regarding the risk to a person of having to traverse an Al-Shabab area. It is, however, necessary at this point to say a little more on the issue. Mr Eicke submitted that there was no evidence that every person passing through an Al-Shabab checkpoint, even on a temporary basis, would be stopped and mistreated if they were, for example, a man without a beard. He also emphasised the evidence of Mr Burns that the main risk at checkpoints was the payment of tolls. Dealing with travel from Mogadishu to Somaliland, Mr Eicke submitted that the evidence from the UNOCHA and the UKBA fact finding report indicated that many IDPs travelled to Somaliland, where they were referred to as "refugees"; and that overland routes included travelling via Afgoye, Beled Weyne, Galkayo, Las Anod and Burao (Microcon – June 2009 – Anna Lindley). The Anna Lindley report also indicated that the evidence did not show a risk for southerners at checkpoints in Somaliland. The Nairobi evidence contained a statement by an individual, who had escaped from Al-Shabab and yet was able to travel through areas where there must have been Al-Shabab checkpoints.

512. Mr Burns considered that taking an overland route from Mogadishu to Somaliland would be unimaginable, or, as recorded by Mr Schwenk, "insane". Those comments were, however, according to the respondent, from people who had no first-hand knowledge of conditions *en route*. We deal below with how one might gain entry to Somaliland, once at its borders, including the issue of the type of passport a person who is not actually being returned by the respondent to Hargeisa might need, in order to get him to Somaliland.

513. Mr Schwenk criticised the respondent's reliance on the Lindley report. He said it was concerned with those fleeing the then present Ethiopian forces and that the majority of those covered by the report were travelling in family/clan groups. Even then, the report demonstrated that there were serious problems for those travelling. Many of the poorest people found themselves walking large segments of the journey and many described it as "the worst time in their life". Some had to endure considerable hardship, walking for days with little or no food or water, as well as being prey – if women – to sexual violence which appeared to be "very common".

514. The respondent also relied on AM (Evidence – route of return) Somalia [2011] UKUT 54 (IAC) which held, relying on the UKBA fact finding report, that Al-Shabab checkpoints "are generally well disciplined and their concern is whether travellers comply with the rules and norms of behaviour required".

515. We do not consider that the Lindley report has a material bearing on the issue. It was compiled before the full emergence of Al-Shabab in its present form. It is clear that the main informants were parts of what appear to have been significant groups of people, moving north in order to find refuge. There is no evidence to suggest that, if appellant ZF were to embark on the journey, she would be able to move in such a group. In any event, it is evident that such group movements run the real risk of enduring considerable vicissitudes.

516. So far as Al-Shabab is concerned, as is already evident from our findings, a distinction needs to be drawn between people passing through checkpoints, who are long-term residents of Somalia, and those who have been living in the West for any significant period of time. The evidence that we have had the benefit of considering is far greater than that available to the Tribunal in AM [2011].

517. We do not consider that the risks to travellers, particularly women, are likely to be materially alleviated by travelling in a minibus or other form of transport, operated by a person who has never been away and "knows the ropes". Using such a form of transport may, we accept, be of assistance; but the combination of the unpredictability of Al-Shabab behaviour and the evidence of their brutality, when they take against an individual, is such as to constitute a real risk.

518. Whilst being in the presence of a male minibus driver, or similar, might facilitate travel by a single woman, it does not significantly alter either the general risk we have just described or the specific risk of sexual violence towards women.

519. Although we have concentrated on appellant ZF, the findings we have made regarding travel also apply to those, such as appellant MW, who might be travelling from Mogadishu to destinations within central or southern Somalia. A judicial fact-finder would need to be satisfied that the person concerned could, in fact, travel home or to the other proposed place of safety, without going into an Al-Shabab-controlled area. Even then, the position for unaccompanied women is likely to be severely problematic, compared with, say, a young, able-bodied man.

520. The overwhelming message from the evidence before us is that it is sufficiently safe to travel from Mogadishu International Airport into the city. TFG/AMISOM control the road. Although there was some evidence of problems, including IEDs, the risk run in travelling along the road, in any form of transport, does not constitute a real risk of serious harm, including Article 15(c) risk. The latter risk arises by reason of *being* in the city.

521. So far we have dealt with overland travel. A striking feature of the evidence before us, however, and one which may well have implications for future Somali appeals, was the availability and relative safety of air travel within Somalia (including, for this purpose, Somaliland).

522. Flying into Mogadishu International Airport is sufficiently safe. This was the clear import of the evidence, both written and oral. Dr Hammond's description of problems at the airport and of aircraft adopting a certain trajectory in order to avoid arms fire, was at variance not only with the evidence we heard but also the findings in HH and AM & AM. The airport area itself is, and long has been, under the control of TFG/AMISOM. We were not provided with any evidence to suggest that commercial aircraft are at real risk of being shot at whilst en route to other airports in Somalia.

523. Informants told the UKBA's Fact-Finding Mission that air travel within Somalia was common. We were presented with no evidence from the appellants to indicate the contrary. The FFM team were told that, as well as regular flights between Mogadishu and Nairobi, there were flights to Hargeisa from Nairobi and flights from Djibouti to Berbera (Somaliland). African Express, Puntair, Juba and Dalow all operated flights in Somalia. A security adviser said that "people travel regularly within Somalia by land and by air. Most airports are operational, mainly with charter flights and it is possible to fly to Mogadishu, Hargeisa, Garowe, Galcayo and Bossasso."

524. If, in a hypothetical case, the respondent is able to point to evidence that the returnee can fly from Mogadishu International Airport to a town in central and southern Somalia, the focus of the appeal may well be upon the person's hypothetical situation in that town, rather than on any problems accessing it by an overland route. This was not, however, the position in the present appeals, where there is no suggestion that appellant AMM could fly to Jowhar or appellant MW to Merka (both of which are, in any event, currently controlled by Al-Shabab). Nor was it suggested that either they or appellants FM and AF (who come from Mogadishu) could fly to some other place in central or southern Somalia.

(5) Somaliland and Puntland

525. These appeals were not earmarked as potential vehicles for giving country guidance on the position within Somaliland or Puntland. However, subject to what we will say in a moment, it appears to be accepted by the respondent that "the authorities in Somaliland, like the authorities in Puntland, would only admit those who originated from the territory or those who had close affiliation to the territory through clan membership. In Somaliland, the majority clan was the Isaaq" (Sufi & Elmi [103]). The ECtHR was there citing what it regarded as evidence from the respondent's Operational Guidance Note on Somalia of 1 July 2010. Whilst we take the view (as the Tribunal did in EM & Others) that Operational Guidance Notes are not, as such, evidence, it is nevertheless possible to have regard to them as an indication of the respondent's view of the available evidence. Indeed, an examination of the OGN of March 2009, included in the evidence of the appellants, makes it plain that the respondent's views in this regard are rooted in the COIS Report on Somalia. There is, accordingly, no evidential basis for departing from the conclusion at [101] of NM and others, that Somaliland and Puntland

> in general only accept back persons who were former residents of those regions and were members of locally based clans or sub clans. The Netherlands Ministry of Foreign Affairs report of November 2004 notes at paragraph 4.6 that UNHCR is encouraging the return of Somalis originating from Somaliland and Puntland 'Originating from' is interpreted here to mean '*having previously lived there for some time (more than a year)*'" (original emphasis).

526. In closing written submissions, the respondent appeared to suggest that appellants FM and AF, neither of whom had been found to have any link with Somaliland or Puntland, could nevertheless find refuge in one of those areas, on the basis that "once a person is not believed on the question of their clan there remains a hypothetical case that they could in fact find assistance (either clan-based or any other) in those other regions". As far as we are aware, this suggestion was not put to either of the appellants by the respondent, when they gave evidence (either in the current proceedings or in previous ones). In Part J of this determination, we shall have more to say about the relationship between our country guidance and a Somali appellant who is found not to be credible. In the present appeals, however, the submissions at [395] and [400] of the respondent's closing submissions came far too late in the day to have any material part to play.

527. Nevertheless, as a general matter it is interesting to observe the close connection between the area known as Somaliland and the United Kingdom, in the context of Somali immigration to this country. In the "Cash and Compassion" report, we find the following:-

> "**3.2 United Kingdom**
>
> Current estimates of the number of Somalis living in the UK range from 95-250,000. The official 2001 census reported a population of 43,000 (Casciani, 2006). The 2006 Annual Population Survey (APS) gives a figure of 82,300. However, neither of these figures include Somalis born in the UK or in any country outside Somalia. The census figures from 2001 suggested 89% of all Somalis were living in London, but this percentage is almost certainly lower now as a result of the dispersal policy. Large Somali communities have developed in Bristol, Manchester, Birmingham, and Leicester, among other places.
>
> The UK's Somali population is older and better established than in many other European countries. The first Somalis to settle in the UK were seamen from Somaliland who [were] in the British merchant navy, and settled in coastal areas such as Cardiff, Bristol and Liverpool during the early 1890's (Change Institute 2009:24). During World War 2, Somalis served with the British navy, and some took up residency in the UK to obtain employment, particularly in Sheffield and South Yorkshire (Ibid, citing Halliday 1992:1B). The post-war economic boom in the UK also drew Somalis; the Somalilander community in London's East End (one of the areas with the largest concentrations of Somalilanders in the UK) formed during this period (Bradbury 2008:175). Only since the weakening and eventual collapse of the government of Somalia at the end of the 1980's – early 1990s has the population included large numbers of refugees and asylum seekers. Today Somalis are consistently among the top ten countries generating asylum seekers to the UK."

528. In the light of this connection, it is not unreasonable to hypothesise that some of those who arrive in the United Kingdom seeking international protection from alleged harm in southern and central Somalia are, in reality, persons from, or otherwise having a strong connection with, Somaliland. Indeed, that is precisely the position with appellant ZF. Where the respondent has reason to believe that an

asylum seeker may come from Somaliland (or Puntland) it is open to the respondent to test that assumption, for example, by means of linguistic analysis. Once the issue has been put in play, usually in the respondent's letter of refusal, the claimant will need to address the issue in any subsequent appellate proceedings.

529. Where the respondent contends that a claimant is, in fact, from Somaliland or Puntland, the issue as to how that person is supposed to get there safely becomes highly material. As we have already explained, the whole nature of Somali cases involving claims to international protection is such that issues of safety on return are integral to the Tribunal's determination of entitlement to such protection. The form of international protection, for these purposes, may include that under the Refugee Convention, even where the person concerned would not have a well-founded fear in his or her home area ([26] and [27] of AM & AM, approved in [59] of HH & Others).

530. We have to say that we are at something of a loss to understand the respondent's position regarding a person such as appellant ZF or Elmi in Sufi & Elmi. Although the evidence points firmly towards them having the requisite degree of connection with Somaliland and facing no real risk of serious harm, if returned to that region, the respondent has chosen to put her case on the basis that return will be to Mogadishu International Airport. The ECtHR in Sufi & Elmi thought that this decision might, in fact, point towards Elmi not being able to get into Somaliland. That certainly does not appear to be the case with appellant ZF, where the respondent has argued forcefully that appellant ZF could travel to Somaliland by land or air. In either case, she would have to do so on her own, in the sense that the respondent presumably considers that her obligations regarding return cease when appellant ZF has left Mogadishu International Airport. Given, however, that there are flights from Nairobi to Hargeisa, Somaliland (albeit stopping at Mogadishu), it is at first sight hard to see why the respondent could not propose to return appellant ZF to Hargeisa. Mr Burns appeared to accept that the Somaliland authorities would be prepared to accept a person travelling on an EU travel document; but, because of the respondent's stance, we did not hear sufficient evidence or submissions on the matter to make any proper findings on this issue. In any event, once a case reaches this point, it is likely that Article 8(3) of the Qualification Directive becomes relevant. This provides that the power of Member States in Article 8(1), to determine that a person is not in need of international protection "if in a part of the country of origin there is no well-founded fear of being persecuted or no real risk of suffering serious harm and the applicant can reasonably have been expected to stay in that part of the country", may apply "notwithstanding technical obstacles to return to the country of origin". In HH & Others the Court of Appeal found at [83] that the ambit of Article 8(3) was "probably confined to administrative difficulties such as documentation", as opposed to risks to life and limb, in getting to the place in question. Thus, it would seem that difficulties regarding the documentation required to satisfy the Somaliland authorities would not, in such a scenario, entitle a claimant to succeed.

531. For the appellants, it was submitted that Article 8 of the Qualification Directive was confined to the issue of internal relocation; that is to say, where a person has established a well-founded fear in one part of a country and the issue is whether he or she could find safety in another part. The wording of Article 8(1) is, however, plainly wide enough to encompass the case of a person who has no well-founded fear in the home area but whose case depends upon establishing a real risk of harm *en route*. In HH & Others, the Court of Appeal, whilst considering that Article 8 was "to do principally with internal relocation" made no finding that it was confined to such a situation. Nor is there anything in the Qualification Directive itself to suggest that Article 8 is so restricted. Article 8 is entitled "Internal protection", not "Internal relocation" or "Internal flight". It is difficult to see how, as a matter of logic or principle, a person should have a greater entitlement to international protection if their home area is not the place where they have a well-founded fear, compared with where the home area is the place of well-founded fear.

532. It may be that the respondent's stance, both as regards Elmi and appellant ZF, is driven by the difficulty of getting the Somaliland authorities to accept the return of anyone from the United Kingdom to their area. An insight into the somewhat fraught relationship between those authorities and the respondent is provided by reading the judgments in R (on the application of) MH v SSHD [2010] EWCA Civ 1112, concerning a claim of unlawful detention brought by a person from Somaliland, whom the respondent had not been able to return there. But, as we have indicated, from the point of view of an entitlement to international protection under the Refugee Convention or the Qualification Directive, such problems could well be said to be "technical obstacles" within Article 8.

533. In the case of appellant ZF, as we have seen, the respondent's stance is that appellant ZF will be returned to Mogadishu. There is no suggestion on the respondent's part that appellant ZF will land there, in possession of an EU travel document. In order to persuade the Somaliland authorities to let her in to their self-proclaimed state, she will, accordingly, need to procure something called an "old green passport".

534. We heard a great deal of evidence and submissions about old green Somali passports. Before the collapse of the Siad Barre regime, the Somali government of that time issued passports, which were bound in green covers. The TFG does not recognise such passports and has its own forms of official international travel documentation. The authorities of Somaliland, however, do not recognise TFG passports; instead, they continue to recognise the old green Somali versions.

535. This, of course, presents a difficulty for a person, such as appellant ZF, who does not (or does not any longer) have an old green passport. The solution, according to the respondent, is to go to Bakara Market (or, perhaps, a market in the Afgoye Corridor, following the recent closure of Bakara) and buy such a passport on the "black market". Although not a legitimate international document, such a passport will be good enough to secure admission to Somaliland.

536. The appellants do not contend that this hypothesis is factually wrong. On the contrary, Mr Burns confirmed that it was possible to purchase such a passport in the manner described. What the appellants contended was that the procurement and use of such a passport would be a criminal offence in the United Kingdom and that neither appellant ZF nor anyone in the same position should be expected to have to obtain such a passport in order to gain entrance to Somaliland.

537. In R v Horseferry Road Magistrates Court ex-parte Bennett [1993] UKHL 10, the House of Lords was concerned with whether the trial for criminal offences of Mr Bennett should be halted on the basis that he had been unlawfully abducted from a third country (South Africa). The House of Lords allowed Mr Bennett's appeal on the basis that the judiciary had a responsibility for the maintenance of the rule of law that embraced the willingness to oversee executive action and to refuse to countenance behaviour that threatened either basic human rights or the rule of law, such as did a criminal trial where the defendant was only present because he had been illegally abducted, with the apparent collusion of United Kingdom police. Appellant ZF submitted that, by the same token, any removal which relied upon her committing an unlawful act could not itself be lawful. The Identity Documents Act 2010, section 4, created a criminal offence of possession of a false identity document with improper intention. A person guilty of an offence under the section was liable to imprisonment for a term not exceeding ten years or to a fine (or both). This reflected the serious way in which Parliament viewed offences regarding such documentation. R v Singh [1999] 1 CR APP R (S) 490 reinforced the fact that a passport was an important document and that it was necessary for the integrity of passports to be maintained. It was, accordingly, a serious offence knowingly to use a false passport, whatever the precise nature of the offence charged in relation to that activity. A similar point was made in R v Adekunle Adebayo [2007] EWCA Crim 878.

538. The appellants also relied upon R v Uxbridge Magistrates, ex-parte Adimi [1999] EWHC Admin 765, which concerned the operation of Article 31 of the Refugee Convention in the context of prosecutions under United Kingdom law for using false travel documentation. Article 31 provides that Contracting States "shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened … enter or are present in their territory without authorisation, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence".

539. We are not persuaded that the use by a person of an unofficial document, of the kind with which we are concerned, in order to access Somaliland, falls to be discounted, as the appellants assert, on the basis of illegality. The Bennett case involved a quite different factual matrix. There were plainly serious public policy concerns about allowing a person to be tried in the United Kingdom for a criminal offence, when the United Kingdom authorities had been complicit in his illegal removal from a third country to this one. Likewise, Adimi involved Article 31 of the Refugee Convention,

which is not in issue in the present proceedings. So far as the Serious Crime Act 2007 is concerned, we did not hear anything approaching adequate submissions on this issue. In particular, we did not receive any submissions regarding the extraterritorial reach of the Act (as to which Schedule 2 is relevant); nor as to relevant defences. The assertion that the respondent would be committing a criminal offence under section 44 of the 2007 Act in removing an appellant to Mogadishu, where the respondent intends the appellant to obtain false travel documentation, is an issue that might need to be fully addressed in some other appeal. For the reasons we will shortly come to, however, the matter does not arise in the present proceedings; and we in fact doubt whether it will prove a key issue in other cases.

540. We do, however, feel that we should say the following. We very much doubt that entitlement to international protection under the Refugee Convention or the Qualification Directive will often turn upon whether the claimant, if returned to the country of his or her origin, would be reasonably likely to do something which, if done in the United Kingdom, might constitute a criminal offence. In very many parts of the world, what would be regarded in this country as criminal bribery (and what may well be regarded as such in the country in question) is in practice an accepted part of everyday life. It is, of course, properly arguable that a society where bribery is likely to be determinative of whether someone will avoid serious harm is a place where the actions of the State are so arbitrary or otherwise extreme as to give rise to a real risk, in any event. But in other cases the picture may be more complex; and the fact that a person would, if in this country, be committing an offence under our criminal law is not *per se* determinative of the issue of international protection. Thus, a person in a developing country who is working in the informal sector, as a street trader, may on occasion have to bribe local officials in order to remain in business. If judicial fact- finders were required to exclude from their deliberations the possibility of a person returning home to work in the informal sector, on the basis that he or she cannot be expected to pay a bribe, then the ambits of both the Refugee Convention and the Directive will, at a stroke, have been substantially enlarged. We doubt whether those who brought those international instruments into being did so on the basis that this would be the result.

541. Mr Schwenk sought to pray in aid RT (Zimbabwe); but we do not consider that the ratio of that case has any relevance in answering the question whether a person can be expected to act illegally. There is no Refugee Convention reason (such as actual or imputed political opinion), which provides a nexus between the refusal to do an illegal act and the harm which may ensue. The street trader, who refuses to bribe the local official and, as a result, loses his market pitch, is not being persecuted for a Refugee Convention reason; he is being punished for not paying a bribe. The same would be true if the official's response was to inflict ill-treatment on the trader.

542. So far as the old green passports themselves are concerned, regardless of the fact that appellant ZF might, if she was within the jurisdiction of the United Kingdom, be committing a criminal offence, there is no evidence before us to lead to the conclusion that buying such a passport in a market in southern Somalia is a criminal

offence under the rule of the TFG or that, even if it is, the matter is regarded by them as in any way serious. So far as the authorities in Somaliland are concerned, plainly old green passports are regarded as legitimate.

543. There is a somewhat spurious element to the appellants' submissions on the "legality" issue of the old green passport, given the current circumstances in Somalia. In short, the Tribunal concludes that these "legal" objections are unfounded.

544. But, once we turn from the law to the facts, it is frankly surreal of the respondent to expect appellant ZF, a 67 year old woman with no recent experience of living in the Horn of Africa, to disembark at Mogadishu International Airport, travel into the city of Mogadishu to Bakara Market (assuming it is open), look for an old green passport there, or travel to a market in the Al-Shabab-controlled Afgoye Corridor, if, as might be the case, the vendors of such passports have relocated there, and then either return to Mogadishu International Airport in order to fly to Hargeisa, or else undertake a journey by land to Somaliland. The respondent did not, in fact, energetically advance the option of going back to the airport, preferring instead to look in detail at the evidence regarding land journeys, including those undertaken by refugees, moving in groups to Somaliland, and to the evidence of minibuses, which Mr Burns contradicted. We shall have more to say on this when we look in detail at appellant ZF's appeal in Part L of this determination. As a general matter, however, we conclude that, at the present time, it will in most cases be impracticable for returnees to obtain old green passports in southern and central Somalia, in order to make the journey to Somaliland, because of the dangers involved in acquiring such documentation.

545. This is so, whether or not there are in Mogadishu members of the Isaaq clan, which is the majority clan or ethnic group in Somaliland. Having noted what Mr Burns and Dr Hammond said, and having regard to the written evidence, we find that it is highly likely that there are, in fact, members of the Isaaq clan present in Mogadishu, albeit not in great numbers. We accept, however, the appellants' evidence that, any such Isaaq are unlikely to be favourably disposed to the Somaliland authorities and, for that reason, to have much to offer by way of assistance to a person arriving in Mogadishu who wishes to go to Somaliland.

546. We have already considered the position of those who, according to the more recent evidence, have been seeking to move from the south into Somaliland and Puntland, as refugees. We do not consider that this evidence casts any doubt on the general position we described at the beginning of this section, regarding the sorts of persons whom the authorities in Somaliland and Puntland would be willing to see admitted, particularly in the context of those coming from the United Kingdom. Insofar as those from the south are concerned, without clan or family connections, they will be treated as IDPs and be likely to find themselves in IDP camps, the conditions of which have in the past been categorised as very poor and which there is no evidence before us to indicate have subsequently improved. Thus, if appellant ZF or others in her position were to succeed in reaching the borders of Somaliland or Puntland,

without the likes of an old green Somali passport, they are likely to be treated as another IDP. However, it is also clear that Somaliland "is less susceptible to widespread humanitarian emergencies than the rest of Somalia" (Rightnet Independent Analysis: Somalia: A Situation Analysis and Trend Assessment, August 2003), as, indeed, the map showing the degrees of problem occasioned by the 2011 emergency attest, as does the evidence of desperate pastoralists from the south making their way to Somaliland.

(6) Female genital mutilation

547. According to the Population Reference Bureau (2010), drawing on figures from 2006, the incidence of FGM in Somalia is 97.9%. Broken down by region, urban regions stand at 97.1% and rural at 98.4%. The lowest region is 94.4% and the highest 99.2%. Other similar studies show a fractionally lower rate but it is universally agreed to be over 90%. 96.7% of women are cut before the age of 19, according to the PRB. 66% of those not cut by then will be by the age of 39. Thus, Ms Short submitted, a female in Somalia was not safe even if she reached adulthood uncut. Cutting can take place at any time from the age of 3.

548. The background evidence indicates that the predominant type of FGM in Somalia is "pharoanic", categorised by the World Health Organisation as Type III, narrowing the vaginal opening through the creation of a covering seal by cutting and repositioning the labia minora and/or the labia majora, with or without removal of the clitoris (infibulation). Mr Burns, however, gave evidence that, whilst outside the main cities, FGM was almost 100% pharoanic, into which category he would place MW's home of Merka, in the cities he considered it was now 90% "sunna. When I say "sunna", I mean anything from partial infibulation to small cuts, depending on the family's preference." Al-Shabab were opposed, according to Mr Burns, to the pharoanic form but did say that women should practise the "sunna" form.

549. Not surprisingly, in a country with such high rates of FGM, the societal requirement for any girl or woman to undergo it is strong. Dr Hammond gave evidence that in some cases the extended family could take the girl to be circumcised without the knowledge of consent of the mother if it was suspected the mother might object. Appellant MW, if returned, would have to seek to survive within her "clan matrix" where she "would come under heavy pressure to have any female daughter circumcised. She would have a say in the decision to circumcise or not, but if she was relying on a female or clan member that had a strong predilection to circumcise, then [appellant MW] would find the daughter circumcised – even without her consent." Mr Burns considered that if a woman opposed circumcision it would "still almost certainly happen at the hands of female family members who would put pressure on the mother and even resort to having the girl circumcised when the mother is temporarily absent. Even the daughter of some of the nurses working in our clinic and who oppose FGM have been taken and circumcised by female relative[s] while their mothers were at work." According to another witness

statement "What happens all the time is that cutting is arranged by a child's grandmother, aunt, or other family members regardless of the attitude of the mother. This even happened in my own family." There was other written evidence before us to similar effect.

550. In the conditions pertaining in Somalia, Ms Short submitted that it would be impossible for a mother to conceal the fact that her daughter had not undergone FGM. Mr Burns' evidence was that family members would know "almost straightaway. Her female family members would ask, other girls would ask her daughter." Other statements from those with experience in Somalia were to similar effect, including those from Sahra Moallim: "Girls will find out whether other girls have been cut. It is something they talk about among themselves a lot. Girls show their cut genitalia to one another when they go to the toilet. If a girl does not show herself or if she refuses to show herself then it will be known that she has not been cut."

551. Ms Short relied upon the US State Department Somali Report on FGM or FGC, together with the evidence of Mr Burns and Ms Moallim, as indicating that there had been no abatement in the risk to females, despite the actions of civil society. Thus, the USSD concluded that a campaign launched within Somalia prior to the overthrow of Siad Barre fell away with the collapse of the Somali state. Ms Moallim, for her part, was currently campaigning to have FGM included among the violations of human rights based on the agenda of a Somali version of the South African Truth and Reconciliation Commission, which was being talked about in Somalia. She had, however, met with much resistance from Somali human rights organisations, which indicated the depth of a Somali's attachment to the practice of FGM.

552. As in other countries where the practice is widespread, in Somalia FGM is regarded as a rite of passage, upon which a girl's future marriage prospects depend (Almroth 2005:14). The USSD Report recorded that many Somalis mistakenly viewed the procedure as a religious obligation; but the concept of "family honour" was also involved, with FGM being intertwined with notions of virginity. A woman active in Somali human rights work opined that "a lot of Somali people mistakenly believe that it is un-Islamic for girls not to undergo FGM". There was thus, according to Dr Mullen, "tremendous social pressure for families to conform to this practice both in Europe and in Somalia. Dr Hammond agreed that "social pressure to have the procedure done to one's daughters is very strong in Somalia, as an uncircumcised woman is often not considered to be marriageable and to bring shame on her family". According to Ms Moallim a woman who resisted having her daughter cut would be seen as rejecting Somali tradition and as importing "gaallo (non-believer) ideas into Somalia, as having abandoned her religion and as preventing her daughter from following her religion".

553. The respondent submitted that the evidence did not, in fact, show that in general a mother opposed to FGM would be incapable of withstanding societal pressures to have it done to her daughter. Reliance was placed on para 2.19 of the COIS Report

on Somalia, where a Somali woman was recorded as stating that she was able to withstand pressure from her mother-in-law to have her daughter circumcised, albeit that the informant's refusal led to her husband divorcing her and cutting off contact with his daughters. Despite this making life "hard in the camp" for the informant, she stated that she would never go back on it, despite the fact that the girls were "often bullied in school". The informant's biggest fear was that "someone from my family will take my daughters one night and try to circumcise them. I have no protection and no man in my life to protect us."

554. Perhaps more helpful to the respondent's case was the Landinfo report on female genital mutilation of December 2008 which recorded that "certain trends indicate a positive shift with regard to general mutilation in Somalia". According to this, the custom is mainly a female affair and the young generation of men between 15 and 26 do not regard FGM to be a prerequisite for marriage. Somali sources referred to "a claim that given the fact that men comply with the decisions women make, it should be possible for mothers to oppose FGM". By contrast, however, the World Bank and other sources emphasise that men "carry major responsibility for the continuation of the practice". For a majority of the population, FGM remained a prerequisite for marriage, with prospective husbands demanding a circumcised wife. Since payment of a dowry is still common, the fathers of daughters played a key role in encouraging FGM, in order to get the dowry.

555. The same report asserted that girls who had not been circumcised could in fact hide the fact that they were uncircumcised until they got married. Girls who were not infibulated "might experience harassment and teasing and might encounter difficulties in becoming married".

556. The respondent noted the evidence of Mr Burns in cross-examination that if the woman's sub-clan was indifferent to FGM, a mother's wish would be respected. Nor was there any evidence, according to the respondent, of Al-Shabab enforcing FGM, albeit that they did not actively prohibit it.

557. It is, of course, established law that FGM "constitutes treatment which would amount to persecution within the meaning of the Convention", whatever form of it is practised and that, having regard to the sexually discriminatory nature of the practice, its infliction upon a woman engages the Refugee Convention by reference to the "particular social group" category (K and Fornah v Secretary of State for the Home Department [2006] UKHL 46). Notwithstanding the interesting evidence about Somali men complying with the decisions that women make, we can see no reason to refuse to find the relevant PSG in Somalia, when it has been found in all the other African countries in which the Tribunal or the higher courts have had occasion to examine the matter.

558. Likewise, we have no difficulty in finding that a Somali mother may suffer persecution and treatment in breach of her own Article 3/15(b) rights if her daughter

is subjected to FGM against the mother's wishes. As the AIT found in FM (FGM) Sudan CG [2007] UKAIT 00060:-

> "Given the first appellant's abhorrence of FGM, any infliction of it upon either of her daughters is, we find, reasonably likely to have so profound an effect upon the first appellant as to amount to the infliction on her of persecutory harm. In the light of our finding as to the nature of the particular social group in the present case, it follows that the first appellant is at real risk of persecution for a Refugee Convention reason (*Katrinak v Secretary of State for the Home Department [2001] EWCA Civ 832*: Recital 27 to Council Directive 2004/83/EC)."

559. This point is also borne out in the UNHCR's Guidance Note on Refugee Claims Relating to Female Genital Mutilation (May 2009):-

> "11. The parent could nevertheless be considered a principal applicant where he or she is found to have a claim in his or her own right. This includes cases where the parent will be forced to witness the pain and suffering of the child, or risk persecution for being opposed to the practice.
>
> 12. Even where the parents have been in the country of asylum for some time, a well-founded fear on behalf of the child or because of the parents' own opposition to FGM can arise upon the birth of a daughter post-flight. The fact that the applicant did not demonstrate this conviction or opinion in the country of origin, nor act upon it, does not itself mean that a fear of persecution is unfounded, as the issue would not necessarily have arisen until then. The birth of a daughter may, in these circumstances, give rise to a *sur place* claim. If it is held that the opposition or fear of FGM is a mere artifice for the purpose of creating grounds for asserting a fear of persecution, a stringent evaluation of the well-foundedness of the fear is warranted. In the event that the claim is found to be self-serving, but the claimant nonetheless has a well-founded fear of persecution, international protection is required."

560. The prevalence of FGM in Somalia is, we find, so great that an uncircumcised, unmarried Somali woman, up to age 39, will in general be at real risk of suffering FGM. The risk will obviously be at its greatest where both parents are in favour of FGM. Conversely, where both parents are opposed to it, the question of whether the risk will reach the requisite level will need to be determined by reference to the extent to which the parents are likely to be able to withstand what are, as a general matter, strong societal pressures (from both men and women) in Somalia for the procedure to be carried out on their daughter. Unless the parents are from a socio-economic background that is likely to distance them from mainstream social attitudes, or there is some other particular feature of their case (such as living in a place where – exceptionally - an anti-FGM stance has taken hold) the fact of parental opposition may well as a general matter be incapable of eliminating the real risk to the daughter that others (particularly relatives) will at some point inflict FGM on her.

561. At this point, it is necessary to say something more about the issue discussed in Part H of this determination, regarding the entitlement to international protection of a

mother whose claim to be opposed to FGM has been disbelieved. Ms Short submitted that, even if the Tribunal were not to believe her client's account of objection to having her daughter subjected to FGM, and even where appellant FM might "consent to" or "promote" her daughter being cut this "may still amount to persecution as it is discriminatory social and cultural determinants, rather than true free will that determine a girl being cut. In that context, the purported wishes of the mother do not support a lack of persecutory anguish since she can be harmed even by submitting to the torture of her daughter."

562. As we stated in Part H, we do not consider that, notwithstanding its status as a "living instrument", the Refugee Convention can be construed as affording refugee protection to a person who is in favour of inflicting harm on another, whether or not the societal and religious background of that person might be responsible for her having that wish, and whether the harm is inflicted by that person or by someone else, with her approval.

563. In her closing submissions, Ms Short urged us to find that, even in the case of Somali women who acquiesce in or promote FGM on their daughters, this merely "reinforces their powerlessness in a persecutory patriarchal male-dominated society. It is telling that support for FGM is negatively correlated to education, reaffirming the intersection of all forms of discrimination, disempowerment and violence against women" ([82] of written closing submissions).

564. In this regard, Ms Short sought to rely on Shah and Islam v Secretary of State for the Home Department [1999] UKHL 20, where Lord Hoffman found that the causal requirement in Article 1(A) of the Refugee Convention could be satisfied either by the persecution or the lack of protection being "for reasons of" a Convention ground. That is, of course, so; but it does not meet the issue with which we are concerned, where the person who will be immediately responsible for the harm is seeking refugee protection by reference to that very harm.

565. Ms Short also relied on HJ (Iran). However, to rely on this judgment is, we consider, to seek to invert the findings that the Supreme Court made. Appellant MW's social and cultural background may explain why she would cause her daughter to be circumcised. But appellant MW is still the person causing the serious harm to a member of a particular social group by reason of that membership and, thus, committing an act of persecution for the purposes of the Refugee Convention. What Ms Short was in effect asking us to do was to adopt a degree of cultural relativism that is not to be found in the Refugee Convention, let alone in HJ (Iran). For example, Article 1(F), which excludes from protection those who have committed various serious crimes, contains no reference to exculpatory factors stemming from the perpetrator's social or other background. It is also difficult to see how Ms Short's case could be brought within Article 1(A) of the Refugee Convention, since the applicant who wishes to inflict the harm does not have a "fear" of persecution, whether or not that fear – if it existed – would be well-founded.

566. We spoke in Part H of a spectrum of cases, of which true willingness, albeit stemming from social conditioning, stands at one extreme, just as the case of duress stands at the other. In the context of Somalia, the evidence, as we have indicated, suggests in general that there will be a very high degree of societal pressure. In particular, the evidence of Mr Burns and others that mothers who refuse to have their daughters circumcised could well fall outwith the ambit of any clan protection strikes us, in the present circumstances, as likely to be highly significant for the mother, raising the spectre of destitution, at least in some cases. Furthermore, although there is some indication that, amongst younger Somali men, the position might be changing, the preponderance of the evidence still points towards an uncircumcised woman having poor prospects of marriage. The socio-economic fears that that may engender in the mother are also, as a general matter, likely to be great.

567. Accordingly, we consider that it would be open to a judicial fact-finder, in such circumstances, to find the Refugee Convention engaged in the case of a mother who was genuinely strongly opposed to inflicting or procuring FGM on her daughter but who, on the evidence, was reasonably likely, sooner or later, to countenance it, as the lesser of two evils.

PART J

ASSESSING THE NEGATIVE PULL OF LIES: MA (SOMALIA)

568. In his submissions on behalf of the UNHCR, Mr Hickman dealt in some detail with the judgment of the Supreme Court in MA (Somalia) v Secretary of State for the Home Department [2010] UKSC 49. MA was a citizen of Somalia, a member of the Isaaq clan who came here illegally in 1995 and in 1998 was sentenced to eight years' imprisonment for rape and indecency with a child. The ensuing legal proceedings concerning the respondent's attempt to deport MA were protracted, but on 1 July 2009 the AIT dismissed MA's appeal. That decision was reversed by the Court of Appeal in HH & Others (MA being one of the "Others") but restored by the Supreme Court.

569. MA (Somalia) is of general importance, dealing as it does with the frequently-encountered question of to what extent an appellant who has been found to have told lies should have that finding held against him or her, in determining entitlement to international protection:-

> "21. … The task of sorting out truth from lies is indeed a daunting one. It is all too common for the AIT to find that an appellant's account is incredible. And yet there may be objective general undisputed evidence about the conditions in the country to which the Secretary of State wishes to send the appellant which shows that most of the persons who have the characteristics of, or fall into the category claimed by, the appellant will be at real risk of treatment contrary to Article 3 of

> the ECHR or persecution for a Refugee Convention reason (as the case may be), but that a minority of these, because of special circumstances, are not subject to such risk."

570. In GM (Eritrea) and Others [2008] EWCA Civ 833 the Court of Appeal addressed the case of an Eritrean asylum seeker, who had not been found credible as to her claim to have left Eritrea illegally, but where the background evidence indicated that only limited classes of person were allowed to leave that country legally. At [53] Laws LJ (with whom Dyson LJ agreed) held that the fact that it was reasonably likely that any 17 year old girl from Eritrea, about whom nothing else relevant was known, left the country illegally "does not entail the conclusion that *this particular* 17 year old girl did so. The reason is that the probability that a particular person has or has not left illegally must depend upon the particular facts of her case… There may indeed be a general probability of illegal exit by members of a class; but the particular facts may make all the difference."

571. At [54] Laws LJ held that the "position would only be otherwise if the general evidence was so solid as to admit of only fanciful exceptions". At [31] of MA (Somalia), Sir John Dyson considered that what "Laws LJ was saying at para 54 was that, where a claimant tells lies on a central issue, his or her case will not be saved by general evidence unless that evidence is extremely strong. It is only evidence of that kind which will be sufficient to counteract the negative pull of the lie." Much, however, depended on the bearing that the lie had on the case. It was for the Tribunal to decide what weight to give to the lie, as well as to all the other evidence in the case, including the general evidence [32]. As was made plain in the context of criminal law in R v Lucas [1981] QB 720, the judicial fact-finder had to be alive to the fact that "people lie for many reasons" [32]. Thus, "the significance of lies will vary from case to case" [33].

572. The Supreme Court found that the Court of Appeal was wrong to find that the AIT had not, in fact, followed the approach articulated, that dismissing an appeal because a person had lied, without more, would be wrong. The Supreme Court further held that the AIT had not overlooked the fact that MA had spent the last twelve years in prison and administrative detention in the United Kingdom, which was a relevant factor in deciding whether he could now avail himself of clan contacts in Mogadishu.

573. Mr Hickman submitted that MA (Somalia) made it clear that a Tribunal should adopt the following approach:-

> "First, it should decide on the evidence and circumstances *other than the evidence given by the individual concerned* what the likelihood is of him or her being without sufficient protection if returned to Place A (evidence A);
>
> Secondly, the Tribunal should consider whether the individual's evidence establishes a reasonable possibility that he or she has no protection on return to Place A (evidence B); and

> If the individual has told a lie about his or her connections to Place A, this may be of 'no great consequence' or it may suggest (to a greater or lesser extent) that he or she does benefit [from] protection in Place A and is trying to conceal it. In this latter situation the lie will have a 'negative pull' as evidence that such protection exists … and the Tribunal must consider whether it is sufficient to undermine the other evidence (including the statistical likelihood), i.e. Evidence A, that the individual is *not* able to benefit from protection on return." (Mr Hickman's emphases)

574. Thus, the UNHCR contended, it is clear that the mere fact a person has told a lie about their connections in Mogadishu is not a sufficient reason for holding that they would benefit from protection if returned as the Tribunal must (1) consider the other evidence and (2) assess the significance of the lie, including the precise nature to which it relates and the possible motives for it.

575. We do not, for our part, consider that there is much to be gained by seeking to construct a prescribed set of steps from MA (Somalia), particularly if they might lead to a "mechanistic" rather than a holistic approach. Fact-finders in this jurisdiction are well aware of the potential dangers involved in approaching the evidence before them in a particular sequence, notwithstanding the fact that one "must start somewhere".

576. It is, of course, axiomatic that the Tribunal will need to be satisfied that the appellant has, in fact, told lies, whether to it or to the respondent. As the Supreme Court indicates at [31] to [33], the significance or "negative pull" of the lie will possibly depend not only on the strength of the background evidence but on whether the lie – looked at in its own terms – is about an issue that is central to the disposition of the appeal. Thus, the Supreme Court approved what the Court of Appeal at [104] of GM had said about the case of another Eritrean appellant, namely, that it "might understandably carry far less weight" because the lie was in fact against the interests of the appellant. It should also be observed, however, that those who sit in this jurisdiction are familiar with cases where a person tells lies about issues which that person thinks are important for his claim when, whether because of the passage of time or otherwise, they are not. In such a circumstance, it will be open to the Tribunal, given the earlier lies, to approach with caution, the appellant's evidence regarding matters which are central to his current claim.

577. It will be for judicial fact-finders to decide, on the basis of the totality of the evidence before them, whether, to the extent that this country guidance remains authoritative (in terms of Practice Direction 12), the case before them is one where, notwithstanding an appellant's lies, it would be "fanciful" to conclude that the appellant falls within one of the various exceptions we have identified in the country guidance in the preceding Part of this determination. We should, however, refer back to what we have said earlier regarding the respondent's closing submissions, which were to the effect that someone who is found to have told lies about his or her experiences in southern or central Somalia has failed to discharge the burden of showing that they are not, in reality, from Somaliland or Puntland. In short, the

issue of coming from Somaliland or Puntland will need to have been "in play" in the appellate proceedings.

578. So far as concerns an ability to live in Mogadishu at the present time without Article 15(c) risk, the exception we have identified (paragraphs 357 - 358 above), though undoubtedly limited, we do not regard as inherently fanciful. Whether it becomes such in the context of a particular case will depend on all the circumstances.

PART K

SUMMARY OF LEGAL FINDINGS

579. At this point, it is probably helpful to gather together and summarise the various legal findings we have found it necessary to make in the course of determining these appeals.

580. Whilst section 2 of the Human Rights Act 1998 and its associated case law requires United Kingdom tribunals in general to give effect to the jurisprudence of the European Court of Human Rights, including that Court's guidance on how to approach evidence in international protection cases, the weighing of evidence and the drawing of conclusions as to the relative weight to be placed on items of evidence adduced before a United Kingdom tribunal are ultimately matters for that tribunal. Whilst the factual finding the Strasbourg Court has made as a result of applying its own guidance is something to which the domestic tribunal must have regard, pursuant to section 2, it is not bound to reach the same finding (**paragraphs 97 – 123**).

581. There is nothing jurisprudentially problematic with the Strasbourg Court's judgment in Sufi & Elmi, as regards Article 3 of the ECHR. The Court's finding, that the predominant cause of the humanitarian crisis in southern and central Somalia was due to the current warring parties, meant that the high threshold (identified, *inter alia*, in N v United Kingdom) for finding an Article 3 violation in the case of naturally occurring phenomena did not need to be met (**paragraphs 124 – 130**).

582. That high threshold is, however, still capable of being crossed in cases of sufficient exceptionality. In deciding what constitutes an exceptional case, regard must be had to all the factors, including the actions of the parties to a conflict, albeit that those actions are not the predominant cause of the humanitarian crisis (**paragraphs 131 - 132 and 474 – 482**).

583. Despite the suggestion in the judgment in Sufi & Elmi that there is no difference in the scope of, on the one hand, Article 3 of the ECHR (and, thus, Article 15(b) of the Qualification Directive) and, on the other, Article 15(c) of the Directive, the binding Luxembourg case law of Elgafaji (as well as the binding domestic authority of QD (Iraq)) makes it plain that Article 15(c) can be satisfied without there being such a

level of risk as is required for Article 3 in cases of generalised violence (having regard to the high threshold identified in NA v United Kingdom). The difference appears to involve the fact that, as the CJEU found at [33] of Elgafaji, Article 15(c) covers a "more general risk of harm" than does Article 3 of the ECHR; that Article 15(c) includes types of harm that are less severe than those encompassed by Article 3; and that the language indicating a requirement of exceptionality is invoked for different purposes in NA v United Kingdom and Elgafaji respectively (**paragraphs 328 – 335**).

584. Article 10 of the Qualification Directive requires the holding of some sort of belief, comprising a coherent and genuinely held system of values, whether these be theistic, non-theistic or atheistic, and is not satisfied in the case of a person who holds no such belief. Social restrictions, such as bans on watching football or television, do not comprise an interference with the right to religion, in the case of a person whose religious etc beliefs do not require him or her to participate in those activities. It is immaterial that a person may be permitted, according to those beliefs, to participate in the activities concerned.

585. Even where the motivation for a law is religious, the religious aspect will not, without more, lay the basis of a claim to international protection in relation to anyone who might fall foul of that law. However, the more such religiously motivated laws interfere with someone's ability to hold and practise their religious or other beliefs, the more intense will be the scrutiny.

586. The necessary religious element to satisfy Article 1(A) of the Refugee Convention is not satisfied solely by reference to the persecutor; but that element can be satisfied if the persecutor ascribes to the victim a perceived religious opinion (**paragraphs 190 – 199**).

587. There is no general legal principle that, in determining a person's entitlement to international protection, the Tribunal must leave out of account any possibility of that person's carrying out an act in the country of proposed return, which – if carried out in the United Kingdom – would constitute a criminal offence. A genuine conscientious objection to complying with unjust laws or demands may, however, provide an entitlement to such protection (**paragraphs 200 – 206 and 536 - 543**).

588. On the assumption that Al-Shabab's likely behaviour towards those who transgress its rules is as found in this determination, the position is as "extreme" as the factual basis in RT (Zimbabwe). In the light of RT, a person from an Al-Shabab area who can show they do not genuinely adhere to Al-Shabab's ethos will have a good claim to Refugee Convention protection, once outside Somalia (subject to internal relocation and exclusion clause issues), regardless of whether the person could and would "play the game", by adhering to Al-Shabab's rules. As can be seen from a comparison with Sufi & Elmi, the effect of RT is, accordingly, to take the Refugee Convention beyond the comparable ambit of Article 3 ECHR protection (**paragraphs 207 – 217 and 491 to 496**).

589. There is no legal burden on the Secretary of State to prove that there is a part of the country of nationality etc of an appellant, who has established a well-founded fear in their home area, to which the appellant could reasonably be expected to go and live. The appellant bears the legal burden of proving entitlement to international protection; but what that entails will very much depend upon the circumstances of the particular case. In practice, the issue of internal relocation needs to be raised by the Secretary of State in the letter of refusal or (subject to procedural fairness) during the appellate proceedings. It will then be for the appellant to make good an assertion that, notwithstanding the general conditions in the proposed place of relocation, it would not be reasonable to relocate there. In an Article 3 claim, a similar position pertains, in that, although the test of reasonableness/undue harshness does not formally apply, unduly harsh living conditions etc – albeit not themselves amounting to a breach of Article 3 – may nevertheless be reasonably likely to lead to a person returning to their home area, where such a breach is reasonably likely (**paragraphs 218 – 227**).

590. An appellant who pursues their appeal on asylum and humanitarian protection grounds, following a grant of leave, is entitled to have their appeal decided on the hypothetical basis (if the facts so demonstrate) that family members would be reasonably likely to return with the appellant and that potential harm to those family members would cause the appellant to suffer persecution or Article 15(b) harm (**paragraphs 228 – 237**).

591. A person is not entitled to protection under the Refugee Convention, the Qualification Directive or Article 3 of the ECHR, on the basis of a risk of harm to another person, if that harm would be willingly inflicted by the person seeking such protection (**paragraphs 238 – 240 and 561 – 567**).

592. Article 8(1) of the Qualification Directive provides that Member States may determine that a person is not in need of international protection "if in a part of the country of origin there is no well-founded fear of being persecuted or no real risk of suffering serious harm and the applicant can reasonably be expected to stay in that part of the country. Article 8(3) states that Article 8(1) applies "notwithstanding technical obstacles to return to the country of origin". Although the Court of Appeal in HH & Others found that Article 8 was "to do principally with internal relocation", there is nothing in that judgment or in the Qualification Directive that demonstrates the Article is so confined, and it would be illogical for it to be so. Accordingly, difficulties in securing documentation to effect a return to a person's home area may not entitle that person to international protection, whether or not there are real risks to that person in some other area of the country concerned (**paragraphs 530 - 531**).

593. In assessing the effect of an appellant's lies (whether to the Secretary of State or a judicial fact-finder), it is unnecessary to construct a prescribed set of steps from the judgments of the Supreme Court in MA (Somalia), particularly if they might lead to a "mechanistic" rather than a holistic approach. The significance or "negative pull" of the lie will possibly depend not only on the strength of the background evidence but

on whether the lie – looked at in its own terms – is about an issue that is central to the disposition of the appeal. Where a person tells lies about issues which that person thinks are important to their claim but which, because of the passage of time or otherwise, are not, it is open to the Tribunal, given the earlier lies, to approach with caution the person's evidence regarding matters that are central to the current claim (**paragraphs 568 – 578**).

PART L

COUNTRY GUIDANCE ON SOMALIA

Mogadishu

594. Despite the withdrawal in early August 2011 of Al-Shabab conventional forces from at least most of Mogadishu, there remains in general a real risk of Article 15(c) harm for the majority of those returning to that city after a significant period of time abroad. Such a risk does not arise in the case of a person connected with powerful actors or belonging to a category of middle class or professional persons, who can live to a reasonable standard in circumstances where the Article 15(c) risk, which exists for the great majority of the population, does not apply. The significance of this category should not, however, be overstated and, in particular, is not automatically to be assumed to exist, merely because a person has told lies.

595. The armed conflict in Mogadishu does not, however, pose a real risk of Article 3 harm in respect of any person in that city, regardless of circumstances. The humanitarian crisis in southern and central Somalia has led to a declaration of famine in IDP camps in Mogadishu; but a returnee from the United Kingdom who is fit for work or has family connections may be able to avoid having to live in such a camp. A returnee may, nevertheless, face a real risk of Article 3 harm, by reason of his or her vulnerability.

596. Except as regards the issue of female genital mutilation (FGM), it is unlikely that a proposed return to Mogadishu at the present time will raise Refugee Convention issues.

Southern and central Somalia, outside Mogadishu

597. Outside Mogadishu, the fighting in southern and central Somalia is both sporadic and localised and is not such as to place every civilian in that part of the country at real risk of Article 15(c) harm. In individual cases, it will be necessary to establish where a person comes from and what the background information says is the present position in that place. If fighting is going on, that will have to be taken into account in deciding whether Article 15(c) is applicable. There is, likewise, no generalised current risk of Article 3 harm as a result of armed conflict.

598. In general, a returnee with no recent experience of living in Somalia will be at real risk of being subjected to treatment proscribed by Article 3 in an Al-Shabab controlled area. "No recent experience" means that the person concerned left Somalia before the rise of Al-Shabab in 2008. Even if a person has such experience, however, he or she will still be returning from the United Kingdom, with all that is likely to entail, so far as Al-Shabab perceptions are concerned, but he or she will be less likely to be readily identifiable as a returnee. Even if he or she were to be so identified, the evidence may point to the person having struck up some form of accommodation with Al-Shabab, whilst living under their rule. On the other hand, although having family in the Al-Shabab area of return may alleviate the risk, the rotating nature of Al-Shabab leadership and the fact that punishments are meted out in apparent disregard of local sensibilities mean that, in general, it cannot be said that the presence of family is likely to mean the risk ceases to be a real one.

599. Al-Shabab's reasons for imposing its requirements and restrictions, such as regarding manner of dress and spending of leisure time, are religious and those who transgress are regarded as demonstrating that they remain in a state of kufr (apostasy). The same is true of those returnees who are identified as coming from the West. Accordingly, those at real risk of such Article 3 ill-treatment from Al-Shabab will in general be refugees, since the persecutory harm is likely to be inflicted on the basis of imputed religious opinion.

600. Although those with recent experience of living under Al-Shabab may be able to "play the game", in the sense of conforming with Al-Shabab's requirements and avoiding suspicion of apostasy, the extreme nature of the consequences facing anyone who might wish to refuse to conform (despite an ability to do so) is such as to attract the principle in RT (Zimbabwe). The result is that such people will also in general be at real risk of persecution by Al-Shabab for a Refugee Convention reason.

601. The same considerations apply to those who are reasonably likely to have to pass through Al-Shabab areas.

602. For someone at real risk in a home area in southern or central Somalia, an internal relocation alternative to Mogadishu is in general unlikely to be available, given the risk of indiscriminate violence in the city, together with the present humanitarian situation. Relocation to an IDP camp in the Afgoye Corridor will, as a general matter, likewise be unreasonable, unless there is evidence that the person concerned would be able to achieve the lifestyle of those better-off inhabitants of the Afgoye Corridor settlements.

603. Internal relocation to an area controlled by Al-Shabab is not feasible for a person who has had no history of living under Al-Shabab in that area (and is in general unlikely to be a reasonable proposition for someone who has had such a history - see above). Internal relocation to an area not controlled by Al-Shabab is in general unlikely to be an option, if the place of proposed relocation is stricken by famine or near famine.

604. Within the context of these findings, family and/or clan connections may have an important part to play in determining the reasonableness of a proposed place of relocation. The importance of these connections is likely to grow, as the nature of the present humanitarian crisis diminishes and if Al-Shabab continues to lose territory.

605. Travel by land across southern and central Somalia to a home area or proposed place of relocation is an issue that falls to be addressed in the course of determining claims to international protection. Such travel may well, in general, pose real risks of serious harm, not only from Al-Shabab checkpoints but also as a result of the present famine conditions. Women travelling without male friends or relatives are in general likely to face a real risk of sexual violence.

606. An issue that may have implications for future Somali appeals is the availability of air travel within Somalia (including to Somaliland). Flying into Mogadishu International Airport is sufficiently safe. There is no evidence to indicate a real risk to commercial aircraft flying to other airports in Somalia.

Somaliland and Puntland

607. The present appeals were not designed to be vehicles for giving country guidance on the position within Somaliland or Puntland. There is no evidential basis for departing from the conclusion in NM and others, that Somaliland and Puntland in general only accept back persons who were former residents of those regions and were members of locally based clans or sub clans. In the context of Somali immigration to the United Kingdom, there is a close connection with Somaliland.

608. A person from Somaliland will not, in general, be able without real risk of serious harm to travel overland from Mogadishu International Airport to a place where he or she might be able to obtain an unofficial travel document for the purposes of gaining entry to Somaliland, and then by land to Somaliland. This is particularly the case if the person is female. A proposed return by air to Hargeisa, Somaliland (whether or not via Mogadishu International Airport) will in general involve no such risks.

Female genital mutilation

609. The incidence of FGM in Somalia is universally agreed to be over 90%. The predominant type of FGM is the "pharaonic", categorised by the World Health Organisation as Type III. The societal requirement for any girl or woman to undergo FGM is strong. In general, an uncircumcised, unmarried Somali woman, up to the age of 39, will be at real risk of suffering FGM.

610. The risk will be greatest in cases where both parents are in favour of FGM. Where both are opposed, the question of whether the risk will reach the requisite level

will need to be determined by reference to the extent to which the parents are likely to be able to withstand the strong societal pressures. Unless the parents are from a socio-economic background that is likely to distance them from mainstream social attitudes, or there is some other particular feature of their case, the fact of parental opposition may well as a general matter be incapable of eliminating the real risk to the daughter that others (particularly relatives) will at some point inflict FGM on her.

PART M

RE-MAKING THE DECISIONS IN THE APPEALS

Appellant AMM

611. Appellant AMM has been comprehensively disbelieved in his evidence, save that he comes from Jowhar. It is common ground that those negative credibility findings stand. Amongst the undoubted problems with the credibility of appellant AMM is the fact that he gave a false name to the United Kingdom authorities when he made his third asylum application. His assertion in oral evidence that he was forced to do so struck us as absurd.

612. In general, having had the opportunity of hearing and seeing appellant AMM give oral evidence, we considered him to be an extremely poor witness. His evidence regarding his alleged religious differences with Al-Shabab bore every indication of having been manufactured for the purpose of the present proceedings. He entirely failed to persuade us that he held any genuine religious or similar beliefs, which were likely to be stifled, restricted or otherwise interfered with by Al-Shabab. Appellant AMM is, in short, a cynical opportunist, intent on securing status in the United Kingdom by any means he considers likely to achieve that result, regardless of whether those means involve lying. Having said this, the previous finding, that he is from Jowhar, stands. Jowhar is in an Al-Shabab-controlled area. We are also prepared, just, to accept that appellant AMM has been outside Somalia since 2000. He has certainly been here since 2005 and the respondent does not appear to take issue with the fact that appellant AMM was rescued in the Mediterranean from a sinking vessel. He has, accordingly, been away from Somalia for a long time, certainly long before the rise of Al-Shabab. Appellant AMM's claim not to know the whereabouts of his wife and 12 year old child struck us as a further instance of his mendacity, since he has no doubt calculated that it would be better from his point of view to assert that he was no longer in touch with them. Given his general lack of credibility and the ease with which contact can be made over mobile telephones with those in Somalia, we consider that the truth of the matter is that appellant AMM's wife and children are living in Jowhar, and that he knows this full well.

613. Does the "negative pull" of appellant AMM's lies reach the point where it overrides the general evidence regarding risk to returnees to Al-Shabab areas from the United

Kingdom for those who have been away from Somalia for a significant period? The issue is whether the extreme likelihood that appellant AMM has close family members in Jowhar would facilitate his return there, removing any real risk that he would suffer the serious adverse attention of Al-Shabab; in particular, as a perceived spy. We do not consider that it would. The evidence before us as to Al-Shabab executions, beatings and so forth, does not disclose that the victims of these atrocities were lacking family members in the areas concerned. Whilst it plainly might be possible for appellant AMM's family to liaise with the then current Al-Shabab commander, in advance of appellant AMM's return, the capricious and unpredictable nature of Al-Shabab rule means that we cannot conclude that this would eliminate a real risk to appellant AMM. On the contrary, the highlighting of his having come from the United Kingdom may have the opposite effect.

614. Added to this is the reasonable likelihood, given the geographic spread of Al-Shabab's control in southern and central Somalia, diminishing though it is, that appellant AMM would have to cross an Al-Shabab area on his way to Jowhar. Even if he has family etc. in Jowhar, they would be unlikely to be able to smooth his passage through such intermediary areas. Those operating such checkpoints are reasonably likely to observe from appellant AMM's behaviour that he has no recent experience of Somalia, which may very well lead to him being identified or at least assumed to be from the West.

615. It is reasonably likely that any serious harm that Al-Shabab would inflict upon appellant AMM would be motivated by that organisation's Manichean view of religion and that appellant AMM would suffer because – irrespective of his own absence of any religious belief – he would be perceived as a religious apostate.

616. Although, in view of that finding, it is immaterial, we did not believe appellant AMM when he sought to persuade us that he had some kind of conscientious objection to paying taxes to Al-Shabab. Once again, his oral evidence bore every appearance of being concocted.

617. The respondent did not point to any other areas of central and southern Somalia, outside Mogadishu, to which appellant AMM might go, where Al-Shabab are not in control. That there are such areas is, however, apparent from the evidence. In the circumstances, we do not consider that appellant AMM could, at the present time, reasonably or without undue hardship relocate to such an area. The likelihood is, bearing in mind the current humanitarian emergency, that appellant AMM would struggle to survive. This is so, notwithstanding the fact that he could avail himself of an initial £500 and, possibly, a further £1,000, from UKBA's relocation package. Coupled with a family or other support network, such as that provided by a clan, such financial assistance may well render internal relocation reasonable, according to Januzi standards. On its own, however, we do not consider that it would, in the case of appellant AMM.

618. Again, despite the negative pull of his lies, we do not find that, looking at the evidence overall, appellant AMM has failed to show a reasonable likelihood that, wherever else he might go in central and southern Somalia, he would have such family/clan connections.

619. The same is true of relocation to Mogadishu. We do not consider that the negative credibility of appellant AMM is so strong as to lead us to conclude that he would be able to live there in the kind of circumstances we have described as being the current exception to the general Article 15(c) risk to returnees to that city.

620. Appellant AMM's appeal accordingly falls to be allowed on refugee grounds. He is not entitled to humanitarian protection. His appeal succeeds on Article 3 ECHR grounds by reference to the risk to him from Al-Shabab.

Appellant MW

621. Appellant MW has not been found credible in the past, save as to her assertion that she comes from Merka. In particular, her previous evidence, that she did not know what clan she was from, is plainly damaging of her credibility, given her background and continued exposure to Somali culture.

622. Her oral evidence to us was intensely problematic. Her reply to Ms Short's question as to what would happen if she arrived in Mogadishu with her three children, was to state that "people in Mogadishu did not use pushchairs" and that she would be unable to carry her three children without one. This reply we consider to be symptomatic of appellant MW's lack of inclination to engage seriously with the appeal process (perhaps because of her recent grant of discretionary leave).

623. What was revealing, however, was her oral evidence regarding her attitude towards female circumcision. Appellant MW's answers are recorded in Appendix 1 to this determination. We consider that they demonstrate clearly appellant MW's acceptance of the practice in Somalia. Indeed, we conclude that the only factor that would preclude appellant MW from circumcising her daughter in the United Kingdom is the criminal proscription on the practice that exists here. Although, as we have seen from the background evidence, societal pressures in Somalia to have FGM performed can be severe, appellant MW's decision to have her daughter circumcised would be likely to be made long before any such pressures arose.

624. Appellant MW's partner gave oral evidence. Despite his vague assertion that he was taking medication "for his memory", with the implication that memory problems had affected his performance as a witness in the past, it was plain to us that the partner was merely not a very good liar. It beggars belief that, as he asserted, he was unaware that he had been found in the past in a judicial context not capable of being believed. It was also striking that, although he said in evidence that his clan did not have "any power", he claimed he did not know what his clan in fact was. When it

was put to him that he had been divorced in the United Kingdom under British law, he replied "what divorce?" His subsequent reply to the question of how he might not know how to get married and yet knew how to get divorced was entirely unpersuasive.

625. The partner's assertions regarding his attitude to FGM, whilst a little more coherent, struck us as being more manufactured than genuine. Whilst we accept what Ms Short said about the position regarding benefits and how, until appellant MW was granted discretionary leave, there may well have been negative financial implications for her and her partner to be living together, both she and her partner exhibited an extremely supine attitude towards this issue. We certainly did not form the impression that the couple were straining to live together. We say that notwithstanding the evidence that they now have three children and that the partner is mentioned on the relevant birth certificates.

626. Having said all this, we do accept that appellant MW has maternal feelings towards her children and that, if forcibly removed to Somalia, she is at least reasonably likely to seek to take her children with her, in order not to be parted from them. We were presented with no evidence to suggest that her partner or anyone else would, in those circumstances, seek to prevent the children's departure with appellant MW.

627. Accordingly, for the purposes of section 84(1)(g) of the 2002 Act, we approach appellant MW's appeal on the hypothesis that she would find herself in Somalia with her three children. In such circumstances, it is, we find, possible that her partner would choose to accompany them; but it is sufficiently unclear to conclude that there is a reasonable likelihood of MW and her children going to Somalia alone.

628. In view of what we have found to be the true attitude of appellant MW towards female circumcision, it is evident that she cannot succeed in showing that she is a refugee on the basis of the real risk that her daughter would be circumcised. Appellant MW is highly likely either to be the perpetrator of such mutilation or to procure it from others (see paragraphs 561 *et seq* above). We have formed our conclusions of this aspect of appellant MW's evidence having regard to the report of the independent social worker, Ms Cox, who claimed that appellant MW "became visibly upset when talking about her fear of [b]eing subject to FGM if she were to return with her to Somalia". We witnessed no such distress during the quite lengthy questioning of appellant MW on this issue in the present proceedings. Whilst we are prepared to accept that this is what Ms Cox saw, appellant MW's thorough lack of credibility in other areas of her claim leads us to conclude that she was seeking to deceive the social worker. What we do accept, however, as we have said, and as Ms Cox goes on to record, is that appellant MW "could not consider leaving [the children] in the UK if she was returned to Somalia but equally feared for their safety there".

629. Leaving aside FGM, in the light of our findings regarding MW's maternal feelings, it is plain that she would be very likely to experience feelings of anguish, amounting to

Article 3 ill-treatment, if she were to see her children severely harmed or suffering from severe malnutrition, somewhere in southern and central Somalia. As we have found, the situation in large parts of that region are such as to make such a fear well-founded. Whilst we accept that appellant MW could well receive money transfers, not only from UKBA but also from her relative in Canada, the general insecurity faced by women, with no male protector would, we find, be significantly aggravated in the case of appellant MW, by reason of her long absence from Somalia and her consequent lack of coping mechanisms, such as women heads of households have had to forge in recent years.

630. In view of our adverse credibility findings, we consider it very likely that appellant MW has some (albeit extended) family in Merka; but that is an area controlled by Al-Shabab and we accordingly make similar findings in relation to appellant MW as we have in the case of appellant AMM. Like him, appellant MW has been outside Somalia for a significant period of time and would be returning from a Western country. There is, accordingly, a real risk of her being perceived as an apostate. We do not, however, accept, any more than we did in the case of appellant AMM, that appellant MW has any genuine religious etc beliefs that are reasonably likely to be interfered with by Al-Shabab's socio-religious requirements. Her children are far too young to be subject to forced recruitment and we do not consider that appellant MW has any conscientious objection to the payment of "taxes".

631. As a single woman with children, appellant MW would clearly be in a heightened risk category from the point of view of sexual violence, which is prevalent in southern and central Somalia. We do not, however, find that she is at real risk of Article 15(b) ill-treatment or persecutory ill-treatment by reason of having to wear oppressively heavy clothing in an Al-Shabab area. As we have found, the evidence that Al-Shabab imposes such requirements is too sporadic to give rise to a generalised real risk.

632. Appellant MW's travel to Merka from Mogadishu International Airport is likely to involve serious problems, including those faced at Al-Shabab checkpoints. As with appellant AMM, we find that those operating the checkpoints are reasonably likely to discern from appellant MW's appearance, and those of her children, (leaving aside issues of clothing) that she has no recent experience of Somalia and is likely to be from the West.

633. As with appellant AMM, whilst it is theoretically possible that appellant MW could relocate to a non-Al-Shabab area in southern or central Somalia, no such potential area has been identified by the respondent. Furthermore, there remain the problems of getting to such an area and the reasonableness of conditions there, given the general humanitarian situation and the likelihood (despite appellant MW's lack of credibility) that she would not have family or clan protection.

634. As for Mogadishu, in the light of our Article 15(c) findings, this is plainly not a reasonable relocation alternative for appellant MW and her children, whether or not

her partner (who says he comes from there) would be hypothesised as returning with her.

635. At [91] of Ms Short's closing submissions, she submitted that the right to education of appellant MW's children would be violated by returning them to Somalia. Given, however, that the only hypothesis with which we are concerned is that in section 84(1)(g) of the 2002 Act, the children's right to education is not an issue in the present proceedings.

636. On the basis of these findings, appellant MW is entitled to recognition as a refugee. She is, accordingly, not entitled to the grant of humanitarian protection.

Appellant ZF

637. Appellant ZF is, at 67, the oldest of the five appellants; she is also the most recent arrival in this country, having reached here in September 2009. On the basis of the original Tribunal's undisturbed findings of fact, appellant ZF comes from north-west Somalia, which, as we have indicated, in this context means Somaliland. The original Tribunal found that there was a "chance that she has lived in Mogadishu", although she did not originate from there. The overwhelming likelihood is, accordingly, that appellant ZF is an Isaaq.

638. We had the benefit of hearing and seeing appellant ZF give evidence. She cut a poor figure. She sought to resile from an important element of her evidence regarding her alleged rape by Al-Shabab militia. She failed to come up to proof, in terms of her written statement, in relation to alleged religious differences with Al-Shabab. She gave inconsistent evidence as to when her daughter was supposed to have left Somalia. She attempted to exaggerate problems regarding her health, mentioning a variety of conditions from heart problems to severe arthritis, which her GP had not seen fit to refer to in his letter. She could give no credible explanation for not being in contact with her daughter. She could give no credible explanation of how, according to her, she had been able to make a long journey on her own from Ethiopia to the United Kingdom. She persisted in her assertion, in the face of the evidence (including linguistic evidence) that she was not from Somaliland. Her evidence as to why she had not left with her daughter involved appellant ZF contradicting herself as to whether she had money (albeit in the form of jewellery which she could have sold). She claimed there was no Somali community in Newcastle, when her doctor's letter stated that she had specifically requested being moved to that city in order to be near the Somali community. Her claim to have been raped by Al-Shabab, who were also supposed to have killed her husband, was intensely problematic, given that she said this happened in 2001, before the emergence of that organisation.

639. The case of appellant ZF is a striking instance of a person whose claim to international protection turns entirely on the respondent's decision to return the

appellant to Mogadishu, as opposed to Somaliland. In Part I we have examined the possible reasons why the respondent has adopted such a course.

640. On the basis of our credibility findings and the background evidence, we have no doubt at all that appellant ZF would not be at real risk of persecution or other serious harm in Somaliland. She has completely failed to show that she is without family and/or clan protection there. Her ability to raise US$3,000 to fund her journey to the United Kingdom demonstrates that she is able to call upon significant financial resources, even before one takes account of the money that UKBA would make available to assist her return.

641. However, appellant ZF will be a refugee if there is a real risk of her being persecuted for a Refugee Convention reason in the country of her nationality; namely, Somalia, at or after the point of her return. In order to get an old green Somali passport (see above) appellant ZF would have to run the real risk of Article 15(c) harm, if such passports are still available in Bakara Market (and assuming it would be open for business), or Article 3 and Refugee Convention harm, if she has to venture into the Afgoye Corridor. The respondent submitted that there was, in fact, evidence from appellant ZF that she had lived for a significant period of time in Mogadishu and also been in Afgoye. The previous Tribunal, however, plainly did not believe anything more than that there was a chance appellant ZF had at some time been in Mogadishu. Her whole account of problems in Mogadishu and Afgoye, which were central to appellant ZF's claim before that Tribunal, was found (quite properly) to be lies. We consider that it is taking the consequences of those lies too far to hold that appellant ZF has, in reality, been able to live without difficulties in those places.

642. At [26] of his closing submissions on behalf of appellant ZF, Mr Schwenk contended "that all the evidence points to the Respondent proposing to send the Appellant to Mogadishu from where she is expected to make her way overland to the north". We agree. The respondent did not to any material extent advance the submission that appellant ZF, having got the old green passport, could return to Mogadishu International Airport and board a plane to Hargeisa. We have, nevertheless, considered that possibility; but by that time there is a real risk that serious harm will have befallen her.

643. As we have already found by reference to the background evidence, appellant ZF's overland route to the borders of Somaliland is fraught with dangers. The evidence does not disclose that appellant ZF would be able to avoid a real risk of serious harm. In particular, we agree with Mr Schwenk at [31] "that when travelling through Al-Shabab-controlled areas she will be perceived by Al-Shabab to have transgressed Islamic mores and will thereby be at risk". The Convention ground is perceived religious opinion, albeit that we do not consider appellant ZF has any genuine religious or conscientious beliefs that are likely to be interfered with by Al-Shabab. In this regard, we do not consider it necessary to repeat what we have said regarding appellant AMM and appellant MW, save that there is nothing to suggest that appellant ZF's age would remove any real risk to her.

644. Appellant ZF is entitled to recognition as a refugee. She is not entitled to the grant of humanitarian protection. Her appeal will also be allowed on Article 3 ECHR grounds.

Appellant FM

645. Appellant FM, who arrived in the United Kingdom in July 2006, from Kenya, told Immigration Judge Courtney that he was from a minority clan (Ashraf), had lived his entire life up to leaving Somalia in the district of Hamar JaabJab, Mogadishu, had married a woman from the majority Hawiye clan and thereby incurred the animosity of his in-laws, causing him to leave. The only part of this evidence that survived the Immigration Judge's well-founded adverse credibility findings was that appellant FM had lived in Hamar JaabJab.

646. In his oral evidence to us, appellant FM said he could not return, on the basis that he would have no employment and there was no stability. He said he could not look for work because jobs were organised by clans and given to people who belonged to the clans concerned. The port near Hamar JaabJab was, he said, controlled by major clans and other clan members would be unable to find work there.

647. Appellant FM claimed to be a Sufi. He described elements of that sect's beliefs and practices, which persuaded us that he was telling the truth about this. We also considered that he gave truthful evidence about being able to live in Hamar JaabJab during the fighting, but having to move to a different district, such as Hamar Weyne, when the fighting was intense. Asked about present circumstances, appellant FM said that although government forces held Hamar JaabJab during the day "during the night others would come". He considered nowhere in Mogadishu to be safe. He did not believe that he could move to another area outside Mogadishu, not controlled by Al-Shabab, because a person needed a clan connection. He agreed that there was no conflict in Somaliland.

648. Appellant FM said that he had last spoken to his wife five weeks ago and that his father-in-law had asked him to release his wife from the marriage so that she could marry someone else. They were now said to live in Ceelasha Biyaha, an area outside Mogadishu that was controlled by Al-Shabab. He had tried to call his wife back but there had been no reply. He confirmed that he had left Somalia because his father-in-law opposed the marriage and now wanted appellant FM to divorce.

649. It is in our view significant that appellant FM's own evidence is that his reason for leaving Hamar JaabJab in February 2006 was not because of the fighting and consequent displacement of civilians from that district but because of alleged ill-treatment from his father-in-law. Immigration Judge Courtney did not believe the account of that ill-treatment or, indeed, that appellant FM was even married. Having heard appellant FM ourselves, we do not conclude that he has shown why that

finding should be displaced, save that we consider it reasonably likely that he is, in fact, married. The evidence that he had been in touch with his wife as recently as five weeks ago did not strike us as overtly self-serving, notwithstanding the assertion that the father-in-law supposedly wants appellant FM to divorce his wife.

650. At the time of the hearing and for a significant period before, Hamar JaabJab had been under the control of the TFG/AMISOM. Notwithstanding that and the withdrawal of Al-Shabab's conventional forces from Mogadishu, we have found that it would in general be a violation of Article 15(c) to return any civilian to Mogadishu at the present time. We have carefully considered whether appellant FM might fall within the limited exception to that general finding, concerning those whose socio-economic position enables them to avoid the risks run by the great majority of the population, whilst maintaining a reasonable lifestyle, albeit centred on a residential compound. The fact that appellant FM did not leave Mogadishu because of the generalised fighting could well be said to be a pointer towards his falling within such an exception. On the other hand, his description of moving with his wife and children to other districts, such as Hamar Weyne, fits well with the background evidence and tends to put him outwith the category just described.

651. Looking at the evidence overall, we conclude that the negative pull of the lies appellant FM has seen fit to tell is not such as to place him within the exception. Accordingly, appellant FM would be entitled to humanitarian protection by reason of Article 15(c), if we do not find him to be a refugee.

652. We do not, however, find that appellant FM's hypothetical presence in Hamar JaabJab is such as to make him a refugee. Whilst Al-Shabab is capable of posing a real risk of indiscriminate violence to civilians generally in that district, we do not consider that the evidence shows that – even before the August 2011 withdrawal of Al-Shabab's conventional fighting forces – they were reasonably likely to have had such a presence in Hamar JaabJab as to be able to persecute appellant FM for his imputed religious opinions. Appellant FM told us he understood that, by night, "others" (presumably meaning Al-Shabab) would come into Hamar JaabJab. That may be so; but the evidence as a whole simply fails to disclose a sufficient risk of persecutory harm, as opposed to the real risk of a threat of indiscriminate violence.

653. Mr Symes submitted that appellant FM would have to venture into Al-Shabab-controlled areas of Mogadishu in order to have anything resembling an ordinary life; in particular, he would need to go to Bakara Market to buy everyday things and, possibly, obtain employment. That may have been so before Al-Shabab's withdrawal; but it is not the case now. In any event, even before that withdrawal, Mr Burns had confirmed that there were a host of markets around Mogadishu catering for basic needs, including in TFG/AMISOM-controlled areas, albeit not operating on the scale of Bakara Market. Furthermore, employment opportunities exist in Hamar JaabJab and in its adjacent port area. Appellant FM claimed that he would be unable to secure employment there, because he was from a minority clan. He has not been believed as to that aspect of his claim. Furthermore, Mr Burns' evidence was to the

effect that the demographics of Hamar JaabJab were considerably different from those that existed in 2006.

654. Since appellant FM does not have a well-founded fear of persecution for a Refugee Convention reason in his home area, it is unnecessary to determine whether, for the purposes of that Convention, he has an internal relocation alternative, either in southern or central Somalia or in Somaliland/Puntland. The respondent, however, contended that such an internal relocation was feasible, as a means of avoiding Article 15(c) harm in Mogadishu.

655. We reject that submission, as regards southern and central Somalia, for the same reasons as we have given in relation to the previous appellants. As for Somaliland and Puntland, we have already indicated why we do not consider that such a relocation alternative can properly be raised at this stage of the appellate proceedings. On this issue, Mr Symes drew attention to the judgment of Sedley LJ in Daoud v Secretary of State for the Home Department [2005] EWCA Civ 755, that:-

> "Internal relocation is not, as Home Office presenting officers seem often to think it is, a throw-away submission in case other arguments fail. It is a serious and frequently problematical issue, requiring proper notice, proper evidence and proper argument, and it is governed by legal tests to which this court has more than once devoted attention." [12]

656. In any event, the adverse credibility findings in appellant FM's case are nowhere near those required to raise as a serious issue that he might, in reality, have the requisite degree of connection with Somaliland and Puntland as to be able to live in either of those regions. Finally, even if this were otherwise, appellant FM would have to make his way from Mogadishu to the borders of those regions, with the attendant risks that we have described in relation to other appellants.

657. As we have earlier held, to live in Mogadishu at the present time, following the withdrawal of Al-Shabab, does not in general raise a real risk of treatment proscribed by Article 3 ECHR.

658. Appellant FM is not entitled to recognition as a refugee. He is, however, entitled to humanitarian protection (Article 15(c)). His appeal is dismissed on Article 3 grounds.

Appellant AF

659. Like appellant AMM, appellant AF has extensive experience of the appellate system in the United Kingdom. This is the second occasion on which his appeal has been remitted to a tribunal by the Court of Appeal. Previous judicial findings of fact, undisturbed by the circumstances of the remittals, establish that appellant AF is a member of the Madhiban clan (a Migdan) who, although being born in Merka and having lived there until 1989, made his home in Mogadishu, in the districts of

Shangani, Hamar Weyne and Hamar JaabJab (all of which at the hearing were under TFG/AMISOM control). Although he experienced discrimination and some minor harassment during the time of the clan conflicts, he was never physically harmed. He enjoyed the protection of a Habargidir man, who was appellant AF's clan patron. Immigration Judge Adio did not believe that the patron had been killed, contrary to the assertion of appellant AF.

660. Appellant AF was able to raise money with the assistance of his patron, by selling appellant AF's mother's land. Appellant AF left his wife and children at home, went to Bakara Market, made travel arrangements and then left Somalia for the United Kingdom. This was in 2001.

661. Like appellant FM, appellant AF told us in oral evidence that he would move with his wife and children to another area of Mogadishu, when the fighting in their area became intense. He confirmed that during the fighting he had never left the city. Appellant AF claimed not to know where his family were and that he had no connections with his clan. Looking at the evidence overall, including the previous judicial findings, we do not consider that there is any credibility in those assertions. We consider that the truth of the matter is that appellant AF's family remain in Hamar JaabJab, that he knows this full well and that he is likely to be in touch with them by mobile telephone. Appellant AF claimed in oral evidence that he had no phone cards and no money to spend on calling persons in Somalia, but then undermined that assertion by saying that "if he did call they would ask him for money". He then changed his evidence again, by asserting that the reason he did not speak to them was that "he did not know their numbers".

662. Appellant AF's attempt to portray himself as religiously opposed to Al-Shabab was entirely unpersuasive. He claimed that he had been brought up "believing that even killing an insect was wrong". The hyperbolic nature of that assertion did not advance appellant AF's case; quite the opposite. The reasoning we have employed in relation to appellant FM, so as to conclude that he is at real risk of Article 15(c) harm, if returned to Mogadishu, is also relevant in the case of appellant AF and causes us to make the same finding in respect of him. In both cases, we do not, in particular, consider that the problems with credibility properly lead us to conclude that appellants fall within the exception to the Article 15(c) class of those at risk.

663. By the same token, however, we do not find that appellant AF falls to be recognised as a refugee. There is no real risk of him coming to the adverse attention of Al-Shabab in Hamar JaabJab or in any other area of the city to which he might wish or need to go, whether for employment or other purposes, such as to constitute a real risk of persecution or Article 3 harm. Like appellant FM, however, he does face the real risk of a serious threat of Article 15(c) harm.

664. We make the same findings regarding other areas of southern and central Somalia and the possibility of relocation to Somaliland and Puntland, as we have just made in

relation to appellant FM. Finally, there is on the evidence no real risk of appellant AF suffering Article 3 harm in Mogadishu at the present time.

665. Appellant AF is not entitled to be recognised as a refugee. He is, however, entitled to humanitarian protection (Article 15(c)). His appeal is dismissed on Article 3 grounds.

Signed

Date

Upper Tribunal Judge P R Lane

APPENDIX 1

SUMMARY OF ORAL EVIDENCE

Appellant AMM

1. The appellant gave his evidence in Somali through the court interpreter and confirmed that he lived in Manchester and that he had made the statement contained in the bundle. He stated that it had been read back to him in Somali and that the contents were true.

2. The appellant was asked for his opinion of Al Shabab. He stated that the difference between himself and Al Shabab was the interpretation of the religion. He stated that according to Islam, killing and taxation was prohibited and so Al Shabab were acting against Islam. He stated that they entered other people's houses by force and took away televisions and radios. He was asked what he had to say about the claim that Al Shabab were killing in the name of Islam. He stated that according to his religion, only God could give and take away life. He said Somalia had been a Muslim country for centuries that now Al Shabab had a different version of Islam which they were using for their own interests. He stated that they interpreted the religion in a different way. Islam meant peace and the killing and execution of people was not allowed. He stated that the collection of taxes was not right, particularly when it was used to buy weapons and wage wars against civilians. He was asked how he would feel if he was stopped at a checkpoint and asked to pay money. He stated that he would feel guilty because he would believe that he had committed a crime against God by paying money. He was asked to explain his reply and he stated it was because that money would be used to kill others.

3. The appellant was then cross examined by Mr Staker. He confirmed that he was born in January 1977 and that he was 34 years old. It was put to him that he was healthy and able bodied. He replied that he may look that way but he was stressed. It was acknowledged that he might find the hearing stressful but it was pointed out that there was no medical evidence as to any ongoing health problems. He stated that he had been stressed for six years. He agreed that he had had several previous appeals. He confirmed he arrived in 2005 and that after the refusal of his first appeal he had gone to Ireland and claimed asylum there. He stated that it had not been his intention but when he had lost his appeal and was told to leave the country he went there and made a claim. He had been told at Dublin that he had to return to the UK and that was what had happened and he then had several more appeals. It was put to him that the Tribunal had accepted he was from Jowhar but that the rest of his account had been rejected. He said he disagreed with the findings. He was asked whether he had any family in Somalia and he said he did not. He had three brothers in Libya and although they used to have contact with each other, that was no longer possible because of the ongoing problems in Libya. He stated that he did not believe there was any communication with people in Libya and he said a lot of Somalis had been killed there because they were suspected of working for Gaddafi's forces. He stated that he had two sisters working as cleaners in Saudi Arabia and that he was in contact with them. He had also been in contact with his wife before his departure for Ireland but he no longer knew where she was. He stated he had no relatives at all in Somalia as his father had been an only child and so had his mother. He was asked about clan connections. He stated that there were always clan connections but it was not possible to rely on them. He stated he had considered committing suicide many times. He had some Somali friends here and he watched Somali news on the television.

4. The appellant confirmed that he had heard of the voluntary assisted return program and he was aware of the assistance offered under it. He was asked whether he would accept that assistance if he returned to Somalia. He replied that he had not come to the UK to make money but to save his life. He stated that if Somalia was stable he would go voluntarily. He did not want any money. He was asked whether he was aware that 80% of the population of Mogadishu lived under TFG control. He asked whether Mr. Staker was suggesting that Mogadishu was safe. The question was repeated. He replied that he believed that Mr. Staker was misinformed. He stated that the TFG were only in control in Villa Somalia and they were unable to move without guards. The population generally was not safe and there was no '80% safe area'. It was put to him that 80% of the population lived in areas that were not under the control of Al Shabab. He stated that the population lived outside Mogadishu and only came into the city in the morning in order to avoid war. He stated there were no safe areas and there was war everywhere. He stated that a minister had been killed by his own niece and the port was under fire just the other day. It was put to him that there were large areas outside Mogadishu that were not under the control of Al Shabab. He replied that he was not aware of any such places; to his knowledge the whole of Somalia, with the exception of Somaliland and Puntland, was under Al Shabab control. He was asked whether he had heard that there were parts of Somalia where there was no fighting. He replied that if the capital was not safe then nowhere was safe. He stated that Somaliland and Puntland were clan-based and had their own problems. He stated that Jowhar was an Al Shabab base. He was asked whether he was aware that internal travel was possible in Somalia. He replied that he would be accused of being a spy if he returned. It was put to him that there were transport links between Mogadishu and Jowhar. He stated that he was aware of that. It was put to him that people did move between Al Shabab and TFG controlled areas. He disagreed with that and said that once somebody was in an Al Shabab area, they would be unable to move into a TFG controlled area and vice versa. The only way to move between areas was to avoid checkpoints otherwise one could be executed. He said he had heard people talking about this.

5. The appellant was asked whether he knew of anyone who had returned to Somalia after living for a long time in the UK or in Western Europe. He said he had, but did not specifically know anyone who had done so.

6. It was put to him that he had claimed in his witness statement that children were forcibly recruited by Al Shabab. He agreed with this. It was put to him that he was not a child and had no children. He stated that he did have a 12-year-old child but he did not know his whereabouts. He was asked on what basis he claimed in his statement that Al Shabab forced people to listen to long sermons of jihad. He replied that Al Shabab aimed to brainwash people. It was put to him that this was just a presumption on his part. He replied he had heard people talking about it. He was asked whether he knew of anyone who had been punished for refusing to fight for Al Shabab. He replied that Al Shabab did not allow any news broadcasters to record facts about them but he had heard that people were missing. The question was repeated. He said he had not seen anything on the television but there were lists on the internet of people who had been executed.

7. The appellant stated that he was a Sunni Muslim. He was asked whether there was anything about him that was different from other Sunni Muslims. He stated that Al Shabab called themselves Sunnis but they were not. He stated that Al Shabab were after people like him and wanted to force them to do what they (Al Shabab) wanted. The appellant was asked whether he was required by his religion to smoke and chew khat. He stated he was permitted to do so. The question was repeated. He replied that it was his hobby to smoke

and chew. He was asked whether he would be prevented from going to the mosque and praying by Al Shabab. He said he had not heard that they would do that but they did force people to go and pray.

8. He was asked about his objections to taxation. He replied that taxes were taken and used to kill people and so in a way both he and the killers were at fault. He was asked whether it would be against his religion to pay taxes in the UK if he disagreed with the objectives of the government. He replied that he had not claimed that his religion did not allow him to pay tax and he explained that if he paid taxes in the UK he knew that the money would be used for housing or the infrastructure and not for killing.

9. In re-examination the appellant confirmed that he had left Somalia in 2000 and had not been back since then.

10. In response to questions from the Tribunal the appellant stated that he believed the UK was a safe country and that it was up to the government here to use taxation in whatever way it chose. He was asked where he had left his wife when he left Somalia. He stated that he had left her in Jowhar with her family. He was asked what had happened to her family. He replied that she was an orphan and he meant he had left her with his family. He was asked why he had given a false name to the UK authorities when he made his third asylum application. He stated that he was forced to do so; it had not been his intention and that people who came here after him had obtained refugee status. He accepted that it had been a mistake and he should not have done it but he had been given the wrong advice.

11. The appellant was asked what he had done between leaving Somalia in 2000 and arriving here in 2005. He said he had been travelling through Ethiopia, Sudan and Libya. He had spent ten days at sea trying to get to Europe from Libya. The boat had sunk and he had been rescued by a cargo ship and brought to the UK.

12. The appellant was asked whether he understood what a Sufi Muslim was. He asked whether that was the name of a man. He was asked whether he understood Sufism. He said he understood it as 'Khalifi'; they were peaceful religious people. He was not one of them; he was Tabliq. There were no questions arising and that completed this appellant's evidence.

Appellant MW

13. The appellant was examined in chief by Ms Short. She gave her evidence in Somali through the court interpreter. She confirmed her address in Bristol. She confirmed that she recalled the statement she had made to the solicitors and that she had told the truth for that purpose. She confirmed the signature at the end of the statement was hers and that she would tell the truth to the tribunal.

14. The appellant stated that she had travelled from Bristol for the hearing with her husband and their three children. She said she would have struggled without him. She was asked how she would have managed to carry their children if she had been on her own and she stated that two were in a pushchair and one was holding her hand. She was asked what would happen if she arrived in Mogadishu with the children. She stated that people in Mogadishu did not use pushchairs. She would be unable to carry her three children without one. She was asked where she bought her children's clothes from. She replied she bought

them from Asda, Next and H&M. She was asked whether she had any Islamic clothes for the children and she replied in the negative.

15. The appellant was asked about her religion. She stated that she was a Muslim. She described herself as a normal Muslim and not like Al Shabab. That completed examination in chief.

16. The appellant was then cross-examined by Mr Staker. She stated that she knew nobody in Somalia and had no friends or family there and no contact with anybody else. She knew some Somali people in the UK but had no family here. As far as she knew her husband had no family either and did not know many people here. She was asked what her knowledge of Somalia was and she replied that she heard on the news that there were killings and chaos. It was put to her that the Tribunal had not considered it credible that she did not know which clan she belonged to. She repeated that she did not know.

17. The appellant confirmed that she had arrived with entry clearance as a spouse in 2006 and that she left her first husband in May 2007. She moved in with her current partner although they subsequently had an argument and she moved out. Although they later reconciled and had an Islamic marriage, they had not lived together since. She stated that in April 2008 he was registered as the father of her first child and that her two younger children were also his. She confirmed that at the time of her initial hearing she was in an ongoing relationship with her partner. She stated that she disagreed with the finding of the Tribunal that it was not a strong relationship. When she was asked why they were not living at the same address, she stated that it was the government's job to put them in the same house. She was asked whether she had applied for housing so that they could live together and she replied that they were going to do that; they received an application form yesterday. That was despite the fact that they had reconciled in 2008.

18. The appellant stated that she had been looked after by her aunt in Somalia and they maintained contact after the appellant came to the UK and whilst she was still married to her first husband but when they had separated he retained the contact details. She stated she had no other way to contact her. Her aunt's son lived in Canada but there was no communication between them. The appellant was asked about the time when she had left her current partner in 2008. She said she had met a family on the street and had gone to live with them. It was put to her that that did not sound credible. She maintained her reply.

19. The appellant was asked about her comment in paragraph 12 of her witness statement and she was asked to clarify whether she meant most or all girls were circumcised. She said girls were circumcised. The question was repeated and she replied that all those that she knew had been circumcised. She was asked whether she knew of anyone who was called names for being uncircumcised. She replied "they would say bad things to you if you were not circumcised". She was asked whether that meant that she knew people who were not circumcised. She stated that everyone was. She explained in her culture it was a shame not to be. She was asked whether she knew of any Somalis opposed to the practice. She replied that it was forbidden in the UK but it was permitted in Somalia. The question was repeated and she gave the same answer. It was put to her that people could still oppose the practice even if it was the norm. She stated that it would be shameful not to be circumcised. She was asked whether she knew of anybody in the UK who opposed the practice or whether it was just the law that stopped them from having their daughters circumcised. She stated that in Somalia people were circumcised by unprofessionals. She was asked what the attitude of the Somali community was here. She stated that people followed the law. She was asked whether Somalis here would consider circumcision if they were able to. She replied in the negative.

She was asked whether she knew of anyone who opposed the practice and she stated she did not. She repeated that all females in Somalia were circumcised. The appellant was asked who would place pressure on her to have her daughters circumcised if she had no family or clan links in Somalia. She replied that it was their tradition and if she did not do so "everyone" would say "bad words". She was asked who she meant. She stated "everywhere you go people would say it". She was asked how anybody would know. She stated that there were no private toilets and showers, children played and urinated outside and it would become known. She was asked whether there would be any other consequences apart from the calling of names. She replied that it would be shameful. She was asked who would be able to force her to have her child circumcised if she refused to do it. She replied that it would be degrading for her child and she would be depressed. She was asked what she would do if she had to choose between having the procedure done and being called names. She replied she would have her daughter circumcised.

20. The appellant was asked whether she was aware of the support available to Somalis who returned voluntarily. She said she was not. It was put to her that the VAR programme provided funds and assistance. She stated that she did not need to contact them.

21. The appellant was asked whether there was any reason why Al Shabab would be displeased with her if she returned to Somalia. She stated that they would be able to differentiate between those who had remained in Somalia and those who returned there. It was put to her that she did not have any information about what happened to people who returned. She replied that she was aware that there were killings, torture and looting every day. She was asked whether there was anything contrary to her religion if she did what Al Shabab wanted to do. She replied that they forced people to do things and people preferred to dress the way they wanted to. She was asked whether she would be able to look like someone who had never left Somalia and she replied that this would not be possible because with children one could not pretend. The question was repeated. She stated that people in Somalia looked rough, they were starving and so it would not be possible to look like them. It was put to the appellant that there were women in Somalia without husbands who were able to look after their children. She replied that those women had families and clans and she did not.

22. In re-examination the appellant stated that her accommodation was paid for by NASS and that her husband received housing benefit. She stated that she did not experience any difficulties regarding the payments that she received.

23. In response to questions from the Tribunal, the appellant stated that her husband had left the Wilson Street address in 2008. When asked why he had left, she replied that it was because the accommodation was a bedsit. She was asked whether that was where she had lived with him. She stated it was not, they had lived together somewhere else. It was put to her that Wilson Street was the address where they had married and she was asked where it was that she had then lived. She then said that she had lived there with her husband but they then moved to another address. She stated that he had left Wilson Street for health reasons. She was asked whether it was shameful amongst the Somali community in the UK not to circumcise daughters. She replied that it was not allowed here but it was done in Somalia where there was only one culture. She was asked how it was that the culture changed just by being in the UK. She stated that people were not forced here and it was not shameful. The government would detain people who carried out the procedure on their children. In the UK it was normal not to carry this out and there were no problems for uncircumcised girls to get married. That completed this appellant's evidence.

Oral evidence of appellant MW's partner

24. The witness, partner of MW, gave his other name as AMM and his address. His evidence was given in Somali. He confirmed that he had been telling the truth when he prepared his statement but said that he had been on medication at the time. He was asked whether the medication had any impact on his memory and he replied that he took the medication for his memory. When this was queried, he replied that he suffered headaches so he took the medicine. He had sustained an injury which affected his nervous system. He confirmed that it was his signature on the statement and that he would tell the truth to the Tribunal.

25. The witness was asked whether he would be able to support his partner if she were returned to Somalia with the children. He said that he received income support, had no other source of income and had no money to send them. He was asked whether he had ever sent money to Somalia. He said he had sent money to his mother on two occasions. He was asked where she had been living and he replied she had been in Ethiopia but because she was attacked there, she had returned to Somalia.

26. In cross-examination the witness confirmed that he had given evidence for his partner at her earlier appeal. He was asked whether he had been aware that he was found to have been a witness not capable of being believed. He said he had not known this. He was asked whether he had lived with his partner from 2007 until January 2008. He confirmed that he had and added that people 'could fight'. He was asked whether he and his partner had reconciled at the time of her appeal and he confirmed that they had. He was asked why they had not lived together since then and he replied that he lived in a one-bedroom place with elderly people. He was asked whether he had made attempts via the authorities to be re-housed with his family. He stated that they had received a form this week having advised their solicitor that they wanted to be together. He stated that no children were allowed where he was currently living. He was asked why it had taken from September 2008 until now to take steps to be re-housed. He said it was due to his lack of experience and because he did not speak the language. There was nobody that he could have asked. He was asked why he and his partner had not married under British law. He stated that he did not know how to do that as he did not know the language. He said he did not know many Somalis in the UK and he did not know of anyone sending money back to Somalia.

27. When asked about his views on FGM he stated that he did not want his daughter to be circumcised and that he was strongly opposed to the practice. He was asked whether he knew of any others who opposed it and he replied that he did not want it for his daughter. He was asked what the attitude towards circumcision was in Somalia and he replied that there were bad people there who forced others into it. He was asked who would be able to compel them to have the procedure done on their daughter if they opposed it. He replied Al Shabab would. It was put to him that he need not be in an Al Shabab area. He replied that he had lived in Mogadishu. To his knowledge all of Mogadishu was controlled by Al Shabab.

28. In response to questions from the Tribunal the witness was asked what clan he came from. He stated that it was not a clan that had any power. The question was repeated. He stated that he did not know. He was asked whether he had opposed FGM whilst he lived in Somalia. He replied that his religion said that no looting was allowed. The question was repeated. He replied that he believed it was wrong. He was asked whether he would have been willing to marry a woman who had not been circumcised and he said he would.

29. The witness was asked when he had left his earlier address. He said he could not remember. He had lived on the top floor and had been offered a ground floor flat because of health problems. It was put to him that he had been divorced in the UK under British law. He asked "what divorce?". He was reminded of what he stated in paragraph 3 of his witness statement. He said he had not divorced MW. He was asked whether he had been divorced and he said he had. He was asked whether the divorce had taken place through the British courts. He said he received a letter and signed it. He was asked how he had known what to do with it. He stated that he had been helped by a Somali lady. He was asked how it was that he did not know how to get married yet knew how to get divorced. He stated that his former wife had brought him here and she knew how the system worked. She was the one who had contact with the courts and when he received a letter a man had helped him. There were no questions arising and that completed the evidence of this witness.

Appellant ZF

30. The appellant gave evidence in Somali through the court interpreter. Examined by Mr. Schwenk, the appellant confirmed her Newcastle address and agreed that she had made the statement dated 31st May 2010. She was asked whether it was right, as stated at paragraph 12 of that statement, that she had been raped by Al Shabab militia. She stated that she had been raped but as she had been in a state of confusion she did not know who had been responsible. Subject to that amendment she adopted the contents as being true and accurate.

31. The appellant was asked about her religion. She stated that she was a Muslim. When asked what type of Muslim she was, she replied she was “just a Muslim”. She was asked whether she followed the same form of Islam as other Somalis and she said she was a genuine Muslim. The question was put again; she gave the same reply. She was asked whether she had ever worn clothes that covered her face and she replied in the negative. She said she was elderly. She did not know why people covered their faces. She wore a bra. She had been married but her husband had been killed ten years ago. She had a daughter but she had left Somalia in 2000 and they had not had contact since then. She then amended that to 2002. She said she had no idea of the whereabouts of her daughter. She knew no one in Somalia. There was no one who could obtain a passport for her. She had no form of travel document. She was supported by NASS and had no savings. She had not been asked by the Secretary of State to complete any kind of application form for a travel document.

32. The appellant was then cross examined by Mr Staker. It was put to her that the position of the elderly in Islam was one of respect. She disagreed. She was asked whether she had a clan attachment. She stated she was from a minority clan. She had no family at all in Somalia. She had not had any siblings; she then amended this evidence and said she had had one who had left Somalia. There had been an uncle but he had health problems and she did not know whether he was alive or dead.

33. The appellant was asked about her health. She said she had difficulties walking. It was put to her that the only letter in relation to her health was a letter from her doctor which was written for accommodation purposes. She confirmed she had headaches and pains in her thumb and foot. It was put to her that the other problems she complained of in her witness statement – heart problems, high blood pressure, asthma and severe arthritis – were not mentioned by her doctor in his letter. She maintained she had told the doctor about those

problems and could not explain why they had not been included. She stated she was on medication. She had no other documentary evidence of her ill health.

34. The appellant said that she disagreed with the findings of fact made by the Tribunal. She was from a minority clan and had lived in Mogadishu. After she was widowed she lived in Hamar Weyne and then in a refugee camp near Afgoye. She said she could not recall when her daughter had left Somalia; it was 2001 or 2002. They had lost contact with each other. It was put to her that that was remarkable given the evidence of the extent of communication between those who had left and those who remained. The appellant replied that her daughter was not in Africa; perhaps she was in Europe. She agreed that it was unusual for there to be no contact but she could not explain the lack of communication.

35. The appellant stated that the $3000 she had spent on her journey came from jewellery that her husband had bought for her. It was put to her that she had survived alone for some eight years. She said she had been able to do so by moving from place to place however she had been persecuted and raped. She was reminded that that part of her account had been rejected by the Tribunal. She made no comment. It was put to the appellant that she had been able to make a long journey alone via Ethiopia. She replied by stating that she had no protection and would be killed if she returned.

36. The appellant was asked whether she was aware of the Voluntary Assisted Returns Programme (VARP). She repeated her previous answer. The question was put again. She said she had not heard of it. It was put to her that assistance was made available through the programme not only for the journey but also to contact family and that she would be given £1500. She stated she could not go; there was no protection in Somalia and there were rapes and killings. She was asked whether she kept abreast of the situation in Somalia. She said that she did not see many Somalis in the UK but she knew the situation in Somalia was unstable. She was asked for the source of her information. She said that there was no Somali community in Newcastle but she knew it was not safe to return. She was asked whether she had heard that 40% of the population in Mogadishu lived under TFG control. She said she did not know that. She also said she was not aware that Hamar Weyne was under TFG control. It was put to her that the evidence did not indicate a high level of violence in Hamar Weyne. She maintained that her clan faced problems on a daily basis. She was asked whether she had been aware that the Afgoye corridor had become more urbanised and permanent. She said she had not. She was asked whether she was aware that it was possible to fly directly to Somaliland. She said she was not from Somaliland. She was asked whether she was aware that the situation in Al Shabab areas varied from district to district. She said she had not heard anything about that but maintained that Al Shabab controlled most places. It was put to her that some areas had more lenient requirements than others. She said she was elderly and had health problems; she was not aware of what was happening in Somalia. It was put to her that she was no different from other Muslims and so she should have no problems with Al Shabab. She stated she could not return. If she did, she would have problems. She did not know anyone who had returned and she agreed she had no personal knowledge of what would happen on return.

37. The appellant was asked whether anything Al Shabab might ask of her would be contrary to her religion. She maintained that she was happy with the way she currently dressed and that Al Shabab forced women to cover their faces and body and wear gloves.

38. She stated that her husband was from the Bandhabow clan.

39. In re-examination the appellant said that she would not cover her face; if she had to, she would feel frustrated. She stated that her uncle would be around 70. She then said that she had been 65 when she left Somalia two years ago and her uncle was 78. She repeated that she did not know what had happened to her daughter.

40. In response to questions from the Tribunal, the appellant stated that her daughter left Somalia after the death of her father (the appellant's husband). She did not live with her in Afgoye. She fled with other people. It was said she was going to the UK. The appellant had not been able to accompany her because she had no money and had a bad back. She was reminded that she had said that she had jewellery. She then said that the situation had been chaotic and she had been unable to sell it. When asked why it had taken her some seven years to leave Somalia after her daughter's departure, she said that there had been no market for her jewellery and besides, she was looking after the two children of her deceased sister. When asked what had happened to those children, she said that she had asked people to take them to Kenya because she had health problems. Some nine months later, she left. The appellant said that her health problems began after she had been beaten and raped ten years ago. She said that she had been supported by aid organisations in Afgoye and in Mogadishu other people had helped her. The money for her daughter's travel had been raised by her clan and her late husband's clan. It was pointed out to her that although she stated that there was no Somali community in Newcastle, the letter from her doctor specifically requested that she be moved to Newcastle in order that she could be near the Somali community. She was asked whether she was in contact with them. The appellant then agreed that there was a Somali community in Newcastle but she stated that she received no help from anyone. She was asked whether she was in contact with them and she admitted she saw some of them.

41. It was put to the appellant that she had stated in her witness statement that her husband had been killed by Al Shabab. She was asked whether that was correct. She replied that she did not know. She said four people came to their home, killed him and raped her. It was pointed out to her that in her witness statement she expressed fear about Al Shabab because of what she claimed they did to her. She replied that Al Shabab controlled the area and killed people. She was asked whether she knew if Al Shabab existed in 2001. She replied there had been many Islamic groups. There were no questions arising and that completed this appellant's oral evidence.

Appellant FM

42. The appellant gave evidence through the Somali interpreter provided by the court. He was examined by Mr Symes. He gave his address as 3 Ray's Avenue and his date of birth as 5 August 1987. He confirmed that he had said in his statement that most of his friends had left for Kenya. He was asked what had happened to his other friends. He replied what he had meant was that he did not know about the others, only about those with whom he had contact. He was asked how he would support himself if he returned to Somalia. He stated he could not return as he had no employment and there was no stability. He was asked whether he would look for work if he returned to Hamar JaabJab. He stated that he would not be able to look for work because jobs were organised by clans and given to people who belonged to the clans concerned. It was put to him there was a port in Hamar JaabJab and it was asked whether he would be able to find work there. He stated that it was controlled by major clans and other clan members would be unable to find work there.

43. The appellant confirmed that he followed the Sufi sect. He said he had always done so and his family were Sufis. He was asked for an example of what this meant in practice. He stated that Sufis commemorated certain saints and visited their graves. He said they were very religious people. He had visited the graves of saints whilst he was in Somalia but this had been before Al Shabab took control. He also used to go to the mosque to commemorate the Prophet's birth. He was asked how he followed the Sufi faith in the UK. He stated that every year there was a celebration and people gathered together and had a drink, prayed and speeches were given. This was known as Digri. It was specific to Sufism and was an important part of his life.

44. The appellant was asked whether his appearance had altered since he had arrived in the UK. He said it had. He was asked to describe in what way it had changed. He stated that he had been slim, younger and had not had any grey hair when he came here.

45. In cross-examination the appellant confirmed that he had lived in Hamar JaabJab all his life. It was put to him that there would have been a lot of fighting in that area and he agreed that was correct. He was asked how it was that his family had never moved out of the area despite the conflict. He then said that they had moved temporarily when there was fighting and that they then moved back when the situation had stabilised. He was asked whether they had moved to a different district of Mogadishu. He replied they sometimes went to Hamar Weyne. He was asked whether it had always been possible to move away and he replied in the affirmative, adding that lots of families did the same.

46. It was put to the appellant that the Tribunal had found that he and his aunt had been able to enjoy sufficient protection in order to keep their assets safe during the war. He confirmed that the aunt had been his father's sister and said that they had land attached to that mosque and that the people in the mosque had looked after it. People knew his father who owned the land. He now had no family left in Mogadishu and his aunt was in Kenya. He was asked whether he had any clan connections and he said that he did not know anybody in Mogadishu. The appellant was asked whether there was anyone at the mosque who still knew his father. He said that they knew his aunt and that he had no connection with them. He agreed he had Somali friends in the UK.

47. The appellant was asked whether he was aware that 80% of the population of Mogadishu lived in TFG controlled areas. He said that he had not been aware of this. He was asked whether he had been aware that Hamar JaabJab was currently under TFG control. He replied that he heard government forces came in during the day but that during the night others would come. He was asked whether he was aware that there was not a high degree of conflict in Hamar JaabJab. He replied that it was similar to other districts and that nowhere in Mogadishu was safe. He was asked whether he was aware that a lot of people lived there and made a living. He maintained that those people had connections with their clan and had money so they were safe. He said without that, one was not safe. He added that if someone agreed with Al Shabab then they would have no problems. The appellant was asked whether he was aware that there were places in Somalia outside Mogadishu that were not controlled by Al Shabab. He stated that he listened to the news and watched television and that it was important to have a clan connection as without it survival was not possible. The question was repeated. He agreed that there was no conflict in Somaliland. It was put to him that they were even areas without fighting in central and southern Somalia. He stated that he was not sure of that and gave an example of a man from the south who went to the central area to work as a butcher a few months ago. He stated that some livestock went missing and this man was accused of being responsible because he was an outsider and he was killed.

48. The appellant was asked whether he was aware that there were minibuses for internal travel. He said he only knew of travel by lorry. He was asked whether he was aware that people travelled between TFG and Al Shabab controlled areas. He stated that if someone did this they would be suspected and killed. He was asked whether he was suggesting that this happened to anyone travelling from one area to another. He said that he meant only those who were new and had not been seen before would be at risk.

49. The appellant was asked whether he had heard of the voluntary assisted returns and reintegration programme. He said that he had heard a lot about it. He confirmed he was aware of the available assistance. He was asked whether he would seek such assistance if he returned. He replied that if he had to return he would kill himself.

50. The appellant was asked whether there was anything different between him and any other Sufi in Somalia. He stated that Sufis were all the same. He was asked whether there was any reason why Al Shabab would target him as opposed to any other Sufi. He stated that Al Shabab members had gone to the graves of saints and had dug out their bodies. He said they did not permit anyone to visit the graves or celebrate. He said they had placed a bomb in a Sufi mosque and many people had been killed. The appellant was asked whether he was prohibited by his religion from having a beard. He stated that he was not. He was asked whether Al Shabab would require him to do anything that was contrary to his religion. He stated that the disagreement between the Somali people and Al Shabab was that the latter wanted to make rules about how to dress whereas the former wanted freedom. He was asked whether he knew of anyone who had been killed for not having a beard. He said that he had heard of this. He added that they gave people a hard time and beat them.

51. It was put to the appellant that he would know how to make himself look like the other Somalis if he was returned to Somalia. He stated that coming from abroad, it would take some time to socialise and it would be difficult to integrate. He agreed that there would be a period of adjustment. It was put to him that the duration of the period might depend on how motivated he would be to re-integrate. He said that it also depended on having family, friends and links to provide one with information. He was asked whether he knew of anyone targeted for not watching executions. He said he did not but that he heard on the radio and on television that people were forced to watch. He said people were executed for refusing to fight for Al Shabab. He did not know of anyone personally because he had no family there but he heard this on television. That concluded cross examination. There was no re-examination.

52. In response to questions from the Tribunal, the appellant stated that after the death of his parents he had gone to live with his aunt who lived in a separate house in Hamar JaabJab. He was asked what had happened to his family's house and he said it had been hit by a missile and destroyed when the civil war started in 1990. There had been no adult male in his aunt's household. His aunt left for Kenya in 2007. He was asked to clarify his earlier evidence that having money made one safe. He replied that money alone did not help; one also had to have clan links. It was put to the appellant that the expert evidence had been their clan membership was no longer a relevant factor in the issue of security. He stated that no one was safe but if the situation of minority and majority clans was compared, then the majority clans had more of a chance. The appellant was asked how he had been able to hold on to the family land throughout the civil war. He stated that it was attached to the mosque and the people there protected it. He was asked what clan those people belonged to and he replied they were mostly from majority clans but they nevertheless helped him because they were honest and religious people.

53. The appellant stated that he had been married in 2006 and that his wife was still in Hamar JaabJab when he left. He was asked when he had last spoken to her and he said that this was five weeks ago. He said that his father-in-law had asked him to release his wife so that she could marry somebody else. He said this was because he (the appellant) was unable to support her. He said that his father-in-law had always opposed the marriage because he was from the Hawiye clan. He stated that they were now in Ceelasha Biyaha, an area outside Mogadishu that was controlled by Al Shabab. A lot of people had fled there. He said he had been surprised and shocked by his father-in-law's request and had not agreed to it. He said he had since tried to call back but there had been no reply. He was asked whether there had been any suggestion in the conversation that the appellant could return and live with his wife. He stated that he had left Somalia because his father-in-law opposed the marriage and that he now wanted the appellant to divorce his wife. He said that his father-in-law had given him an ultimatum on the phone and had said that if he did not divorce his wife he would offer her to somebody else even though she was still married to him. That completed his evidence.

Appellant AF

54. The appellant gave evidence in Somali through the court interpreter and confirmed that he recalled making his witness statement, that it had been read back to him in Somali and that the contents were truthful. He agreed that he had been referred to a consultant about his health and stated that he had an appointment to see him on 16 July. He stated that his condition was the same as it had been when his statement was prepared and he had been given some medication in the interim by his doctor.

55. The appellant was asked how he would feel about having to pay taxes to Al Shabab at checkpoints. He stated he was not happy about that because he knew that the money was used to buy weapons. He stated that if he paid the money he would feel guilty about that but if he refused then he could be beaten. He was asked why he would feel guilty about paying the money. He stated that the money would be used to kill people and therefore he would be indirectly responsible for that.

56. In cross-examination the appellant confirmed that his health had not given him any problems until a few months ago. He stated that he had first seen his doctor about his current problems in April or May but because he had moved he was unable to see the doctor and had to register with a new one. The letter he had produced from his doctor was the first time that he had seen him about his problems. It had been around April. It was put to the appellant that although he had claimed in his statement to have bouts of vomiting, his doctor's letter failed to mention that. The appellant stated that he had been given medication for the vomiting. It was put to him that it seemed strange that his GP would fail to mention vomiting in his letter to the consultant. The appellant stated that the purpose of the letter was so that a scan could be arranged. This had been booked for 16 July. He was asked whether his appeal hearing might have caused his health concerns. He replied that he could not blame the Tribunal for that and that his ill-health had come from God.

57. The appellant was asked whether he had any family left in Somalia. He said he had some distant relatives and clan links but he did not know where his cousins, uncles and aunts were. The last time he had any information, they were in Mogadishu. He stated he was from the minority Madhiban clan but he now had no connections with them at all. His uncle was

from the same clan. He agreed that his uncle might have connections but he and his uncle had not had any contact with each other since the appellant's departure.

58. The appellant confirmed that he had lived in several districts of Mogadishu and that he had been able to move between districts in order to avoid the conflict. He stated, however, that this had nothing to do with moving to clan-based areas; he would move with his wife and children and others fleeing the conflict and then move back when the fighting had ceased. He confirmed that he had been living in Mogadishu when the war broke out and that he had never left the city. He confirmed that he was originally from Merka. Despite the conflict he had not returned there. It was put to him that he had been able to live, work, marry and raise a family in Mogadishu despite the conflict. He agreed this had been the case. It was put to him that the situation was not particularly different at the current time and that he could return and do the same thing. He replied that it was completely different now. It was put to him that he could return to Merka. He stated that Merka was under Al Shabab control.

59. The appellant was asked whether he was aware of the voluntary returns programme and he stated that he was. He was also aware of the available assistance. He was asked whether he would take advantage of this if he returned. He stated that Mogadishu was not safe and that Merka was under Al Shabab control. If he returned he would be killed. It was put to him that 80% of the population in Mogadishu lived under TFG control. He replied that he did not believe that and it was more likely to be 40%. He was asked whether he was aware that Shingani, Hamar JaabJab and Hamar Weyne, all areas that he had lived in, were under TFG control. He confirmed that he was. It was put to him that the evidence did not suggest there was a high level of conflict in any of those areas. He maintained that was not the case and stated that Mogadishu was not safe and was under siege. He stated that even government members were unable to travel without escorts and that recently a minister had been killed and Al Shabab had accepted responsibility for that. It was put to him that a significant number of ordinary Somalis lived in Mogadishu and made a living in some way. He replied that those people were not living, they were just surviving. There was no employment and no security. It was put to the appellant that people also lived in the Afgoye corridor and moved to Mogadishu to work. He stated that there was no security and no safety and that whatever money such people earned was less than what they lost on a daily basis. It was put to the appellant that Merka was stable. He said it was not and that it was under the control of Al Shabab. It was put to the appellant that there was no fighting there. He questioned how that could be claimed and stated that there was a war going on.

60. The appellant was asked whether he was aware that travel was possible between TFG controlled areas and those controlled by Al Shabab. He said that anyone coming from an Al Shabab area would be seen as a spy and would not be safe. He stated that in Merka people were forced to go and fight in the war. It was put to the appellant that Al Shabab were less hard-line in some parts of the country, particularly outside Mogadishu. He stated that was not correct; there was one ideology and that was jihad and he did not want to kill anyone.

61. The appellant stated that he was a Sunni Muslim. He was asked whether there was anything about his background that would make him of particular interest to Al Shabab. He stated that his religion and the way that he lived was different to Al Shabab's interpretation. He stated that he was brought up believing that even killing an insect was wrong. He stated that Al Shabab wanted people to commit acts which were unreligious. He was asked whether there was any reason that Al Shabab would seek to recruit him over any other Somali. He replied that they would recruit anyone who was strong. It was put to him that he would be

able to blend in on his return. He stated that he had been away for 10 years and he would be unable to live within the new system. He felt safe here and was unable to return.

62. The appellant was asked whether he would be required to do anything by Al Shabab that was contrary to his religion. He said he would not but maintained that his religion permitted him to choose how to dress whereas Al Shabab imposed dress requirements and also forced people to go to the mosque. The appellant was asked whether it was contrary to his religion to pay taxes because he disagreed with how the money would be spent and whether it would be against his principles to pay taxes here. He stated that once people started working in the UK, tax was deducted but that in return if they fell ill they knew the government would support them. He questioned what Al Shabab would use the taxes paid to them for.

63. In re-examination the appellant was asked why it had taken a month to get an appointment to see a specialist. He stated that he had been told by his GP that he would have to wait for a few weeks for an appointment. He stated that he had got fed up of waiting and on 25th May he called the hospital to ask whether he could have an appointment. None were available at the time but shortly afterwards he was contacted and offered an appointment for 16th July.

64. The appellant was asked why he had not had contact with any clan members since he left Somalia. He stated that he had no phone cards and no money to spend on calling them. He added that if he did call they would ask him for money. In any event, he added, he did not know their numbers.

65. In response to questions from the Tribunal, the appellant said that he had left his wife and children alone. He was asked how he had thought they would be able to manage without any support. He stated that he had been in the Bakara area when all his travel arrangements were made and he had no time to go and see his wife. The question was repeated. He stated that he had been in Bakara for three days and there was no time to go home. He was asked whether he had considered using his money to move himself and his family somewhere closer where they could all be safe. He stated he had never thought of that; he only thought that he had to save himself and escape.

66. The appellant was asked to clarify his earlier evidence about people being made to go and pray. He stated that his religion required people to wash themselves before prayers but if they were seen on the streets they would be taken and made to go to the mosque. He stated that some mosques might have facilities for ablutions but his main objection was to people being forced to go and pray. He confirmed that there were five times a day for praying and that those times did not differ in Al Shabab areas. That completed the appellant's evidence.

Dr Laura Hammond

67. Dr Hammond confirmed that the contents of her report were a truthful response to the questions that had been put to her in the letter of instructions from Wilson Solicitors. She stated that she had undertaken research in the Horn of Africa from 1992 and had lived in Ethiopia between then and 1997. She had been involved in working for the UNDP repatriating refugees from Ethiopia back to Somalia. She had spent time in Puntland, Somaliland and the Gedo region and had returned there in early 2002 and late 2008. Meanwhile she had continued her research on Somalia and in 2008 had done some further work for the UN which included advising the UK government. She had returned to the

region twice in 2011 examining six sites in southern and central Somalia (although she had remained in Nairobi) and the position of the Somali Diaspora in Nairobi, Oslo, London, Dubai, Toronto and Minneapolis. She stated that last week she had been in the Horn teaching for the Rift Valley Institute and giving a training course in Kenya where she had been able to speak to many people who had just returned from the Accord meeting in Kampala. She stated that her expertise was in applied and academic work with Somalis and non Somalis who had worked in this area for a very long time. She stated that by comparison she was regarded as a junior and she had nineteen years of experience. She had extensive contacts among the UN and NGOs and amongst the aid community. She also had dealings with people of all clan groups and from all walks of life in the Diaspora.

68. Dr Hammond was asked whether her assessment had changed since she wrote the report. She replied that the area under the control of AMISOM and the TFG had expanded since then and there was an increase in fighting around Bakara market. She referred to a recent incident where an airport VIP guard leaving a mosque had been killed by a suicide bomber and also to the assassination of the interior minister. She stated that the TFG was not a functioning structure and there was a crisis over whether its mandate would be extended. She said those in the know predicted that the TFG would lose the expanded area of control as they did not have the capability to maintain it. She explained, when asked for clarification, that the TFG had never been very strong, that it had been set up in 2004 under donor led pressure and had never been popular. Its mandate was due to expire in August 2011 and it had pushed for a three-year extension which was not accepted. However, a one-year extension had been approved in Kampala on the condition that the Prime Minister resigned. People on the ground in TFG areas wanted an election and were not happy that the Prime Minister had been forced to resign; as a result there were currently protests on the streets.

69. Dr Hammond confirmed that she was aware of people who voluntarily travelled to Mogadishu. She explained that these would be aid workers, society leaders, business people and contractors working at the airport. She agreed that they were taking a risk in returning there. She explained that when an aircraft landed at Mogadishu airport it had to dip down sharply on the runway and then stop before it reached the end of the runway so as to avoid being hit by mortar shells. She stated people then disembarked from the aircraft and ran towards the airport building. She agreed that AMISOM control was tight at the airport. She stated that important personnel travelled between the airport and Villa Somalia in armed military vehicles. For the 'ordinary' Somali, she stated it was not advisable to hire security escorts or guards as that would invite attention and suspicion from the TFG and Al Shabab. She stated that some people travelled with a few armed guards in a car behind them. People minimised risk by coming in to Mogadishu, staying for short periods and leaving as soon as possible. She pointed out that their families lived elsewhere.

70. Dr Hammond was asked about the reference to Ceelasha Biyaha referred to at paragraph 1.18 of her report. She stated it was an area on the outskirts of Waberi, further down the coast from the airport. She stated that in order for people from that area to reach the market they would have to pass through roadblocks. She stated that although AMISOM posted patrols on main roads which they checked on a daily basis for landmines and other security risks, they did not clear the secondary roads. She was asked what inferences could be drawn from the reports that thousands of people used the roads to cross to Bakara market. She stated that people knew there were risks but they had to purchase goods they needed and they had to work. This was part of daily life. Although many people were injured in the marketplace, risks had to be taken. The conflict had been ongoing for some twenty years and residents had normalised a certain amount of risk which they balanced against daily life challenges.

71. Dr Hammond was referred to her observations on the capacity of people to obtain protection (paragraph 1.17 of her report) and was asked whether she would have given the same reply two or three years ago. She stated that she would not have done so. She said that two or three years ago it was much more about clan politics but now the situation had shifted. Support was drawn from a range of clans although there was a breakdown of clan protection in the city. She pointed out that the president's own clan (the Hawiye) had demonstrated against him and that the interior minister had been killed by his niece. She said that the impact of the conflict on the economy had meant that those who were powerful in the past had had their positions challenged. Some were no longer as wealthy, some had to pay protection money to Al Shabab and some had had to change their allegiances. There was a different situation now as to who held power compared to the situation five years ago. Even if someone had been in a position to provide protection before, due to the impact of the conflict there was no longer any guarantee that they would be in a position to do so now.

72. Dr Hammond was asked whether there were any organisations in Somalia which promoted the return of displaced people to Mogadishu. She stated there were none. She explained that most international organisations had no access to displaced people who were largely in the Afgoye corridor. The last estimate was that 409,000 displaced people lived there. She stated that all international organisations agreed that it was not appropriate to send people back there. Those who returned were aid workers or people who were able to come and go quickly and who knew they could seek shelter in the airport if necessary or could leave the country. The average Somali could not do that; they did not have the resources or necessary travel documents.

73. Dr Hammond was asked to explain why Al Shabab tried to control Somali behaviour (paragraph 1.37). She explained that their ideology claimed to be a literal interpretation of the Quran. They fought different kinds of Jihad, inside Somalia and also internationally, and additionally a personal jihad to control behaviour, maintain purity and resist temptation. She was asked to explain why people returning from the West would be suspected of being spies (1.41). She stated that someone who had travelled to the West and applied for asylum would be seen as someone trying to escape the movement and their loyalties would be seen as being with the West. Al Shabab had a hostile attitude towards the West which it viewed as a corrupting force drawing people away from purity and therefore considered those returning from the West as spies or informants. The consequences could be torture or execution, often without evidence. She stated it was unclear what provoked this reaction as in all the cases she had seen there was no evidence to support the suspicion that the people were spies. She added that as many of the suicide bombers had been people returning from the West; the TFG were also suspicious of them.

74. Dr Hammond elaborated on her comments about patron client relationships pertaining to AF, a Madhiban (Midgan) clan member (paragraph 2.4). She stated that such a relationship ensured somewhere for the client to live and work but this protection did not extend to physical protection. She stated that AF had been away from Somalia for some time and because of the economic collapse the war had brought to many people, the arrangement of who had power had changed since that time. There were questions as to whether the person who had provided him with support in the past would still be able to do so. She explained that protection in this sense did not transfer from one individual to another and other clan members would not feel the same responsibility to someone who had been protected by one of their members.

75. Dr Hammond stated that she had met AMM just before the hearing commenced. She was asked whether there was anything about him that would make him identifiable as an outsider if he returned to Somalia. She stated that it would be clear that he was wearing clothes bought outside Somalia, that he looked healthy and was rather heavy, all of which suggested he was relatively well off. That would make people suspect that he had come from a foreign country or that he had access to wealth and either he or his family members could be kidnapped and held for ransom. If he returned to Jowhar, which was where he was from, that could be a problem as he did not have a beard.

76. Dr Hammond was asked for her reaction to the statements taken from people in Nairobi by a team of solicitors from Wilsons. She stated that given the short period of time involved, she was impressed by the wide range of people who had been located and interviewed; these included the former prime minister, residents of Eastleigh and aid workers. She agreed the contents of their statements were entirely consistent with her own knowledge of the situation. She pointed out that if aid workers or NGO staff were questioned about their experiences, many might be unwilling to speak on record for fear of putting themselves or their organisations at risk particularly if they lived in Al Shabab areas. She confirmed that although she sat on a panel charged with reviewing country of origin information, there was no independent review of the fact-finding mission report or the OGNs as the latter contained policy information.

77. When questioned specifically about ZF, Dr Hammond stated that she would have to be met by somebody at Mogadishu airport and transport to Hargeisa would have to be arranged. If the journey was made over land she would have to travel by bus or minibus from Mogadishu through south-central Somalia and through Gulkayo. All these areas were under Al Shabab control except for Gulkayo which was under the control of a different militia. If she was wearing foreign clothing or had a suitcase which looked as though it had been purchased abroad, or if she wore jewellery she would be noticed and would be vulnerable particularly travelling alone. Women were under the most scrutiny regarding their dress and behaviour. She would then have to pass through Puntland, and North Gulkayo tended to return people to South Gulkayo if they were not from that area. Assuming she made it through, she would then have to cross the border into Somaliland. She would have to show that she had family waiting for her and they might have to be questioned before she was admitted. In all, it was a perilous journey. Additionally, she might be made to pay fees at roadblocks and she could be robbed, beaten or arrested if she breached behaviour and dress codes. She stated that a relatively speedy journey would take three or four days but it had been known to take weeks. She stated that one would have to stay overnight when the bus stopped and if she had no family she would have to remain on the bus. An unaccompanied woman would have difficulties in being accepted at a hotel.

78. With regard to MW who had no family in Somalia, Dr Hammond said it was unclear who would be able to meet her at the airport. As her area of Merka was under Al Shabab control it would be difficult even if she had family members for them to travel from Merka to Mogadishu. As she had been away from Somalia for twelve years, the situation was nothing like it was when she had left. She would now be required to cover herself from head to toe, cover her face, leave no hair showing, and wear thick socks and, possibly, gloves. As traditional Somali dress sometimes revealed the shoulder and hair, the expectation that she would immediately be able to fall into the new dress code was not realistic. She referred to an incident a week ago where several indigenous Somali women were arrested for expressing joy at a wedding. The point she wanted to make was that even though they had

lived there all their lives and would have been aware of behavioural codes, this was unexpected.

79. Dr Hammond explained that children were seen as the asset of a clan which had responsibility for raising them and making sure cultural expectations were met. If a mother objected to FGM it was not enough. If the clan were in favour of circumcision then the child could be subjected to the procedure at any time when the mother was absent. The only option available to the mother would be to leave the family but as Al Shabab did not permit women to work, she needed family support to survive. As long as a woman remained living with her family she would be unable to withstand pressure to have her daughters circumcised. If she were to leave the family, she would need some other means to survive. Widows were sometimes married off to soldiers in Al Shabab areas and she would be vulnerable to that.

80. Dr Hammond was asked whether MW's divorce in the UK would be accepted as a valid Islamic divorce by Al Shabab. She replied that if it had been granted by the UK courts and not in accordance with Islamic practice, then there was the chance that it would not be accepted as valid. This could have consequences for MW as she had three children by her second husband. It would depend on the attitude of her first husband's clan who may not accept that she had left them and who may make claims on the children, their education, the issue of FGM and whether they should be recruited into armed service.

81. In cross-examination by Mr Eicke, Dr Hammond was asked whether she was aware of the guidance on the preparation of expert reports contained in the practice directions. She confirmed that she was. She stated that she believed that she had provided a balanced picture. She confirmed that she was a social anthropologist and stated that her academic research had focused on refugees and that she was aware of refugee law. She was also convener on an MSc programme on migration. When questioned about her comments on linguistic analyses, she stated that in reviewing country of origin information she had seen questions asked about the usefulness of Sprakab reports and that she was aware of challenges to them. She admitted that she had not been aware that this matter had been considered by the Tribunal in 2010.

82. Dr Hammond stated that she had last been in Somaliland in 2008. When she conducted her research between June 2010 and May 2011 she had been the team leader for a group of researchers some of whom were in South and Central Somalia. She explained that they were local researchers living in those areas. The research had pertained to investors who received money from abroad and the manner in which they were perceived. She stated that people were reluctant to talk about receiving money from the Diaspora for fear of making themselves a target for extortion or of being seen as a spy. She stated that the information fed back to her was that people were worried that information they gave would be traced back to them by Al Shabab and they would be suspected of having foreign allegiances. It was put to her that the social services providers she had referred to were mainly returnees yet they had returned without problems and were playing important roles in the community. She replied that it depended on where they were. More had returned to TFG controlled areas. She explained that some people who returned came and went making use of the fact that they had durable residence in another country or foreign citizenship in order to facilitate their travels. She was questioned about the lack of interview transcripts in her material. She stated that two transcripts had been provided with it but the other information contained in her report had not been undertaken specifically for this case and that it would be impossible for her to keep track of all the interviews and conversations she had ever had. She stated that

it was not her practice to keep transcripts of all the interviews she conducted. She stated that the situation was different for researchers preparing the fact-finding mission report because they did not have her experience or knowledge and so they had to follow a list of set questions. She explained that she had prepared her report in the way that she had because she had been asked to provide her own opinion of the answers she had been given. She stated she had undertaken research in Nairobi about Somalis travelling back and forth to Somalia and had been told that they did so for business reasons. They did not consider Mogadishu to be safe but managed to minimise the risk by making short trips.

83. In clarifying the information contained in paragraph 1.50 of the report, Dr Hammond stated that the UN source she had cited was the same person who had been interviewed in transcript 2 that the information had been contained in a conversation that had taken place outside the interview context. It had been about displaced people in the Afgoye corridor who were not assisted by international workers but were helped instead by local businessmen or the Diaspora. She cited an example of a recent incident where a business woman had set aside $10,000 for distribution in the Afgoye corridor.

84. It was pointed out to Dr Hammond that she had relied on just two reports – Human Rights Watch and the Fact Finding Mission - in reaching her analysis. She was asked why she had not referred to the vast number of other available reports contained, for example, in the respondent's bundle. She replied that she did not find the UN Security Council reports to be particularly reliable because they had a particular agenda and that she had not referred, for example, to the Oxfam or Landinfo reports not because of neglect but because of the wide range of information that was available. She conceded that the two latter reports were reliable. She was asked why she had relied upon the UN monitoring group report of March 2010 and she replied she found it to be a more authoritative source than the UN Security Council. She explained this was the last report that had been prepared by them although a more up-to-date one was expected soon. She also explained that she was analysing how the situation had changed since 2008 following the end of the Ethiopian occupation. The monitoring group report had been relied on to show how the situation had changed for combatants in the intervening period. She explained that the shift had occurred with the withdrawal of Ethiopian troops and the rise of Al Shabab; suicide bombings had begun at this time rather than before.

85. Dr Hammond was asked to comment upon the reliability of UNOCHA. She stated that they had a reasonable understanding of what was going on but had no presence in Al Shabab areas. They were less reliable than organisations not associated with the UN. Questions were then put about the figures from the Elman peace organisation cited at paragraph 3.3 of her report. She agreed that it was unclear whether the so-called rise in casualty figures was a comparison to the 2009 figures or to the earlier and higher 2007 figures. She stated, however, that not all casualties were reported. She had cited the figures because they had been requested although she remained sceptical about them. However, as far as figures went, they were a reliable reflection of the information that was available. She suggested that the organisation may not have access to figures of casualties in other areas. She explained that the risks to the population between 2006 and 2009 were different and that the shift in tactics had led to random violence and bombings, all of which are impacted on civilians. She stated that in considering the drop in the number of casualties in Mogadishu cited by the Elman peace organisation, one had to bear in mind the enormous displacement of the population from the city. She stated that a drop in absolute numbers when 1 million people had left did not provide any indication of whether the risk to them had decreased. She agreed that the city was more clearly delineated between two factions now than it was previously. She was

asked whether that could be an improvement for civilians in Mogadishu. She stated that it was possible to live in areas which posed fewer risks but given that all civilians would need to get to Bakara market they would have to cross riskier areas. She explained that TFG areas had expanded since the report had been written and there were safer residential areas but civilians could not survive in those areas alone. She gave the example of the district of Hamar JaabJab; it was a smaller area and a resident would have to travel outside for facilities. Additionally, Al Shabab were able to infiltrate and attack TFG controlled areas. She agreed that there were at least seventeen markets in Mogadishu (as listed on the map key) and that one of them was shown to be in Hamar JaabJab. However she insisted that civilians would still have to travel outside the area to Bakara, which was a large commercial centre providing a range of services, including money transfer.

86. Dr Hammond was asked to explain how the citation she had given of a journalist's article in paragraph 1.12 of her report could be used to justify her conclusion that the information as to the extent of TFG control was unreliable. She stated that this passage emanated from an article written by Geoffrey York who had visited areas under AMISOM control and had found that in fact they were not controlled by AMISOM. It was put to her about the quotation contained in her report did not support that finding. She stated that there were other ways he established that control was not as great as it was claimed to be. She was asked whether she had seen any other figures of areas under TFG control and she stated that there were no composite figures but she had seen reports where it was said that areas claimed to be under AMISOM control were not in fact so controlled. She stated there were some 9,000 AMISOM troops in Somalia.

87. Dr Hammond was referred to the information contained in Dr Mullen's report that 80% of the fighting in Mogadishu was centred around Bakara market. She was asked whether that meant that the risk for civilians was not as high outside that area as it was in 2008. She replied that some areas of Mogadishu were deserted. Many residents had fled to the Afgoye corridor. However there were risks wherever people remained and Bakara was one of those places. The TFG now had control over the access road and had plans to take control of that area but it would be a tough fight and as the TFG was in some confusion at the current time, now was not the moment to launch an attack to do so. They were waiting for the right time. When asked to clarify her earlier comment about people taking to the streets to protest, she clarified that supporters of the Prime Minister had demonstrated on the streets and demanded the resignation of the speaker and the president instead. She was asked whether that meant that people felt safe enough to protest on the streets. She said that some did but there had been retaliation by the police and it was not without risk. She explained that there were times when people felt frustrated enough to behave in this way and pointed to an example in 2008 when people had protested about the increase in food prices. She said the TFG was not able to quell the protests and Al Shabab took advantage of the unrest to attack as they had recently done at the seaport. She agreed that the list of districts controlled by the TFG provided in the Mullen report was mostly correct although the district of Hodan was not entirely under TFG control. She was shown a map of conflict areas (respondent's volume 3, Tab 13, p.1485). She was asked where Bakara market was and she said it was in the centre of Hawal Wadaag.

88. Dr Hammond was shown a news report about Bakara being a no-fire zone. She stated that AMISOM had issued such statements before but had breached them. They were unpopular with the civilian population because they fired indiscriminately and showed no concern for civilians. Whilst they did not fire around the market area, casualties would drop however things could change in weeks or months; this was not a long-term picture. The only reason

they had not taken the market at the moment was because they did not have the ability to maintain it. She said that when AMISOM troops were attacked by Al Shabab, their response was always to fire into the market regardless of where the attack had come from.

89. Dr Hammond was referred to pages 273 and 288 of respondent's volume 1 regarding relocation to Mogadishu. She stated that the airport compound was secure and that the AMISOM compound was also safer now than it had been about troops were unable to travel around the city and it was a 'bunkerised' presence.

90. Dr Hammond was referred to paragraph 1.13 of her report and asked what dates this estimate was based on. She said she was unsure. Different figures from different reports were put to her pointing to the unreliability of statistics and she agreed that figures were difficult to obtain. She was asked whether she agreed with the UNHCR paper contained at Tab 6, respondent's volume 1, on displacement and nomadic lifestyles. She stated that the 60% figure applied to the whole of Somalia and that lifestyles were more nomadic in the north and the north east.

91. With regard to safety on return to Mogadishu, Dr Hammond agreed that armed escorts were not needed between the city and the airport because they could be counter-productive but she stated that travel was a risk nevertheless. She stated that ordinary Somalis would not use an armed escort because they did not have access to any but even if they did it would be seen as a risk. She stated she had asked people how they had travelled around and was told they used minibuses or taxis. She stated that there used to be clan-based armed buses on the streets but these had been prohibited by Al Shabab. She agreed that the situation inside the airport had improved.

92. Dr Hammond was referred to paragraph 3.21-3.25 of Mr Burns' report on airport security. She said she had never heard of a deal being made between Al Shabab and the TFG/AMISOM. She stated that although it was secure in the airport, people inside had been passing information on to Al Shabab. This was illustrated by the incident last week of an airport VIP guard who had been killed when leaving a mosque. She said that Somalis were not allowed into a number of areas housing aid workers. She stated that although the road to the airport was currently controlled by AMISOM, the situation could change at any time.

93. It was put to Dr Hammond that her reference to a checkpoint in her report (1.23 to 1.24) was about a roadblock in Afgoye rather than in the city of Mogadishu. She agreed there was no information about checkpoints in Mogadishu. It was put to her that the quotation did not support her analysis of risks and checkpoints and that perhaps the reason why there were no reports of problems with Mogadishu checkpoints was that there weren't any problems. She said that there were articles which dealt with forced recruitment of young men at checkpoints. She said the only information in the fact-finding mission report about checkpoints was the information she had provided and she did not believe that the experience of people at checkpoints differed regardless of whether or not they were inside or outside Mogadishu. She stated that we knew checkpoints in Mogadishu existed because a leader had recently been killed at one.

94. With regard to the issue of forced recruitment, Dr Hammond was referred to Mr Burns's report which maintained that it did not frequently occur. She stated that Al Shabab had a sophisticated way of compelling people to join them. They used a range of tactics including threatening to harm family members and putting pressure on schools to provide recruits so that although people chose to join them, it was not a free choice. She disagreed with Mr

Burns and maintained that people were taken away at gunpoint at checkpoints. With reference to paragraph 1.44 of her report, she was asked how credible it was for someone to be telephoned three times regarding recruitment. She stated that this practice was also followed in other cases she was familiar with. The pattern was that somebody would be approached and given some time to decide and then would be phoned, texted and threatened.

95. Dr Hammond was referred to paragraphs 1.25, 1.26, 1.40 and 1.41 of her report; she agreed that this information was raised on press reports. She also agreed that none of these reports made any references to the people concerned being returnees. She maintained however that if somebody was suspected of spying, the punishment would be harsh. It was put to her that there was nothing in the evidence to show that an ordinary returnee was more at risk of being perceived as a spy than anybody else and that at most they faced the risk of being kidnapped and held for ransom. She agreed that there was a risk of kidnapping but added that they would also be seen as being sympathetic to the west because of their asylum claim. She was asked why it was that the part time returnees who performed social services were not perceived as spies. She stated that she did not have information as to when those people had returned but many had been doing it for a long time and so were not perceived as newcomers. Additionally, they were in TFG areas, did not travel widely and may have negotiated their positions with local administrative leaders. It was put to her that another explanation could be that there were no problems for such people. She conceded that there was a shortage of information. It was put to Dr Hammond that there was no evidence to support her contention that the appellants would be seen as spies if returned. She maintained that in her view that there was such a risk and she based this on what people had told her about how they were treated at roadblocks and so on. It was put to Dr Hammond that Saudi Arabia had recently deported some 16,000 Somalis back to Somalia and there was no evidence to suggest they had been targeted as spies on return. She replied that there was no information as to what had happened to them and in any event deportation from Saudi Arabia was different to deportation from the UK. From the former, one would be more likely to be seen as a failed labour worker.

96. Dr Hammond was asked whether she mistrusted reports from NGOs in the same way that she did not find the UN Security Council reports reliable. She said NGO reports presented a different kind of problem in that many NGOs practised self-censorship. She said that those working in Al Shabab areas would deny their work outright for fear of being targeted or having their funding cut. She did not accept that there was over reporting although she agreed that two journalists might report the same incident in a different way. She agreed that monitoring was difficult. She stated that in Somalia aid was provided where there was access. It did not necessarily flow to the areas that were most needed; for example the Afgoye corridor faced an appalling situation yet, because of poor access, aid did not make its way to that area.

97. Dr Hammond was asked about travel in Somalia. She stated that there were minibuses and lorries to and from Mogadishu and there were also regular internal flights to other cities. With regard to paragraph 1.47 of her report, she stated most of this information came from conversations that she had with different people. She disagreed that her report presented a different picture to the information contained in the fact-finding mission report. She stated that as long as people obeyed Al Shabab rules, they would be able to travel. However a returnee would not know the rules. She stated she had focused on the risks faced by those who travelled whereas the other report had concentrated on the fact that people moved. She stated that the fact that there was movement did not mean there was no risk. People could

take their chances and lie but that might lead to problems as well, depending on the kind of questions asked.

98. It was put to her that Al Shabab rule was not uniform throughout the country particularly with regard to the treatment of women. She agreed with this but pointed out that they were strict in all areas but how strict they were from district to district was another matter. She stated that she was not, however, aware of any Al Shabab areas where the rules regarding women would be different. She stated that in most places women were prohibited from engaging in gainful activity. She was asked to explain how that fitted with her earlier example of the businesswoman who distributed money in Afgoye. She stated that the woman would have had to have travelled with a male relative and then would have stayed in a house, called women in and handed it out in that way.

99. With reference to her earlier evidence of the reluctance of people to reveal how much money they were receiving from abroad, she was asked to explain how the amount of money was relevant to the determination of their allegiance. She stated that more money might suggest more contributors and so greater ties with the West. She was asked whether the social services providers were all men and if not how they were able to undertake their work. She replied that any women workers in Al Shabab areas would have to work through a male agent.

100. Dr Hammond was referred to paragraphs 1.48 and 1.49 of her report regarding IDPs. She was asked why she had relied on a Guardian article rather than the information in the fact-finding mission report. She stated that the fact-finding mission report was based on interviews conducted in Nairobi and was therefore second-hand information whereas the journalist who wrote the Guardian article had spoken directly with displaced people. It was put to her that he had interviewed people in Somaliland and there was no information about how long they had been living there. She stated that as the interviewees had talked about Al Shabab, they must be relatively recent post Ethiopian occupation arrivals. She stated that despite the fact they had no clan protection in that area and lived in dismal conditions they chose to stay there. She stated that Somaliland clans had very little representation in the south of the country. They were mainly the Isaaq clan and they would return clan members who opposed the idea of an independent Somaliland. She confirmed that no returnee to Somalia could expect clan protection from a different clan. She was asked to explain how it was that support from the Diaspora was not clan specific. She stated that on balance most support was along clan lines, however assistance was given across clan lines in IDP camps; that did not mean that a displaced person could go to another clan and seek help.

101. It was put to Dr Hammond that information between the Diaspora and Somalia flowed very quickly and that, for example, money could be transferred within hours. She agreed. She was asked then in that context how realistic it was that returnees would not know what the rules were. She stated that whilst relatives might be able to warn them about general expectations, there were things that might be overlooked.

102. With reference to the specific circumstances of AF, Dr Hammond confirmed that one of the main concerns was forced recruitment to Al Shabab. It was put to her that evidence (respondent's volume 3, Tab 10, pp. 1302-3) did not suggest that a Midgan was incapable of obtaining protection. She stated that given that even majority clan members could no longer be guaranteed any protection, she was unsure how minority clan members could obtain any. Even if AMM were to find a patron as before, that was an economic relationship and would

not provide any physical protection. She agreed that his home area was not controlled by Al Shabab. It was controlled by a different militia allied to the TFG.

103. With regard to MW, Dr Hammond stated that Merka was a stronghold of Al Shabab support and therefore there was no question of them moderating their position to compromise with local administrators as they might in the areas where their support was weaker. She stated that MW would be unable to live in Mogadishu because she had been away from the country for twelve years and there were concerns that she had no family ties there. Further, it was a big obligation for any hosting family to take in for additional people and there would have to be a male relative. She may be able to receive support in a TFG area but as an unaccompanied woman with three young children she was vulnerable. There was also the risk that she might be married off to Al Shabab soldiers. It was put to her that the latter scenario was unlikely if she was in a TFG area. She stated that it depended upon the shifting situation.

104. Dr Hammond agreed that FGM was not her area of specialisation. She was asked whether it was a social pressure rather than a religious requirement. She replied that many clergy claimed it was a requirement although it was not Quranic practice. She agreed that it might be possible to hide the fact that one was not circumcised until marriage but pointed out that once it was discovered the woman could be returned to her family as her husband would be unlikely to accept it. It was put to her that as MW's daughter was very young that was not an immediate concern. She stated that girls were generally between eight and fourteen years old when they were circumcised and that 98% of females were circumcised in one way or another. There was a more extreme method and a less invasive procedure. It was put to her that if someone had no familial links then there was no pressure upon them to circumcise children. She replied that if MW did not seek family or clan support she would not be able to survive. She was referred to the Oxfam report (volume 2, Tab 8) which suggested that 20% of women in 2004 had not had their daughters circumcised. She suggested that incorrect information may have been given to NGOs who prepared the report. She explained that people were reticent to talk about this as it was a sensitive subject and they knew that NGOs wanted to eradicate it.

105. She was asked about her comments regarding appellant FM. She agreed she had not addressed the possibility of his travel by air. She also agreed that although she had said that he might have to leave Hamar JaabJab to shop, there were provisions available there. It was put to her that appellant ZF would also be able to fly home. She agreed but pointed out that she would be subject to questioning about where she had come from and about the whereabouts of her family. She suggested that if Appellant ZF could not find her family then there may be a risk for her. It was put to her that is appellant ZF travelled by land, she could travel in the company of other men. Dr Hammond clarified that a woman needed a man to look after her specifically; travelling on a bus where there were male passengers was not sufficient. This was information gleaned from conversations she had had. She stated that in order to access Somaliland, appellant ZF would need to have a connection to her family to confirm her clan links. She agreed that the figures cited in paragraph 3.10 of the report was somewhat out of date and admitted that she was sceptical of them in any event but they were included in the report because they were the only ones she could find. She also agreed that her speculation at 3.13 was before the Kampala Accord. She stated that the figures pertaining to mental illness related to Somaliland and Puntland; those from Mogadishu could be much higher in her opinion.

106. In re-examination Dr Hammond was asked how she rated UNHCR reports for reliability. She stated that depended on the subject matter. She stated they were useful as a snapshot but that as people kept moving around the situation kept changing and one needed to be careful of what conclusions were drawn from the reports. She pointed out that the UN had a difficult time getting access to Somalia as trust had been eroded. She stated that as far as Somalis were concerned the UN, UNHCR and UNICEF were all perceived in the same way. She was asked about her view of the AMISOM declaration of the no fire zone. She maintained her earlier evidence that the plan was to attack the market at some point. She was not aware when the declaration had been made but agreed it would have been at least since December 2010, that being the date of the IRIN article (Appellant's bundle C, p.266). She was asked whether AMISOM had fired mortars into the market since that time and she replied she believed that they had but she was unable to provide dates or casualty figures. She also said that in the past they had made similar declarations which they had breached.

107. Dr Hammond was asked where Somali MPs lived. She stated that they resided within TFG areas and that the more senior figures lived in Villa Somalia. All had armed protection. She was referred to a news report on the Kampala Accord contained at Tab 10 of the respondent's supplementary bundle. She was asked why the next meeting had been postponed. She stated that this was because there was no safe place in Mogadishu for the meeting to take place. Dr Hammond was asked about the consequences for someone who refused to join Al Shabab. She said there was a pattern of harassment of an individual or his family designed at coercing him to join the movement. She stated that although some were forcibly taken away, usually the pattern was telephoned threats and text messages.

108. Dr Hammond was referred to evidence in the respondent's bundle (volume 2 at pages 683 and 685); she confirmed that the figures accorded with her experience of circumcision. She was asked to comment on the conclusion of that report and she replied that the context in which a questions was put and the manner in which it was asked could sway the responses received. With regard to the US aid report contained in bundle MW1, she stated that she did not believe the figures would be deliberately inflated or deflated but the questions were based on a particular agenda, intervention, and those responding to them were aware of that. She agreed that the figures of 98.4% of women circumcised in rural areas accorded with her knowledge and that the general figure of just under 98% was accurate.

109. On the issue of checkpoints she stated that she had seen many reports of women travelling alone and being stopped, although she herself had not been to such a checkpoint. Even if women were travelling on a bus with other male passengers, they would still have to have a male family member with them. She agreed that some people might lie about the purpose of their travel when questioned at checkpoints. She stated that all parties in Somalia operated checkpoints, some were more permanent as, for example, on major roads; however they could move around and be set up in different areas. Dr Hammond was asked whether someone from Somaliland arriving at Mogadishu airport would have any hope of obtaining assistance from his community to make the journey back. She said that the members of the Isaaq clan remaining in Mogadishu would be opposed to the independence of Somaliland, as otherwise they would not have remained there, and would not support somebody leaving Mogadishu for Somaliland. A person could not therefore just rely on clan ties for support.

110. Dr Hammond was asked about the market in Hamar JaabJab marked on the map. She stated that she was not aware whether it was still open but she added that the map included a list of embassies and other places that were probably no longer functional. She was asked what kind of work FM would be likely to find in that area. She replied it would have to be in the

informal sector and there were several opportunities around the port, albeit that it functioned intermittently. She confirmed that it could be directly reached from Hamar JaabJab. She was asked whether there were any circumstances in which FM would have to go to Bakara market. She stated virtually everyone in Mogadishu had to go to there at one point or another.

111. In response to questions from the Tribunal, Dr Hammond stated that Al Shabab viewed FGM as advisable and, although she was not aware of any examples of enforced circumcision, she did not believe they would seek to eradicate it. She was advised that all returns of failed asylum seekers were to Mogadishu and she was asked whether it was possible to travel from Mogadishu to Somaliland, She replied that whenever she had travelled to Somaliland, it was by air from Nairobi. She stated that although she travelled on special UN flights, there were commercial airline flights to Hargeisa from Nairobi and Dubai. She was unsure of the costs of internal flights but stated that a flight from Nairobi to Hargeisa was about $500. She was asked to clarify the situation with regard to aid in Al Shabab areas. She stated that officially there was none but there were in fact organisations at local level that provided limited support. This was mainly geared towards medical assistance rather than food as Al Shabab did not consider food aid was necessary in their areas. She stated that Al Shabab would not permit new organisations to set up but those that had been operating for some time were allowed to continue their work. She stated that food was obtained from Bakara market if people had the resources to go there; there was also some food available in the Afgoye area. Dr Hammond was referred to the map of areas of conflict in Mogadishu that had been shown to her earlier by Mr Eicke. It was pointed out to her that Bondhere was described as an area of acute conflict and she was asked whether there was anything about that area that would attract conflict. She stated that the presidential palace of Villa Somalia was close by. Dr Hammond was asked to expand on her evidence about Al Shabab tailoring their behaviour in accordance with the support they had in particular areas. She gave an example of an area where NGOs provided teaching to children and there were mixed sex classrooms. When Al Shabab objected, the NGO threatened to withdraw and so Al Shabab backed down and, unusually, children were taught in mixed sex classes. She was asked to explain what she meant by returnees having a different gait (paragraph 1.40). She stated they had a different way of carrying themselves. They did not walk as slow and did not shuffle as they would in Mogadishu where they would wear sandals.

112. There were no questions arising and that completed Dr Hammond's oral evidence.

Mr Tony Burns

113. Mr Burns gave evidence by video link from Brisbane. He commenced his evidence by confirming that he had given a truthful and accurate account in his statement of September 2009 and his report of May 2011, both of which he sought to rely upon. He explained that the withdrawal of the Ethiopian forces created a vacuum which Al Shabab were able to exploit. AMISOM had managed to establish a green line around the airport, seaport and presidential palace. Each time their position was attacked by Al Shabab they responded by indiscriminately firing mortars in the direction of the attack and in the vicinity. This resulted in large civilian casualties and was the biggest danger that civilians now faced. In his view the situation was much worse than in 2008; the situation had led to a degradation of livelihood and security. He stated that in rural areas there were severe crop failures and a

minimum of 30% to a maximum of 100% herd loss. He described Mogadishu as an active war zone but explained that nonetheless desperate rural civilians had moved there in order to find food and employment.

114. Mr Burns was asked to expand upon paragraph 3.7 of his report in which he set out the daily threats faced by civilians. Specifically, he was asked to describe the situation for civilians in districts of low-level violence. He stated that all sixteen districts of Mogadishu suffered from the violent tactics of criminal freelance militias that were pervasive, particularly at night. Many of these might be TFG or AMISOM militias by day but at night they raped, looted, killed and extorted money from civilians. He stated that a colossal number of people had moved out of Mogadishu and into the Afgoye area although the situation there was dire. He stated that the displacement figure was initially put at 3 million but was then amended to 2.5 million. From the beginning of 2011 there were large movements back into Mogadishu which was still the main area of livelihood. His organisation, SAACID, operated food kitchens throughout the city. He stated that many families were split, with some coming into Mogadishu for food and others living outside the city. He explained that a significant number of rural families had taken their chances and moved into Mogadishu in order to look for food because their crops had failed, their herds had died and there was no water. They moved into TFG areas which were less oppressive than those controlled by Al Shabab. Hamar Weyne and Hamar JaabJab were minority districts and many people moving there had clan connections. However these areas were filled to capacity and unable to absorb any more incoming people. As a result some were spilling over into Shingani but basically all areas were seeing newcomers. He estimated the population of Mogadishu to be around the 1.1 million mark whereas it had been some 600,000 when it was at a low point.

115. Mr Burns stated that the situation in rural areas was untenable in terms of basic human existence and that if people remained there they would die of starvation so even if Mogadishu was a war zone it was more tenable choice than dying in the countryside. He stated that they had been very high displacement after the Ethiopian occupation but he described Somalis as having very good coping strategies. New services had been set up between Afgoye and Mogadishu. Initially those who were displaced were the poor but increasingly there were more displaced people from the middle and upper classes which led to the poorest people being forced out through lack of space; they were forced to return to Mogadishu and take their risks. However there were wells for water and opportunities for day labour.

116. Mr Burns was asked to explain why he stated that Al Shabab were hypersensitive and viewed detainees with suspicion. He stated that Al Shabab set themselves up on a district basis in Mogadishu and in rural areas. The centre of their operations was in Jowhar in the Shabelle district. The majority of their political and military structures was based there. They considered the primary threat against them to be from the Ethiopian intelligence and military forces and indeed the Ethiopian forces continued to make incursions into Somalia. Al Shabab were vigilant to Ethiopian operatives moving into their areas. They were also aware that the Ethiopians worked closely with the US and Western governments from whom they received funds. He stated that his organisation no longer had facilities in Jowhar as their compound had been taken over by Al Shabab. He explained that it was a huge logistical effort for SAACID staff to move around.

117. With regard to the movement of civilians, Mr Burns stated that if the poor were moving as a group and obtained the necessary letters they should not have any problems passing through check points although they would be asked questions about where they were going.

However it would be different for the Diaspora who would be identifiable on return and would be seen as being tainted with western ideology and suspected of being spies and/or a potential source of income. They may be coerced into paying money or be held for ransom. They may also be compelled to become an operative or a suicide bomber. At the very least, they would face detention and interrogation. He stated that he could provide information about the conditions in jails because many of his staff had spent time in Jowhar prison. He stated that the conditions were very poor. There was a basic compound and prisoners had to obtain their own meals and water, or else pay for them. If they were unable to do so, they starved. Beatings were common. He gave an example of a former MSF employee who had an arm and a leg broken on suspicion of being a Christian. He survived only because other inmates gave him food. He was released after some six or seven months but had suffered very badly.

118. Mr Burns was asked questions by Mr Schwenk about appellant ZF's particular circumstances, specifically about her ability to travel by land to Gedo. He stated that she would have to pass through Hiran and Galgadud in order to get there and that prospect beggared belief as he did not know of any Somali who would contemplate such a trip. There would be innumerable Al Shabab checks, conflict zones and she would have to pass through the pirate areas mentioned above where she would be viewed with great suspicion. Moreover the area was hit by drought and there was no access to basic facilities.

119. It was put to him that it might be suggested by the respondent that travel was safe given the numbers of people moving into Mogadishu. He replied that his organisation interviewed new entrants into Mogadishu on a daily basis and the overwhelming consensus was that it was unsafe to travel. A woman on her own would be raped or killed and no one travelled from Mogadishu to Somaliland by land. It was best to travel in groups and the more men within the group, the better.

120. Mr Burns was asked what travel documents appellant ZF would require to gain entry into Somaliland. He replied that she needed an old-style Somali passport as Somaliland did not accept the TFG issued passports. An old-style passport could be obtained in Bakara market but the market was currently closed. Businesses had had to relocate to other parts of Mogadishu or to the Afgoye corridor and she may be able to obtain a passport there.

121. Ms Short then asked questions on behalf of appellant MW. Mr Burns stated that it was not possible to travel on the K4 road to Merka as that had been closed by AMISOM. She would therefore have to go via the back roads and would face many checkpoints. He stated that as Al Shabab were currently under great economic stress and suffering ammunition shortages, they had increased the number of road blocks so as to obtain money from travellers. There were now roadblocks in every district, taxes had increased and the situation looked likely to deteriorate further.

122. With regard to FGM, he stated that he stood by the opinion contained in his report. He stated that around 99% of women in Somalia were circumcised and that the extreme version consisted of the complete removal of the clitoris and the labia and the stitching of the genitalia so as to leave a hole just the size of a grain of rice. He stated that the health consequences were appalling, there was extreme pain during intercourse and childbirth and many women died. The least invasive form was performed in a minority of cases in rural areas although it was more widespread in Mogadishu. Al Shabab had no pronouncement on the issue. Mr Burns was reminded that it had been found that appellant MW had no family in Somalia and he was asked whether she would be able to seek protection from her majority

clan in her effort to prevent her daughter from being circumcised. He stated that it would be impossible to exist without clan networks as clans still dominated all socio-economic structures. He stated that all Diaspora would be seen as foreigners and not as 'real' Somalis. He said that appellant MW would have to attach herself to her clan and to accept social and cultural norms. He stated that 99% of Somali girls were circumcised despite any objections their families may have. He stated that most of his staff opposed FGM but their daughters were still circumcised because families would simply take them away and get it done whilst their parents were not around. The only way to avoid the risk was to leave Somalia. She would then have the option of going to a refugee camp in Yemen or Kenya. She would be unable to hide the fact that her daughter had not been circumcised if she stayed in Somalia as there were no secrets in Somali villages. He explained that families did not have private showers and that if people bathed they would do so in creeks or near wells. Children would play together naked and an uncircumcised girl would be noticed. Additionally, there were always inquisitive women around who would make it their business to find out, especially as the appellant was Diaspora.

123. In response to questions put by Mr Symes regarding appellant FM and his ability to find employment, Mr Burns stated that there was systematic unemployment in Somalia, reaching some 70%. The main market was currently barricaded by AMISOM troops so the largest opportunity for potential employment was lost for the moment. He stated that the average family size was nine individuals, family income was $70 and expenses $100; average debt was $110. A returnee would face suspicion from the TFG and Al Shabab. Appellant FM would have little opportunity for employment. He may be able to sell fruit. He may have skills which he could use. There were no NGOs operating in Hamar JaabJab which was a minority district. A lot of rural minorities were coming into that area.

124. Mr Eicke then cross-examined. Mr Burns confirmed that his report consisted of raw data obtained from his own background and expertise and that he had not relied upon any outside material. He stated that his organisation operated throughout Somalia; he was the director of operations and received daily briefings. He had sought to provide an analysis of the trends currently in operation rather than giving examples of specific incidents. SAACID was a women's organisation based in Mogadishu and operating in all sixteen districts including those controlled by Al Shabab. It also had a presence in other districts in south and central Somalia controlled by Al Shabab. It sought to provide food to those in need.

125. Mr Burns was asked about the garbage clearing exercise which his organisation had undertaken. He explained that it had been designed to cover all districts but in practice the funds ran out and had operated for just twelve weeks in the ten TFG controlled parts of the city. He stated that 60% of his employees were women and they worked in both TFG and Al Shabab controlled areas. He stated that his workforce overwhelmingly consisted of members of minority clans; some 2,200 were employed, and at least 50% of positions were allocated to women and minority clan members. A majority were displaced persons. However, every clan was represented in every district and SAACID resources were distributed as evenly as possible throughout the city. He stated it was not common for the workforce to move across districts. It was up to the leaders of each team to select staff; however, positions requiring qualifications and skills were filled on merit. He stated that there had been a recent programme to select nurses and applicants came from everywhere including Afgoye. He said that specialist staff members were selected randomly across clan lines and efforts were made to integrate different plans. He stated that the organisation did not talk formally with Al Shabab; it used community leaders and elders as middlemen. He stated that operations had to be suspended in Jowhar. This was because of a lack of consensus amongst the

different Al Shabab militias, some of whom supported the programme whereas others did not. He stated that Al Shabab were not a unified force and when broken down were clan-based. He stated that SAACID had a primary duty of care to its staff and as no consensus had been reached, the programme was not implemented in this area. Mr Burns stated that he defined minority clans on a numerical basis so in his view all clans excluding the Abgal and the Habir Gadir were minorities in the city; even the other Hawiye were in the minority.

126. Mr Burns stated that north east Hodan was still a heavily disputed area. He was asked whether it was possible for lone women with children to work, even in such areas. He replied that it was essential for women to work as if they did not, they starved.

127. It was put to Mr Burns that the SAACID operation (described at page 407) appeared to have been conducted with few incidents and that the picture he now painted did not accord with that contained in parts of this report. He stated that the lack of incidents were down to the skill with which SAACID operated. He explained that DDG referred to the Danish De-mining Group which had a presence in Mogadishu.

128. He was reminded that he had stated that the risk of armed violence was limited to rural areas (paragraph 3.4) and asked whether that meant that the risk outside those areas was reduced. He replied that in comparison to the three areas cited, the risk was negligible. He was asked whether the risk emanated from Al Shabab intelligence rather than armed violence and he replied that in terms of the Diaspora that was certainly the case as Al Shabab's greatest fear was that their base would be threatened by Ethiopian agents. He was asked whether he was aware of any incident where any member of the Diaspora had been targeted and he responded that he was not; he had no contact with them at all. He was asked whether there were any reports that described the incidents he had set out in paragraph 3.4 of his report. He replied he could not comment on any documents in the public domain and stated that the only Diaspora he knew of were those businessmen who stayed for short periods. He was asked whether there was any evidence that they were treated as spies. He replied that there were a number of cases to show indigenous Somalis were treated as spies and that therefore the risk to an outsider would be even greater. It was put to him that he was speculating on the risk, given the lack of evidence; he replied that his views were given in the context of the situation and that he believed it would be a probable outcome. It was put to him that in 2010 Saudi Arabia had deported 16,000 Somalis back to Somalia and that there were no reports that any of them had been treated in the way that he had described. He replied that the information in the public domain was very limited. For example, there was a chronic under reporting of the number of casualties. He stated that stabbings, rapes and machete attacks all occurred. He stated he could guarantee that some of those returnees would have been ill treated or killed.

129. Mr. Burns agreed that Al Shabab was an umbrella organisation and that it had no uniform code of rules and no uniform enforcement of same. He agreed that to some extent the risk to an individual depended upon the locality to which they returned that pointed out that Al Shabab moved around their personnel every three months. For his organisation this meant regular re-negotiations.

130. With regard to what he had said earlier about minorities and the contents of paragraph 3.6 of his report, Mr. Burns stated that in order to determine which clan was in a minority one had to look at the situation region by region, even district by district. He stated, for example, the Habir Gadir may have traditionally been in the majority in Afgoye but currently they were a minority there. He stated that many districts and areas had developed coping mechanisms to

deal with the structures that had been implemented by Al Shabab and he did not believe that an outsider would be able to return and fit in. He stated that there had been no sociological change to the norms, and minorities were still badly treated.

131. Mr Burns was referred to paragraph 3.10 of his report. He explained that his understanding of the question was that it referred to high profile individuals. He agreed that what he had said did not reflect the situation of the ordinary Somali citizen. He stated that the threats faced by an individual depended on where they were on the social strata. There was a notable rise in the assassinations of community leaders and an increase in kidnappings for middle-class members who were also at risk of stray bullets. For the poor the problems included subsistence as well as stray bullets, indiscriminate mortar fire and rape. He was asked whether the risk varied according to whether one lived in a higher or lower conflict area. He replied that there were no safe areas and that the problems of obtaining food, basic security, and ability to find employment, threats from militias, rape extortion and kidnapping for ransom were risks that were found everywhere. It was put to him that it would be wrong to look at the risk in Mogadishu as being uniform at the present time. Mr. Burns agreed that in military conflicts the majority of the city was not always in conflict but he pointed out that the situation was unpredictable and that some parts of the city faced more chronic fighting than others. With regard to movement within the city, he stated that if people obtained the relevant letters from the administrative authorities than they should have no problems passing through checkpoints. He stated that when people were displaced they tended to go to areas where they had some kind of link. He stated 50% of the population of Mogadishu had been displaced in one year. It was put to him that there were safer areas within the city. He agreed that there were always safer areas however there was always the fear that Al Shabab would attack and that AMISOM would respond by firing mortars into the city. He stated that people left Al Shabab areas in order to get away from AMISOM mortars and because Al Shabab gave them a hard time. He confirmed that there had been an agreement between Al Shabab and AMISOM regarding the airport. The US and the UK had also contributed to keeping the airport safe.

132. Mr. Burns confirmed that he travelled to Mogadishu once every eight weeks. He was asked whether the flights were busy and he replied it varied. For example, if he was travelling from the UAE the flights were always full because of the drop-offs to Somaliland and Yemen, but travelling from Nairobi they were not so busy. He confirmed that people did return to join their families for holidays and younger Somalis who had never been to Somalia wanted to come and see what it was like. Others came for marriage and some brought their daughters to be circumcised. He agreed that there were onward flights from Mogadishu to areas in Somalia and Somaliland.

133. Mr. Burns was asked whether returnees to urban areas would be treated any differently to those in rural areas. He stated that his comments in paragraph 3.37 of his report related to rural areas where Al Shabab were very sensitive to intelligence operations and hence to newcomers. He explained that currently they were struggling economically and therefore on the lookout for Diaspora who were easy to spot. It was considered that they were tainted by Western culture and were not true Muslims. They spoke differently, dressed differently and walked differently. It was put to him that there was no evidence that those returning for family visits were badly treated. He agreed that he had not seen any such evidence but stated that such returnees did not travel around, would remain in the family compound and then leave. He stated that when he visited Somalia he never left the compound.

134. Questions were then put about forced recruitment. Mr Burns agreed that Al Shabab did not forcibly take people away to fight; that had never been their policy, however now that they were under pressure the concern was that they might start to do that. He stated that some minority clans had been brought into the Al Shabab structure and in return had to contribute a number of males to fight. He described this as being the norm in many rural areas. He agreed that the risk did not emanate from roadblocks (paragraph 3.42) but from Al Shabab intelligence. He was asked whether he was aware of the detention of anyone in such circumstances, whether indigenous Somalis or Diaspora. He stated it was very common for Al Shabab to detain people at checkpoints and call the central office in the district to check what they should do. People would be released within hours or days but if their story did not check out they would be taken to the district office and perhaps even to the regional office. He stated that Al Shabab were looking for ways to make money and for individuals who did not meet the required profile. He was asked whether armed escorts were still necessary to accompany individuals through checkpoints. He stated that they were not as roadblocks had reduced banditry; however, he expressed concern that as Al Shabab came under financial pressure their members might become freelance bandits. He agreed there was public transport available between Mogadishu and Kenya and that there were daily vans. Volume was so great for inland travel that this had to be regulated. Although it was easy to travel to Kenya, travelling to Jowhar, for example, was a different story and it was just not done to travel to Hargeisa.

135. Mr. Burns was asked to clarify whether he was referring to small or large groups of people seeking food and water at paragraph 3.44 of his report. He stated that he was talking about rural families who moved in clumps of 20 to 50 families. He stated that they travelled on foot and that this was a daily occurrence as wells dried up and food became unavailable. There was free movement into Mogadishu and well regulated trade from Kenya to Mogadishu. For those travelling to Kenya, the fee was paid to the driver and he would solve any potential problems. There were instances of rape but it was not Al Shabab policy and was not condoned.

136. It was put to Mr Burns that food assistance had been increased by the EU. He appeared not to be aware of that but pointed out that for southern Somalia the only significant food assistance was provided by his organisation. Funds came from Sweden and Denmark but he was unsure whether the programme would be able to continue after the end of the month. There were questions over whether the donors could continue to fund it and he indicated that EU commitment was static at $1 million. However as the cost of the kitchen programme amounted to $4.8 million, EU funding was meaningless. Mr Burns stated that from impressions drawn from his staff, he concluded that Mogadishu was going through the worst humanitarian crisis since the beginning of the civil war and that his staff members considered the situation now to be even worse than it was in 1991 and 1992.

137. With specific regard to appellant AMM, Mr Burns stated that he would be identified as Diaspora and would be seen as a security threat. Again, it was put to him that there were no reports available to support that conclusion but he stated that he reached that view on the bases of how indigenous people had been treated. As a result it was his belief that he had no chance of escaping detection and suspicion.

138. It was put to Mr Burns that despite the fact that Jowhar was a regional centre for Al Shabab, it remained in the top ten towns receiving IDPs. He replied that Somalis had to try and survive. They moved to areas where they had family or a clan structure or an opportunity for employment. He confirmed that he had members of the Midgan (Madhiban) clan

working for him. It was put to him that he could be expected to know if they experienced problems. He replied that there had been no sociological changes as to how minority clans were treated over the last twenty years and that they suffered inequalities that were unacceptable because they were at the bottom of the clan structure.

139. With regard to appellant MW, he agreed he was unable to assess her linguistic aptitude. He stated, however, that his staff had told him that they could pick out members of the Diaspora by the way they walked and spoke if there was a line up of 100 Somalis. He added that Merka was the headquarters for Al Shabab military structures in the region. He accepted that he did not know the specific facts of MW's case but stated that from his own experience of his staff who were 100% against circumcision, he was aware that their daughters ended up being circumcised nonetheless. He said one needed to know the context of the family and clan.

140. Mr Burns was asked whether someone with money would be able to set up a business. He stated that someone with money and short-term support could have a viable means of survival but the risk was that people would see money coming in and that led to different risks. He agreed there was a large business community in Mogadishu particularly around Bakara market but pointed out that the big businessmen were not in the country. He stated that the next level of businessmen came and went whereas those who had less than half $1 million to invest remained and paid taxes to the TFG. He stated that for 95% of Somalis annual income was less than $5000 a year. He stated that socially and politically they had to be part of the clan structure.

141. Mr Burns was questioned about education. He agreed that SAACID provided education through schools but stated that from the end of the month fifteen schools were being closed for lack of funding. Four had been closed by Al Shabab. He stated that 2010 was worse than 2008 as it was harder to get cash. He referred to the information in the respondent's bundle 3, tab 13 at page 1454 as 'rubbery'. He stated that many of those schools had closed and whilst there were some schools functioning in Merka, they included Jihad classes.

142. Mr Burns accepted that it was possible to fly from Mogadishu to Hargeisa but said this could not be done on the same day. If flying from Nairobi then it was part of the same route and could be done. There were also flights to Somaliland from Dubai and Yemen. He stated that appellant ZF would need travel documents and cash if she were to make that journey. He was asked whether she would be able to rely on the support of the Isaaq clan in Mogadishu if she had to stay there overnight. Mr. Burns replied that there were virtually no members of that clan left in Mogadishu and it also depended whether she would be able to find somebody who would be willing to help with accommodation. He was referred to evidence confirming the presence of an Isaaq community that he stated that he had never heard of such a community or an Isaaq individual in Mogadishu. He was asked whether an old-style Somali passport could be obtained on her behalf by another person. He said that anything was possible in Somalia if the right fixer was found. He added that all IT technology available in the West was also available in Somalia if one knew where to find it.

143. In re-examination Mr Burns was asked to explain the connection between the financial pressure on Al Shabab and the increase in political assassinations. He stated that international cash had decreased and taxation had been raised as much as was possible. With the increasing pressure from AMISOM, ammunition costs amounted to some $2000 to $3000 a day and could not be sustained. If the TFG were to show a modicum of competence, Al Shabab would be unable to maintain their position and so rather than confront AMISOM

they were likely to return to guerrilla tactics and kill community leaders thereby attempting to cause disruption within the TFG.

144. In response to questions put by Mr. Schwenk about the legal status of passports obtained from Bakara market, Mr. Burns stated that the passports were still accepted in Somaliland and Djibouti. The question was put again and he gave the same reply. He was asked what the status of the passport would be if it was newly obtained and once again he repeated his reply. He was asked whether there were minibus routes from Mogadishu to Hargeisa and he said there were none.

145. Ms Short then asked questions about the position for women. Mr. Burns stated that women were allowed to work to a degree in Al Shabab areas because there were so many female heads of households. He stated that women could obtain a business license but business women were subjected to harassment. For example, their goods could be taken away by militia, there could be demands for money or they may be subjected to sexual or ideological harassment. Mr. Symes had no questions.

146. In response to questions from the Tribunal, Mr Burns conceded he was not aware whether it would be possible to gain entry to Somaliland with EU travel documents. Neither did he know the position for holders of foreign passports. He stated it was more than likely admission would be possible but he was not sure. He was asked about Bakara market and he replied that it was situated in the Hawal Daag district of Mogadishu and that the road to the market was controlled by AMISOM who had plans at some point to force Al Shabab out of the area. He stated it had been closed for the last few months in terms of vehicles coming into the area. He stated that the market had largely moved into Afgoye as a result. He was asked whether there were provisions elsewhere in the city and he stated there were around fifty public markets throughout Mogadishu. Some areas had specialist markets, for example Hamar Weyne and Hamar JaabJab had fish markets. He stated that there was no trading going on at the current time in Bakara and the big businessmen were in the process of moving their goods out. There were no questions arising and that completed his oral evidence.

APPENDIX 2

BACKGROUND EVIDENCE

Item	Document	Date
1	OHCHR, "Violence against women: CEDAW general recom. 19"	29 January 1992
2	United Nations (UN) Security Council, "Resolution 1325"	31 October 2000
3	Reliefweb, "Eight year old shoeshine boy shot dead in Mogadishu"	17 June 2001
4	UK Border Agency, "Policy Bulletin 11: Mixed Households"	27 January 2003
5	UNHCR, "Guidelines on International Protection: "Internal Flight or Relocation Alternative" within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees"	23 July 2003
6	Writenet, "Somalia: a situation analysis and trend assessment"	August 2003
7	NOVIB / Oxfam, "Knowledge, attitudes, beliefs and practices of female genital mutilation in Somalia/land"	October 2004
8	House of Commons, "Hansard written answers for 18 November 2004 (pt 96)"	18 November 2004
9	James Hathaway, "The Rights of Refugees under International Law" (extract: 2.5.2 Conclusions and guidelines on international protection, pages 112-118)	2005
10	UNHCR, "Conclusion on women and girls at risk"	6 October 2006
11	Danish Refugee Council / NOVIB / Oxfam (Joakim Gundel), "The predicament of the 'Oday'"	November 2006
12	UNHCR map, "Points of Interest in Mogadishu"	February 2007
13	Households in Conflict Network (Anna Lindley), "Remittances in Fragile Settings: a Somali case study" HiCN Working Paper 27	March 2007
14	UNHCR, "UNHCR Handbook for the Protection of Women and Girls"	January 2008
15	Advisory Panel on Country Information (Dr Alan Ingram), "Review of COI Fact Finding Mission Reports and Guidelines"	April 2008
16	UNHCR map, "Central Operational Zone – Migration Routes"	April 2008
17	UNHCR map, "Mid-Southern Operational Zone – Migration Routes"	April 2008
18	UNHCR map, "North-Eastern Operational Zone – Migration Routes"	April 2008
19	UNHCR map, "North-Western Operational Zone – Migration Routes"	April 2008

Item	Document	Date
20	Advisory Panel on Country Information, "Minutes of 10th meeting"	1 May 2008
21	UK Home Office, "Female Genital Mutilation (FGM) Report: Somalia"	20 June 2008
22	UNHCR map, "Southern Operational Zone – Migration Routes"	June 2008
23	Foreign and Commonwealth Office letter, "Isaaq clan in Mogadishu"	15 July 2008
24	UK Border Agency, "Fact finding missions – methodology and guidance – response to ACPI review April 2008"	September 2008
25	UK Home Office, "COI Report: Somalia"	3 October 2008
26	Advisory Panel on Country Information, "Minutes of 11th meeting"	7 October 2008
27	UK Border Agency, "Operational Guidance Note: Somalia"	7 October 2008
28	USAID, "Horn of Africa – complex emergency"	31 October 2008
29	Amnesty International, "Fatal insecurity: attacks on aid workers and rights defenders in Somalia"	October 2008
30	UN, "Monthly cluster report: humanitarian response in Somalia"	October 2008
31	LandInfo, "Conflict, security and clan protection in South Somalia"	12 November 2008
32	BBC News, "Insurgents 'seize' Somali port"	12 November 2008
33	BBC News, "Somalis grow fearful of Islamists"	12 November 2008
34	UN, "Somalia: 2009 consolidated appeal"	12 November 2008
35	Missionary International Service News Agency (MISNA), "Somalia: rebels continue to advance, Elasha and Adado fall"	13 November 2008
36	Reuters, "Somali Islamists move closer to Mogadishu"	14 November 2008
37	Reuters, "Rival Islamists clash near Somali capital, 6 dead"	17 November 2008
38	UN Security Council, "Report of the Secretary-General on the situation in Somalia"	17 November 2008
39	UN Security Council, "Recent political progress in Somalia obscured by deteriorating security, humanitarian conditions, Security Council hears in several briefings"	20 November 2008
40	UN Security Council, "Resolution 1844"	20 November 2008
41	BBC News, "Fierce gun battle rocks Mogadishu"	21 November 2008
42	United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA), "Somalia: situation report no. 46"	21 November 2008
43	IRIN, "Somalia: talks resume amid continuing violence"	24 November 2008
44	IRIN, "Kenya-Somalia: Thousands flee amid fears of fighting along border"	27 November 2008

Item	Document	Date
45	UNOCHA, "Somalia: situation report no. 47"	28 November 2008
46	UN, "Monthly cluster report: humanitarian response in Somalia"	November 2008
47	Reuters, "Shelling kills at least 15 in Somalia's capital"	5 December 2008
48	Reuters, "Somalia's Al Shabab seize central town, 13 dead"	6 December 2008
49	Human Rights Watch, "And what about Somali women?"	9 December 2008
50	LandInfo, "Female genital mutilation in Sudan and Somalia"	10 December 2008
51	Reuters, "Sharif back in Mogadishu as death toll hits 16,210"	10 December 2008
	LandInfo, "Female genital mutilation in Sudan and Somalia"	15 December 2008
52	UN, "Somalia Humanitarian Review" Vol. 1 Issue 11	November – 15 December 2008
53	Reuters, "Eleven killed in fighting in Somalia's capital"	17 December 2008
54	Swiss Refugee Aid / Markus Virgil Hoehne, "Somalia: update on the current situation (2006-2008)"	17 December 2008
55	IRIN, "Somalia: AWD kills dozens in Galgadud"	23 December 2008
56	Médecins Sans Frontières, "MSF calls on combatants to respect medical facilities in Guri El, Somalia"	27 December 2008
57	SAACID, "Results of the "SAACID rapid Population Assessment of IDP Settlements in Mogadishu""	2008
58	UNHCR map, "Mogadishu and Surrounds"	2008
59	World Food Programme map, "Somalia – Flood-Affected Areas"	2008
60	BBC News, "Somali police stations taken over"	4 January 2009
61	IRIN, "Somalia: "Too poor to escape the fighting""	6 January 2009
62	BBC News, "Islamist rebels clash in Somalia"	11 January 2009
63	IRIN, "Somalia: displaced families in dire need"	12 January 2009
64	Reuters, "Fear and threats as Ethiopian troops quit Mogadishu"	14 January 2009
65	Reuters, "Somali Islamists strike at departing Ethiopians"	14 January 2009
66	UNOCHA, "Somalia: situation report no. 3"	16 January 2009
67	IRIN, "Somalia: hundreds flee Bardera in fear of attacks"	15 January 2009
68	Agence France-Presse (AFP), "Mogadishu residents trickle back to their homes"	17 January 2009
69	AFP, "12 killed in Mogadishu fighting"	21 January 2009
70	UNOCHA, "Somalia: situation report no. 4"	23 January 2009
71	AFP, "Suicide car bomb, gunfight kill 22 civilians in Somalia"	24 January 2009

Item	Document	Date
72	Reuters, "Somali Islamists to rule by Sharia law in Baidoa"	27 January 2009
73	UN, "Somalia Humanitarian Overview" Vol. 2 Issue 1	15 December 2008 – January 2009
74	Reuters, "Somalis say Ethiopian troops enter, Addis denies"	3 February 2009
75	Human Rights Watch, "Somalia: new violence highlights need for independent inquiry"	5 February 2009
76	IRIN, "In brief: top Somali journalist killed"	5 February 2009
77	UNOCHA, "Horn of Africa crisis report"	6 February 2009
78	IRIN, "Somalia: Hawo Nagash, "My biggest fear is that somebody will take my daughters and circumcise them""	10 February 2009
79	UN, "Technical Assistance and Capacity-building: Report of Shamsul Bari, independent expert appointed by the Human Rights Council on the situation of human rights in Somalia"	24 February 2009
80	BBC News, "Islamist rebels seize Somali town"	25 February 2009
81	Reuters, "Somalia death toll hits 81 in worst fighting for weeks"	25 February 2009
82	US Department of State, "2008 Human rights Reports: Somalia"	25 February 2009
83	UN, "Somalia Humanitarian Overview" Vol. 2 Issue 2	February 2009
84	UNOCHA map, "Mogadishu and periphery: HRF supported projects"	February 2009
85	Amnesty International, "Somalia: civilians pay the price of intense fighting in Mogadishu"	4 March 2009
86	IRIN, "Somalia: Merka IDPs virtually out of food"	6 March 2009
87	UN Security Council, "Report of the Secretary-General on the situation in Somalia"	9 March 2009
88	Reuters, "Roadside blast kills four in Somalia"	11 March 2009
89	IRIN, "Somalia: thousands displaced in Galgadud attack"	16 March 2009
90	IRIN, "Somalia: children, IDPs hardest hit by lack of water"	23 March 2009
91	Reuters, "Fighting kills at least 14 in Somalia"	30 March 2009
92	UK Border Agency, "Operational Guidance Note: Somalia v19.0"	March 2009
93	UN, "Quarterly cluster report: humanitarian response in Somalia"	January – March 2009
94	UN, "Somalia Humanitarian Overview" Vol. 2 Issue 3	March 2009
95	UNHCR, "A tale of three cities: internal displacement, urbanization and humanitarian action in Abidjan, Khartoum and Mogadishu" Research	March 2009

Item	Document	Date
	Paper No. 173	
96	Refugees International, "Somalia: political progress, humanitarian stalemate"	3 April 2009
97	MISNA, "Two Somali aid workers and driver killed"	10 April 2009
98	IRIN, "Somalia: second thoughts about returning to Mogadishu"	14 April 2009
99	UN, "Somalia Humanitarian Overview" Vol. 2 Issue 4	April 2009
100	USAID, "Somalia – complex emergency"	5 May 2009
101	Reuters, "Clashes kill at least 65 in Somalia in 3 days"	10 May 2009
102	BBC News, "Mogadishu mired in fresh mayhem"	13 May 2009
103	Amnesty International, "Somalia: amputations and public killings must stop"	14 May 2009
104	AFP, "Five killed in clash in Somalia village"	15 May 2009
105	Reuters, "Militants take key Somali town, fighting rages"	17 May 2009
106	Médecins Sans Frontières, "Somali refugees imperilled in overcrowded camps in Kenya"	18 May 2009
107	IRIN, "Somalia: Al-Shabab's pyrrhic victory?"	19 May 2009
108	New York Times, "Somalia: Ethiopian troops return"	19 May 2009
109	Internal Displacement Monitoring Centre, "Somalia: security and protection crisis continues despite peace deal"	20 May 2009
110	Reuters, "Insurgents in Mogadishu attack AU peacekeepers"	23 May 2009
111	AFP, "8,000 displaced in one day by Mogadishu fighting: UN"	24 May 2009
112	AFP, "208 killed in two weeks of Mogadishu fighting: minister"	25 May 2009
113	UN Security Council, "Resolution 1872"	26 May 2009
114	UNOCHA map, "Mogadishu and periphery: Secondary and primary health care facilities and list"	27 May 2009
115	AllAfrica, "Teenagers with guns threaten region"	1 June 2009
116	Reuters, "Bomb, battles kill at least 38 more in Mogadishu"	1 June 2009
117	LandInfo, "Somalia: Protection and conflict resolution mechanisms"	2 June 2009
118	LandInfo, "Somalia: Vulnerability – Minority groups, weak clans and vulnerable individuals"	2 June 2009
119	DPA, "UN: almost 100,000 have fled Somali capital"	4 June 2009
120	Reuters, "Somali battle kills 123, rebels deny leader Aweys dead"	6 June 2009
121	IRIN, "Somalia: no one left to tell the story"	10 June 2009

Item	Document	Date
122	AFP, "In Somalia war, children wage jihad"	12 June 2009
123	UNOCHA, "Weekly Humanitarian Bulletin" Issue # 22	5-12 June 2009
124	LandInfo, "Somalia: Armed groups and recruitment"	16 June 2009
125	LandInfo, "Southern Somalia: The security situation"	16 June 2009
126	AFP, "Mogadishu police chief, seven others killed in fighting: witnesses"	17 June 2009
127	USAID, "Somalia – complex emergency"	17 June 2009
128	AFP, "Somalia: at least 26 killed in Mogadishu fighting"	18 June 2009
129	UNOCHA, "Weekly Humanitarian Bulletin"	12-19 June 2009
130	AFP, "Somalia violence sparks mass exodus from capital"	20 June 2009
131	Reuters, "Somali Islamists order teenagers' hands, legs amputated"	22 June 2009
132	USAID, "Drought in key northern and north-eastern pastoral regions threatens livestock"	22 June 2009
133	UNHCR, ""Before it comes to my house, let me run""	22 June 2009
134	AFP, "Somalia violence displaces 159,000 in six weeks: UN"	23 June 2009
135	IRIN, "Somalia: pastoralists leave drought-hit villages"	23 June 2009
136	UNICEF, "UNICEF situation report – Somalia"	1-30 June 2009
137	MICROCON (Anna Lindley), "Leaving Mogadishu: The War on Terror and Displacement Dynamics in the Somali Regions" Research Working Paper 15	June 2009
138	UNOCHA, "Somalia – humanitarian access analysis"	January – June 2009
139	UN, "Donor alert – Deteriorating health situation in South and Central Somalia calls for urgent humanitarian action"	1 July 2009
140	IRIN, "Somalia: conditions worsen as more IDPs flood into Kismayo"	7 July 2009
141	Médecins Sans Frontières, "In Somalia, majority of north Mogadishu population flees as fighting escalates"	7 July 2009
142	UNHCR, "Somalia: new fighting in Mogadishu displaces more than 200,000"	7 July 2009
143	IRIN, "Somalia: young men running from military conscription"	9 July 2009
144	OHCHR, "UN human rights chief says reports suggest possible war crimes in Somalia"	10 July 2009
145	UNOCHA, "Weekly Humanitarian Bulletin" Issue # 26	3-10 July 2009
146	Reuters, "Fighting kills at least 43 in Somali capital"	12 July 2009

Item	Document	Date
147	AFP, "Somalia – a land of kidnappings"	14 July 2009
148	International Committee of the Red Cross (ICRC), "Somalia: renewed fighting in Mogadishu takes heavy toll on civilians"	16 July 2009
149	UNOCHA, "Weekly Humanitarian Bulletin" Issue # 27	10-17 July 2009
150	UN Security Council, "Report of the Secretary-General on the situation in Somalia"	20 July 2009
151	UK Border Agency, "Country of Origin Information Report: Somalia"	21 July 2009
152	UNHCR, "Somalia displacement update"	21 July 2009
153	Xinhau, "Eleven die in Mogadishu shelling"	22 July 2009
154	IRIN, "Feeding centres closed amid heavy fighting"	23 July 2009
155	UNOCHA, "Weekly Humanitarian Bulletin" Issue # 28	17-24 July 2009
156	AFP, "Somali rebels bombard parliament as clashes kill seven"	27 July 2009
157	BioMed Central, "Prevalence and associated factors of female genital mutilation among Somali refugees in eastern Ethiopia: a cross-sectional study"	27 July 2009
158	Reliefweb, "Mogadishu fighting puts children at risk"	28 July 2009
159	Reliefweb, "Somalia: many displaced, many to feed"	28 July 2009
160	United Nations, "Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development: Annual report of the Special Representative of the Secretary-General for Children and Armed Conflict, Radhika Coomaraswamy"	30 July 2009
161	Somalia Inter Agency Standing Committee (IASC Somalia), "Protection cluster update"	31 July 2009
162	International Relations and Security Network (ISN), "Somalia's new religious war"	31 July 2009
163	UNOCHA, "Somalia – humanitarian access update"	1-31 July 2009
164	UN, "Somalia Humanitarian Overview" Vol. 2 Issue 7	July 2009
165	UNICEF / World Health Organization (WHO), "Carrurteenna "our children" – joint UNICEF/WHO Somalia newsletter"	July 2009
166	UNHCR, "Population movement tracking – Somalia"	July 2009
167	UNHCR, "Somalia briefing sheet"	July 2009
168	MISNA, "New African Union (AU) contingent in Mogadishu, arrests	3 August 2009

Item	Document	Date
	and clashes"	
169	UNHCR, "UN High Commissioner calls for urgent international action to remedy "dire" situation in Somalia"	6 August 2009
170	UNOCHA, "Weekly Humanitarian Bulletin" Issue # 30	31 July – 7 August 2009
171	AFP, "Somalia's humanitarian crisis 'critical': UN agency"	11 August 2009
172	International Crisis Group, "Somalia: The Trouble with Puntland"	12 August 2009
173	IRIN, "Somalia: humanitarian crisis "at new low""	12 August 2009
174	UNHCR, "Displaced by conflict, families in Somalia often left divided"	13 August 2009
175	UNOCHA, "Weekly Humanitarian Bulletin" Issue # 31	7-14 August 2009
176	Voice of America (VOA) News, "Somali militants vow to launch new attacks on government, peacekeepers during Ramadan"	19 August 2009
177	Reuters, "Somalia fighting kills at least 45 – residents"	20 August 2009
178	UNOCHA, "Weekly Humanitarian Bulletin" Issue # 32	14-21 August 2009
179	Food Security Nutrition Analysis Unit (FSNAU) Somalia, "Somalia: half the population in humanitarian crisis amid an escalating war"	24 August 2009
180	IRIN, "Somalia: humanitarian situation "worst in 18 years""	25 August 2009
181	UNOCHA map, "Mogadishu and Afgooye Corridor – IDP Camps and Conflict Zones"	25 August 2009
182	USAID, "Somalia – complex emergency"	25 August 2009
183	IRIN, "Somalia: cut off by insecurity, IDPs in Jowhar run out of food"	27 August 2009
184	MISNA, "Mogadishu: clashes on the road to Afgoye, food crisis in Jowhar"	27 August 2009
185	USAID, "Humanitarian crisis in Somalia continues to deepen"	27 August 2009
186	UNOCHA, "Weekly Humanitarian Bulletin" Issue # 33	21-28 August 2009
187	Reliefweb, "Militias advance, news that Ethiopians are to return"	30 August 2009
188	UNICEF, "UNICEF situation report – Somalia"	1-31 August 2009
189	UNOCHA, "Somalia – humanitarian access update"	1-31 August 2009
190	Danish Refugee Council / SAACID map, "Hot meal distribution: Mogadishu, Somalia"	August 2009
191	UN, "Somalia Humanitarian Overview" Vol. 2 Issue 8	August 2009
192	AFP, "At least 50 killed in Mogadishu fighting: UN"	1 September 2009
193	UNOCHA, "Weekly Humanitarian Bulletin" Issue # 34	28 August – 4

Item	Document	Date
		September 2009
194	Xinhau, "Shelling in Somali capital leaves eight dead"	7 September 2009
195	IRIN, "Interview with IDP in Jowhar"	8 September 2009
196	FSNAU, "Nutrition situation post *Gu* 2009"	11 September 2009
197	UNOCHA, "Weekly Humanitarian Bulletin" Issue # 35	4-11 September 2009
198	ICRC, "Somalia: shelling of Mogadishu hospital results in several casualties"	12 September 2009
199	AFP, "Somalia: Mogadishu bombings pile pressure on peacekeepers"	18 September 2009
200	IASC Somalia, "Protection cluster update: weekly report"	18 September 2009
201	Save the Children, "Children in Somalia face unprecedented danger as food shortages and fierce fighting deliver double blow"	18 September 2009
202	UNOCHA, "Weekly Humanitarian Bulletin" Issue # 36	11-18 September 2009
203	Reuters, "At least 19 killed in violence across Somalia"	21 September 2009
204	AlertNet, "Interview – Somalia faces worst drought in 20 years, UN says"	22 September 2009
205	IRIN, "Somalia: instead of a safe haven, fear and rape in Galkayo"	23 September 2009
206	Reuters, "Fighting kills at least 12 in Somali capital"	23 September 2009
207	Reuters, "Interview – Somalia risks being 'new Afghanistan' – EU aid head"	23 September 2009
208	USAID, "Somalia – complex emergency"	23 September 2009
209	UNOCHA, "Weekly Humanitarian Bulletin" Issue # 37	18-25 September 2009
210	IRIN, "Somalia: insecurity "no excuse" to neglect IDPs"	30 September 2009
211	IRIN, "Somalia: civilians flee fighting in Kismayo"	1 October 2009
212	BBC News, "Somali port city buries the dead"	2 October 2009
213	IASC Somalia, "Protection cluster update: weekly report"	2 October 2009
214	Reuters, "Shabab rebels take full control of Somali port"	2 October 2009
215	IRIN, "Somalia: thousands stranded near the Kenyan border"	6 October 2009
216	BBC News, "'Rebels' threaten Somali hospital"	8 October 2009
217	New York Times, "Somalia: compulsory viewing of amputations as punishment"	10 October 2009

Item	Document	Date
218	Reliefweb, "Somalia: Women take on men's jobs to feed their families"	15 October 2009
219	BBC News, "Islamists break Somali port truce"	21 October 2009
220	OHCHR, "UN representative on internally displaced persons says the international community is failing displaced Somalis"	21 October 2009
221	BBC News, "Shelling 'kills Somali civilians'"	22 October 2009
222	Reuters, "Somalia: shell fire kills at least 30 in Mogadishu"	22 October 2009
223	AFP, "Rapists, hunger and hyenas stalk displaced Somali women"	23 October 2009
224	BBC News, "Somalis 'made to view executions'"	25 October 2009
225	Reuters, "Dozens killed in Somali fighting – rights group"	1 November 2009
226	Reuters, "Somali rebels close women's organisations"	2 November 2009
227	BBC News, "Somali adulterer stoned to death"	6 November 2009
228	MISNA, "Somalia/Mogadishu: civilians killed in clashes"	16 November 2009
229	BBC News, "Somali woman stoned for adultery"	18 November 2009
230	Amnesty International, "Somalia: unlawful killings and torture demonstrate Al Shabab's contempt for the lives of civilians"	24 November 2009
231	IRIN, "Somalia: mass exodus as militia takes control of southern town"	24 November 2009
232	MISNA, "Somalia: clashes in Mogadishu, victims among civilians"	24 November 2009
233	Reuters, "Hardline rebels take Somali border town near Kenya"	28 November 2009
234	AFP, "Anger grows after Somalia suicide bomber"	5 December 2009
235	Reuters, "Somalia: residents clash with rebels on Mogadishu outskirts"	8 December 2009
236	Internal Displacement Monitoring Council (IDMC), "Somalia: political and security crises, access limits and donor cuts increasing IDP vulnerability"	10 December 2009
237	Reuters, "Islamist rebels fight over executions in Somalia"	14 December 2009
238	MISNA, "Somalia/Mogadishu: bus and civilians attacked"	16 December 2009
239	LandInfo, "Somalia: Reer Hamar"	17 December 2009
240	Reuters, "Mortar shell attacks kill at least 14 in Somalia"	20 December 2009
241	BBC News, "Mortar attack on MPs in Somalia"	21 December 2009
242	IRIN, "Somalia: IDPs targeted over violence in Galkayo"	21 December 2009
243	AFP, "UN security officer shot dead in Somalia"	22 December 2009
244	AFP, "11 killed in heavy fighting in Somali capital"	24 December 2009
245	UN Security Council, "Report of the Secretary-General on the situation in Somalia"	31 December 2009

Item	Document	Date
246	Austrian Red Cross / Accord (Joakim Gundel), "Clans in Somalia"	December 2009
247	IRIN, "Somalia: thousands displaced by clashes in Galgadud"	4 January 2010
248	BBC News, "Somali militants force WFP exits"	5 January 2010
249	Reuters, "Fighting in two Somali towns kills at least 18"	11 January 2010
250	AFP, "Sixteen killed in battles in central Somalia"	12 January 2010
251	AFP, "Seven children killed in Somalia shelling"	13 January 2010
252	Reuters, "Somalia clashes kill 138 in two weeks – rights group"	15 January 2010
253	IRIN, "Somalia: IDPs on the run again as fighting hits Beletweyne"	19 January 2010
254	IRIN, "Somalia: hospital desperate for specialists"	21 January 2010
255	UN, "Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin"	21 January 2010
256	AFP, "Somali insurgents raid foreign aid offices"	22 January 2010
257	Reuters, "Islamist rebels take central Somali town, eight dead"	22 January 2010
258	Reuters, "Blast at AU hospital in Somalia kills at least one"	25 January 2010
259	Reuters, "Fighting in central Somalia kills at 16"	27 January 2010
260	OHCHR, ""Extremely serious" – strong warning on security, human rights and humanitarian situation in Somalia"	28 January 2010
261	BBC News, "Somali fighting mars anniversary"	29 January 2010
262	New York Times, "Islamic insurgents attack troops in the Somali capital"	30 January 2010
263	UN, "Somalia Humanitarian Overview" Vol.3 Issue 1	15 December – 30 January 2010
264	Human Rights Watch, "Annual Report: Somalia"	January 2010
265	UNHCR, "Population Movement Tracking Monthly Report"	January 2010
266	Reuters, "Somali rebels unite, profess loyalty to al Qaeda"	1 February 2010
267	UN, "Somalia Humanitarian Overview" Vol.3 Issue 2	2 February 2010
268	IRIN, "Somalia: "dwindling shelter and little water""	3 February 2010
269	Refugee Documentation Centre (Ireland), "Information on whether young women who have children born out of wedlock are in danger of attack by Al Shabab or any other terror grouping in Somalia,"	3 February 2010
270	USAID, "Somalia – complex emergency"	3 February 2010
271	BBC News, "Somalia bombs 'target civilians'"	4 February 2010
272	Reuters, "Shelling kills at least 9 in Somalia – group"	8 February 2010

Item	Document	Date
273	Reuters, "Somali clashes kill 24, thousands flee capital"	10 February 2010
274	New York Times, "Somali: at least 15 die in shootouts"	11 February 2010
275	BBC News, "'Thousands flee' Somalia fighting"	12 February 2010
276	Reuters, "Somalia in turmoil"	12 February 2010
277	BBC News, "Somali minister survives bombing"	15 February 2010
278	UN, "Written statement submitted by Amnesty International, a non-governmental organization in special consultative status: the urgent need for protection of civilians and accountability for war crimes in Somalia"	26 February 2010
279	Forced Migration Review, "Adapting to urban displacement" Issue 34 (extract)	February 2010
280	UNHCR, "Population Movement Tracking Monthly Report"	February 2010
281	UNOCHA map, "HRF supported projects, 2009 – Mogadishu"	February 2010
282	Reuters, "Fighting in Somali capital kills 12 – rights group"	3 March 2010
283	Reuters, "Inter-clan fighting kills 14 in central Somalia"	5 March 2010
284	UN, "Report of the independent expert on the situation of human rights in Somalia, Shamsul Bari"	8 March 2010
285	Reuters, "Fighting in Somali capital kills 17, rebels behead 2"	10 March 2010
286	The Guardian, "Half of all food sent to Somalia is stolen, says UN report"	10 March 2010
287	US Department of State, "2009 Human Rights Reports: Somalia"	11 March 2010
288	IRIN, "Somalia: without food and unable to bury the dead in Mogadishu"	15 March 2010
289	UN Security Council, "Resolution 1916"	19 March 2010
290	IRIN, "Kenya-Somalia: thousands flee Mogadishu "death trap""	22 March 2010
291	AFP, "Five civilians killed in Mogadishu fire fight"	23 March 2010
292	Kismaayo News, "TFG district commissioner destroyed before he could destroy shanty houses"	27 March 2010
293	VOA News, "Somali government official killed after Mogadishu evictions"	27 March 2010
294	Reuters, "Clan clashes in central Somalia kill 16"	31 March 2010
295	UK Foreign and Commonwealth Office, "Human Rights Annual Report 2009 – Countries of Concern: Somalia"	March 2010

Item	Document	Date
296	UNHCR, "Population Movement Tracking Monthly Report"	March 2010
297	AFP, "Artillery fire in Somalia kills at least 11 civilians: medics"	3 April 2010
298	BBC News, "Somali conflict's long reach"	5 April 2010
299	BBC News, "Militants raid UN base in Somalia"	8 April 2010
300	BBC News, "Somalia fighting leaves 19 dead"	13 April 2010
301	New York Times, "Somali radio stations halt music"	13 April 2010
302	Jamestown Terrorism Monitor, "Conflict between Somali leaders halts military operations against Islamist insurgents" Volume IX Issue 15	14 April 2010
303	BBC News, "Somali ban on 'Christian' bells"	15 April 2010
304	Reuters, "Somalia violence kills 14, parliament fails to meet"	18 April 2010
305	Human Rights Watch, "Harsh War, Harsh Peace"	19 April 2010
306	Reuters, "Five die in mortar shell attacks in Mogadishu"	20 April 2010
307	Reuters, "Somalia clashes kills 11, five headless bodies found"	21 April 2010
308	AFP, "Hardline Islamists seize three Somali towns"	23 April 2010
309	IRIN, "Somalia: where fun is forbidden"	27 April 2010
310	Reuters, "Violence in Somalia capital kills at least 16"	27 April 2010
311	IRIN, "Sudan-Somalia: dangerous for minorities"	29 April 2010
312	Committee to Protect Journalists, "Exiled Somali journalists face new challenges in Nairobi"	April 2010
313	European Union (EU) Council Secretariat, "Factsheet: EU Engagement in Somalia"	April 2010
314	Opinion Research Business newsroom, "Clinging to hope, living in crisis: the Mogadishan way of life"	April 2010
315	UN, "Somalia Humanitarian Overview" Vol. 3 Issue 4	April 2010
316	UNHCR, "Population Movement Tracking Monthly Report"	April 2010
317	BBC News, "Somali blasts kill 'at least 30'"	1 May 2010
318	Reuters, "Somali rebels urge school pupils to join jihad"	3 May 2010
319	UNICEF, "Statement from UNICEF's Executive Director and the Secretary-General's Special Representative on Children and Armed Conflict on the recruitment of child soldiers in Somalia"	4 May 2010
320	BBC News, "Gunmen in Somalia kill journalist"	5 May 2010
321	Foreign and Commonwealth Office letter, "Travel within and to Somalia"	5 May 2010

Item	Document	Date
322	Human Rights Watch, "Somalia's saviours are making everything worse"	5 May 2010
323	UNHCR, "Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Somalia"	5 May 2010
324	AFP, "Exiled Somali journalists threatened by hardliners"	6 May 2010
325	UNOCHA map, "Somalia – Mogadishu Landmarks"	6 May 2010
326	IRIN, "In brief: nearly half of Somali women, children have anaemia"	7 May 2010
327	Reuters, "Somali rebels seize town bordering Ethiopia"	8 May 2010
328	UN Security Council, "Report of the Secretary-General on Somalia"	11 May 2010
329	AFP, "Nine killed as Somali forces attack insurgents"	12 May 2010
330	IRIN, "Thousands displaced by floods, fear of renewed clashes"	12 May 2010
331	Refugee Documentation Centre (Ireland), "Information on the safety of returns to the Mogadishu area of Somalia, including any dangers on the route of return"	13 May 2010
332	BBC News, "Rebels attack Somali Parliament"	16 May 2010
333	International Crisis Group, "Somalia's Divided Islamists" Africa Briefing No. 74	18 May 2010
334	AFP, "Somalia: three killed in Mogadishu violence"	20 May 2010
335	BBC News, "Somaliland-Ethiopia border clash 'kills 13'"	22 May 2010
336	Reuters, "Fighting in Somali capital kills 20, rights group"	23 May 2010
337	Amnesty International, "Amnesty International Report 2010 – The State of the World's Human Rights: Somalia"	28 May 2010
338	Critical Threats, "Somalia Conflict Maps: Islamist and Political"	31 May 2010
339	Garowe Online (Dr Michael Weinstein), "The present military balance in Mogadishu (Intelligence brief)"	31 May 2010
340	SAACID, "Education Report – Faadumo Mohamed Hassan"	May 2010
341	UN, "Somalia Humanitarian Overview" Vol. 3 Issue 5	May 2010
342	UNHCR, "Population Movement Tracking Monthly Report"	May 2010
343	World Food Programme / Logistics Cluster map, "Somalia: Road Networks"	May 2010
344	Freedom House, "Worst of the Worst 2010: The World's Most Repressive Societies: Somalia"	1 June 2010
345	Reuters, "Fighting in central Somalia kills 24 – rights group"	2 June 2010

Item	Document	Date
346	IRIN, "Rise in mental health disorders blamed on conflicts"	3 June 2010
347	BBC News, "Somali troops fight al-Shabab militants in Mogadishu"	4 June 2010
348	The Guardian, "How Somalia's civil war became new front in battle against al-Qaida"	7 June 2010
349	IRIN, "Somalia: thousands displaced by rains and clashes"	8 June 2010
350	Reuters, "Fighting, blast kills at least 12 in Somali capital"	9 June 2010
351	UNOCHA, "Weekly Humanitarian Bulletin" Issue # 22	4-11 June 2010
352	AFP, "At least seven killed in Mogadishu clashes"	12 June 2010
353	New York Times, "Children carry guns for a US ally, Somalia"	13 June 2010
354	Reuters, "Clash between Somalia police, soldiers kill 13"	13 June 2010
355	War on Terror News, "Fighting between Somali police, soldiers kills at least 10"	13 June 2010
356	New York Times, "Somali insurgents detain soccer fans"	15 June 2010
357	New York Times, "UN voices concern on child soldiers in Somalia"	16 June 2010
358	Radio Free Europe/Radio Liberty, "In Somalia: the World Cup is a dangerous game"	16 June 2010
359	AFP, "Somalia: 11 killed in Mogadishu clashes"	18 June 2010
360	IASC Somalia, "Protection cluster update weekly report"	18 June 2010
361	Reuters, "Fighting in Somali capital kills 20"	19 June 2010
362	IASC Somalia, "Protection cluster update weekly report"	25 June 2010
363	Shabelle Media Network, "Somalia: Somali MPs held meeting in Mogadishu"	28 June 2010
364	AFP, "Somalia: battle in northern Mogadishu kills eight"	29 June 2010
365	Reporters Sans Frontières, "Several journalists seriously hurt in press conference bombing in Mogadishu"	30 June 2010
366	UNHCR map, "Population Movement Tracking Mogadishu monthly dashboard"	June 2010
367	UNHCR map, "Somalia: Population Movement Tracking monthly report"	June 2010
368	BBC News, "Somali president leads troops in anniversary battle"	1 July 2010
369	Minority Rights Group International, "State of the World's Minorities and Indigenous Peoples 2010: Somalia"	1 July 2010
370	Reuters, "Somali clashes kill 21, wound 42"	1 July 2010

Item	Document	Date
371	IASC Somalia, "Protection Cluster Update Weekly Report "	2 July 2010
372	AFP, "Somalia: 12 killed in fresh Mogadishu fighting"	4 July 2010
373	AFP, "16 killed in Mogadishu classes"	6 July 2010
374	IRIN, "Mogadishu faces a catastrophe"	6 July 2010
375	Reuters, "Somalis protest about extra peacekeepers, many coerced"	7 July 2010
376	Australian Government Refugee Review Tribunal, "Country Advice: Somalia"	9 July 2010
377	The Guardian, "Somalia needs good government to turn back the terrorist tide"	12 July 2010
378	IRIN, "Conditions worsen for IDPs in and around Mogadishu"	14 July 2010
379	AFP, "Aid worker in Somalia detained, not kidnapped: UN"	19 July 2010
380	AFP, "Somalia – Mogadishu fighting kills 14 civilians: witnesses"	19 July 2010
381	BBC News, "Somali shell attacks injures Koranic schoolchildren"	19 July 2010
382	Reuters, "Kenyan forces, Al Shabab rebels clash on border"	20 July 2010
383	Reuters, "Somalia: Mogadishu fighting kills 52 civilians in a week – group"	20 July 2010
384	IRIN, "Somalia: deadly skies above Mogadishu"	21 July 2010
385	New York Times, "Guards for Somali leader join Islamists"	22 July 2010
386	IDMC, "Somalia: displacement and worsening humanitarian situation as a result of ongoing violence and conflict"	30 July 2010
387	Amnesty International, "Hard news: journalists' lives in danger in Somalia"	July 2010
388	UK Border Agency, "Operational Guidance Note on Somalia"	July 2010
389	UNHCR, "UNHCR Operation in Somalia Factsheet"	July 2010
390	UNHCR map, "Somalia: Population Movement Tracking monthly report"	July 2010
391	AFP, "Mogadishu violence kills seven"	4 August 2010
392	AFP, "Somalia fighting kills 21 near Ethiopia border"	4 August 2010
393	AFP, "Civilians worst hit by Mogadishu clashes: aid group"	5 August 2010
394	The Wall Street Journal, "Africa Dispatch: Jewelry for Jihad"	5 August 2010
395	IRIN, "Somalia: unarmed and under fire in Mogadishu"	6 August 2010
396	Reuters, "Somalia's al Shabab rebels expel three aid groups"	9 August 2010
397	OHCHR, "UN expert calls on international community to protect	10 August 2010

Item	Document	Date
	civilians and pursue rights violators"	
398	IASC Somalia, "Protection cluster update weekly report"	13 August 2010
399	Reuters, "Somalia's Al Shabab increases Kenyan border raids"	18 August 2010
400	BBC News, "'Ten killed' in Mogadishu blast as militants blamed"	21 August 2010
401	AFP, "Somali militants step up campaign against WFP"	22 August 2010
402	AFP, "Somalia: 11 civilians killed in Mogadishu fighting"	23 August 2010
403	LandInfo, "Somalia: Security and Conflict in the South"	23 August 2010
404	Reuters, "Somali militants storm hotel, 31 dead including MPs"	24 August 2010
405	AFP, "Somalia: 10 civilians die in Mogadishu's third day of heavy fighting"	25 August 2010
406	Reuters, "Somalis flee fourth day of violence in Mogadishu"	26 August 2010
407	IASC Somalia, "Protection cluster update weekly report"	27 August 2010
408	AFP, "Somalia: 11 civilians dead in fresh Mogadishu fighting"	28 August 2010
409	IRIN, "Mogadishu fighting cuts food supplies"	30 August 2010
410	The Guardian, "Ten die and 27 injured in clashes in Mogadishu"	30 August 2010
411	New York Times, "Somalia: roadside bomb kills 8 civilians"	31 August 2010
412	Reliefweb, "Mogadishu: After nine days of fighting, more casualties"	31 August 2010
413	International Organization for Migration, "Somalia"	August 2010
414	UN, "Somalia Humanitarian Overview" Vol. 3 Issue 8	August 2010
415	UNHCR map, "Somalia: Population Movement Tracking monthly report"	August 2010
416	UNOCHA map, "Mogadishu – Conflict Zone"	August 2010
417	New York Times, "In Somalia, battle ends for streets of capital"	1 September 2010
418	IASC Somalia, "Protection cluster update weekly report"	3 September 2010
419	AFP, "Eleven killed in Mogadishu battles"	8 September 2010
420	BBC News, "'Slow genocide' in Somalia's capital Mogadishu"	8 September 2010
421	IRIN, "Somalia: no high school, no hope in Gedo"	8 September 2010
422	BBC News, "Somali suicide attackers hit Mogadishu airport"	9 September 2010
423	IRIN, "In brief: Somali civilian deaths at "alarming" levels"	9 September 2010
424	UN Security Council, "Report of the Secretary-General on Somalia"	9 September 2010
425	AFP, "Somalia: Mogadishu shelling kills 12 civilians"	16 September 2010
426	UN, "Report of the independent expert on the situation of human rights in Somalia, Shamsul Bari"	16 September 2010

Item	Document	Date
427	IASC Somalia, "Protection cluster update weekly report"	17 September 2010
428	Reuters, "Suicide bomber attacks Somali presidential palace"	20 September 2010
429	IASC Somalia, "Somalia: Agriculture and Livelihoods Cluster – Ongoing Activities"	20 September 2010
430	Reuters, "Somali PM Sharmarke resigns, caretaker named"	21 September 2010
431	AFP, "Fresh Mogadishu fighting kills 19 civilians: medics"	23 September 2010
432	Critical Threats, "Mogadishu Map: al Shabab's Ramadan offensive"	23 September 2010
433	New York Times, "Somali forces fight Islamists in the capital"	23 September 2010
434	The Guardian, "19 dead in Somalia as militants clash with pro-government troops"	23 September 2010
435	IRIN, "Now there is nothing – no handouts, no work"	29 September 2010
436	IRIN, "Somalia: spotlight on maternal health risks in rural areas"	30 September 2010
437	IASC Somalia, "Gender Strategy of the Somalia Agriculture and Livelihoods Cluster"	September 2010
438	UN, "Somalia Humanitarian Overview" Vol. 3 Issue 9	September 2010
439	UNHCR, "IDP population assessment of the Mogadishu periphery – September 2010"	September 2010
440	UNHCR map, "Population Movement Tracking Mogadishu monthly dashboard"	September 2010
441	UNHCR map, "Somalia: Population Movement Tracking monthly report"	September 2010
442	UNOCHA map, "Somalia: 3W Agriculture and Livelihoods"	September 2010
443	AFP, "Seven civilians killed in Somali fire fight"	2 October 2010
444	Bar-kulan, "Al-Shabab forcefully collecting Zakat in Jowhar"	3 October 2010
445	Bar-kulan, "Al-Shabab to collect monthly fee from Kismayo Residents"	3 October 2010
446	UK Border Agency, "Somalia: Report of Fact Finding Mission to Nairobi, 8-15 September 2010"	8 October 2010
447	New York Times, "Somali militias clash, undermining new strategy"	15 October 2010
448	The Guardian, "British security worker kidnapped in Somalia"	15 October 2010
449	Amnesty International, "Human rights concerns in southern and central Somalia"	18 October 2010
450	BBC News, "Al Shabab bans mobile phone money transfers in Somalia"	18 October 2010
451	IRIN, "Somalia: insurgents' defeat leaves town between hope and fear"	18 October 2010

Item	Document	Date
452	The Guardian, "British aid worker freed in Somalia"	20 October 2010
453	The Guardian, "Somali schoolboy tells of how Islamists cut off his leg and hand"	20 October 2010
454	Jamestown Terrorism Monitor, "Schism in Al-Shabab leadership in Somalia follows failed Ramadan offensive" Volume VIII Issue 38	21 October 2010
455	IRIN, "Somalia: help running out as IDP numbers rise in Afgoye"	25 October 2010
456	IRIN, "Border town emptied by fighting"	27 October 2010
457	New York Times, "Somali Islamists kill two girls branded spies"	28 October 2010
458	IASC Somalia, "Protection cluster update weekly report"	29 October 2010
459	SAACID, "Education Report – Maryan Mahad Mohamed"	October 2010
460	UN, "Somalia Humanitarian Overview" Vol. 3 Issue 10	October 2010
461	UNHCR map, "Population Movement Tracking Mogadishu monthly dashboard"	October 2010
462	UNHCR map, "Somalia: Population Movement Tracking monthly report"	October 2010
463	WHO, "A situation analysis of mental health in Somalia"	October 2010
464	AFP, "Somalia: Mogadishu fighting kills 12"	1 November 2010
465	IRIN, "Fight over water, pasture sends hundreds fleeing"	9 November 2010
466	UN Security Council, "Report of the Secretary-General on children and armed conflict in Somalia"	9 November 2010
467	UNOCHA map, "Afgooye Corridor – IDP Numbers"	10 November 2010
468	UNOCHA map, "Afgooye Corridor – Settlement Positions"	10 November 2010
469	Maplecroft, "Somalia overtakes Iraq, Afghanistan, Pakistan and Colombia to become world's terror capital – global study"	15 November 2010
470	AFP, "Somalia: twenty-one civilians 'killed by shelling in Mogadishu'"	17 November 2010
471	US Department of State, "International Religious Freedom Report 2010"	17 November 2010
472	Shabelle Media Network, "Somalia: Lifeline Africa displays death toll 2089, injuries carried to 6753"	23 November 2010
473	New York Times, "Six peacekeepers in Somalia arrested in civilian deaths"	24 November 2010
474	IASC Somalia, "Protection cluster update weekly report"	26 November 2010
475	MISNA, "Somalia: civilians wounded in the fighting, doctors denounce "hospitals on the brink of collapse""	26 November 2010

Item	Document	Date
476	European Country of Origin Sponsorship, "EU common guidelines on (Joint) Fact Finding Missions"	November 2010
477	Minority Rights Group International, "No redress: Somalia's forgotten minorities"	November 2010
478	SAACID, "Education Report – Safio Abdullaahi Ga'al"	November 2010
479	UN, "Somalia Humanitarian Overview" Vol. 3 Issue 11	November 2010
480	UNHCR map, "Population Movement Tracking Mogadishu monthly dashboard"	November 2010
481	UNHCR map, "Somalia: Population Movement Tracking monthly report"	November 2010
482	IRIN, "Accusations traded over rising casualties at Mogadishu market"	2 December 2010
483	UNHCR, "Somalia: Accusations traded over rising casualties at Mogadishu market"	2 December 2010
484	BBC News, "Rape with impunity – plight of Somalia's women refugees"	15 December 2010
485	AFP, "Tension between Islamist factions near Somali capital"	16 December 2010
486	IASC Somalia, "Protection cluster update weekly report"	17 December 2010
487	UN Security council, "Resolution 1964"	22 December 2010
488	UN Security Council, "Report of the Secretary-General on Somalia"	30 December 2010
489	UNOCHA, "Weekly Humanitarian Bulletin" Issue # 51	23-31 December 2010
490	Opinion Research Business newsroom, "The world has forgotten about Somalia"	December 2010
491	SAACID, "Employment for Peace II – Composite Report"	December 2010
492	UNHCR map, "Population Movement Tracking Mogadishu monthly dashboard"	December 2010
493	UNHCR map, "Somalia: Population Movement Tracking monthly report"	December 2010
494	Accord, "Whose peace is it anyway?" Issue 21	2010
495	ICRC, "Annual Report 2010"	2010
496	UN, "Somalia: Consolidated Appeal: End-Year Report"	2010
497	WHO map, "Major Hospitals in Mogadishu"	2010
498	AllAfrica, "Somalia: 19 killed in Mogadishu clashes, govt forces mutiny"	1 January 2011
499	BBC News, "Somalia's al-Shabab bans mixed-sex handshakes"	7 January 2011

Item	Document	Date
500	Daily Nation, "Kenyan herder killed by Al-Shabab"	7 January 2011
501	IRIN, "Somalia: Mogadishu women eke out a living among the shells"	10 January 2011
502	Shabelle Media Network, "Somalia: Al Shabab bans women from working"	11 January 2011
503	IRIN, "Fighting for an education"	12 January 2011
504	UNHCR, "PMT Mogadishu Dashboard: since 1 December 2010"	14 January 2011
505	Bar-kulan, "Al-Shabab to tax telecommunications workers"	17 January 2011
506	Human Rights Watch, "World Report 2011: Somalia"	24 January 2011
507	BBC News, "Somalia: 20 years of anarchy"	25 January 2011
508	IASC Somalia, "Protection cluster update weekly report"	28 January 2011
509	BBC News, "Somali 'cleric spying for CIA' was killed by al-Shabab"	31 January 2011
510	BBC News, "Somali police battle troops, leaving 16 dead"	31 January 2011
511	Laura Hammond *et al*., "Cash and Compassion: The Role of the Somali Diaspora in Relief, Development and Peace-building"	January 2011
512	SAACID, "Employment for Peace II – Composite Report"	January 2011
513	UN, "Somalia Humanitarian Overview" Vol. 4 Issue 1	December 2010-January 2011
514	UNHCR map, "Population Movement Tracking Mogadishu monthly dashboard"	January 2011
515	UNHCR map, "Somalia: Population Movement Tracking monthly report"	January 2011
516	IRIN, "Aid agencies struggle to access communities as drought looms"	3 February 2011
517	IASC Somalia, "Protection cluster update weekly report"	4 February 2011
518	UNOCHA map, "Somalia: Nutrition Services and list of agencies and areas"	7 February 2011
519	Human Rights Watch, "Stop war crimes in Mogadishu"	14 February 2011
520	UNHCR, "Somalia: Stop War Crimes in Mogadishu"	14 February 2011
521	AFP, "Somalia: three killed at Mogadishu pro-peace demo"	15 February 2011
522	AFP, "At least seven killed in Somalia unrest"	15 February 2011
523	FSNAU Somalia, " Post *Deyr* 2010/11 Analysis" Special Brief	15 February 2011
524	New York Times, "Peacekeepers in Somalia hit trenches of rebels"	20 February 2011
525	BBC News, "Mogadishu police camp rocked by deadly suicide car bomb"	21 February 2011

Item	Document	Date
526	International Crisis Group, "Somalia: The Transitional Government on Life Support" Africa Report No. 170	21 February 2011
527	Radio Free Europe/Radio Liberty, "Suicide blast in Somalia kills at least five people"	21 February 2011
528	AFP, "Somali anti-insurgent push leaves 50 dead"	23 February 2011
529	UNHCR, "Somalia Population Movement Tracking"	23 February 2011
530	New York Times, "Shifting battlefronts cut a long gash across Somalia"	24 February 2011
531	AFP, "Renewed fighting erupts in Mogadishu"	25 February 2011
532	FSNAU Somalia, "Post *Deyr* 2010/11 Nutrition Technical Series Report"	25 February 2011
533	Reliefweb, "Somalia: TFG minister condemns extremists theft of animals from pastoralists"	27 February 2011
534	The Guardian, "Somalia government ends latest crackdown on militants"	27 February 2011
535	IRIN, "Somalia: Access to food key challenge as IDP numbers in Afgoye rise"	28 February 2011
536	Reliefweb, "Somalia: Access to food key challenges as IDP numbers rise in Afgoye"	28 February 2011
537	SAACID, "Employment for Peace II – Mobilisation Monthly Report"	February 2011
538	SAACID, "Mid-Term Progress Report on Mogadishu"	February 2011
539	UN, "Somalia Humanitarian Overview" Vol. 4 Issue 2	February 2011
540	UNHCR, "Total IDPs"	February 2011
541	UNHCR map, "Population Movement Tracking Mogadishu monthly dashboard"	February 2011
542	UNHCR map, "Somalia: Population Movement Tracking monthly report"	February 2011
543	IRIN, "Thousands displaced in offensive against militants"	1 March 2011
544	Médecins Sans Frontières, "New offensive in Somalia causes score of casualties"	1 March 2011
545	Reliefweb, "Somalia, on the brink of a humanitarian disaster – UN Independent Expert"	2 March 2011
546	IASC Somalia, "Protection cluster update weekly report"	4 March 2011
547	Somalia Report, "Mogadishu's main market ordered closed"	7 March 2011
548	Foreign Office Minister Henry Bellingham's statement at the UN	10 March 2011

Item	Document	Date
	Security Council Somalia open debate	
549	UN Security Council, "Statement by the President of the Security Council"	10 March 2011
550	IASC Somalia, "Protection cluster update weekly report"	11 March 2011
551	Letter from the Chairman of the Security Council Committee addressed to the President of the UN Security Council pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea	11 March 2011
552	Refugee Action, "Choices – VARRP Programme – Help with the Journey & to build a new life"	13 March 2011
553	Shabelle Media Network, "Somalia: three AMISOM soldiers receive two year prison sentence for shooting civilians"	15 March 2011
554	AFP, "Somalia: fighting in Mogadishu kills 17"	16 March 2011
555	Garowe Online, "Somalia: dozens die, others injured in Mogadishu clashes"	16 March 2011
556	Refugee Action, "AVRFC Programme – Help with the journey & to build a new life"	16 March 2011
557	Refugee Action, "Choices – Reintegration Payments"	16 March 2011
558	IASC Somalia, "Protection cluster update weekly report"	18 March 2011
559	EU Council Conclusions on Somalia, 3076th Foreign Affairs Council meeting	21 March 2011
560	IRIN, "Recruitment of child soldiers on the increase"	21 March 2011
561	IRIN, "Somalia: Recruitment of child soldiers on the increase"	21 March 2011
562	All Headline News, "Al Shabab decapitates two teenagers in central Somalia"	22 March 2011
563	MISNA, "Somalia: civilians killed in clashes overnight"	22 March 2011
564	Shabelle Media Network, "Somalia: fighting, shelling erupt in the capital"	22 March 2011
565	Statement by Chairman of Security Council Working Group on Children and Armed Conflict Security Council SC/10205	22 March 2011
566	Garowe Online, "Somalia: mortars kill 10 in Mogadishu"	24 March 2011
567	Press TV, "Clashes leave 12 dead in Mogadishu"	26 March 2011
568	Reuters, "Burundi, Uganda to send 3,000 more troops to Somalia"	27 March 2011
569	Shabelle Media Network, "Somalia: artillery shell struck at some of	27 March 2011

Item	Document	Date
	Mogadishu neighbourhoods"	
570	AlertNet (Nairobi), "UN boosts aid presence in Somalia"	28 March 2011
571	Press TV, "29 people die in battle for Mogadishu"	28 March 2011
572	Médecins Sans Frontières, "MSF suspends operations in Median area, Mogadishu, Somalia, following direct attacks on its compound"	30 March 2011
573	UK Foreign and Commonwealth Office, "Human Rights and Democracy: The 2010 Foreign and Commonwealth Office Report: Somalia"	31 March 2011
574	IDMC, "Internal Displacement: Global Overview of Trends and Developments in 2010"	March 2011
575	UN, "Somalia Humanitarian Overview" Vol. 4 Issue 3	March 2011
576	UNHCR map, "Somalia: Population Movement Tracking monthly report"	March 2011
577	UNOCHA, "Weekly Humanitarian Bulletin" Issue # 13	25 March-1 April 2011
578	Terror Free Somalia Foundation, "Al Shabab orders Somali school to pay monthly "contribution" Al-Qaida links al-Shabab imposes jihad tax on school children"	2 April 2011
579	Reliefweb, "UN leaders raise alarm on plight of Somali refugees in Kenya"	3 April 2011
580	Field Nutrition Cluster Update (FNCU), "Mogadishu Meeting Minutes"	4 April 2011
581	Garowe Online, "Fighting, bomb blast kills eight in Somalia"	6 April 2011
582	IRIN, "Fighting limits access to Bakara market"	7 April 2011
583	US Department of State, "2010 Country reports on Human Rights Practices: Somalia"	8 April 2011
584	Press TV, "68 die in battle for Mogadishu"	9 April 2011
585	Garowe Online, "10 die in Somalia clashes"	12 April 2011
586	AFP, "33,000 Somalis flee surge in fighting: UNHCR"	13 April 2011
587	Reliefweb, "Shoe-shining in a war zone"	14 April 2011
588	Reliefweb, "Drought hits villagers and IDPs fleeing fighting"	15 April 2011
589	Reliefweb, "Somalia: unexploded shells threaten hospital in Mogadishu"	15 April 2011
590	Press TV, "Skirmishes leave 12 dead in Mogadishu"	19 April 2011
591	UNHCR, "Somalia: Mahamud Abdi Omar, "I am not only surviving but	19 April 2011

Item	Document	Date
	thriving""	
592	Reliefweb, "Worst drought in a lifetime"	20 April 2011
593	IASC Somalia, "Protection Cluster Update Weekly Report"	8-21 April 2011
594	Reliefweb, "Trapped between conflict and natural disaster"	21 April 2011
595	Shabelle Media Network, "Somalia: DBG establishes houses for IDPs in Mogadishu"	21 April 2011
596	Money Jihad, "Al-Shabab enlists kids in money jihad"	25 April 2011
597	VOA News, "Aid workers say child soldiers involved in escalating Somali violence"	25 April 2011
598	Garowe Online, "Landmine kills 8 in southern Somalia"	26 April 2011
599	Garowe Online, "Somalia: 15 killed in Somalia clashes"	26 April 2011
600	Garowe Online, "Somalia: Mogadishu clashes kill 5"	26 April 2011
601	IRIN, "Thousands trapped between conflict and drought in Galgadud"	27 April 2011
602	Reliefweb, "Thousands trapped between conflict and drought in Galgadud"	27 April 2011
603	UN Security Council, "Report of the Secretary-General on Somalia"	28 April 2011
604	US Commission on International Religious Freedom, "Annual Report 2011"	28 April 2011
605	Garowe Online, "Somalia: fighting kills 5 in Luuq district"	29 April 2011
606	International Federation of Red Cross and Red Crescent Societies, "Annual Report: Somalia"	29 April 2011
607	FSNAU, "Food Security & Nutrition Quarterly Brief – Outcome of Jilaal Dry Season"	April 2011
608	FSNAU, "Nutrition Update"	March – April 2011
609	UN, "Somalia Humanitarian Overview" Vol. 4 Issue 4	April 2011
610	UNHCR map, "Population Movement Tracking Mogadishu monthly dashboard"	April 2011
611	UNHCR map, "Somalia: Population Movement Tracking monthly report"	April 2011
612	UNHCR map, "Total IDPs"	April 2011
613	UN, "Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo"	2 May 2011
614	Home Land, "Al-Shabab executes 2 for spying"	4 May 2011

Item	Document	Date
615	IASC Somalia, "Protection Cluster Update Weekly Report"	6 May 2011
616	Bariga Afrika, "Al-Shabab imprisons 40 traders in Baydhabo"	8 May 2011
617	Tony Burns, "Narrative summary on the current context in Somalia"	9 May 2011
618	Reliefweb, "Rains worsen conditions for IDPs"	10 May 2011
619	Reliefweb, "At least 13 dead in Somalia clashes"	12 May 2011
620	Reliefweb, "U.N. boosts aid presence in Somalia"	12 May 2011
621	Street Fight, "Al-Shabab restricts local movement"	12 May 2011
622	"Aid groups warn of worsening food crisis in Somalia"	13 May 2011
623	Amnesty International, "Annual report: Somalia"	13 May 2011
624	Reliefweb, "Aid groups warn of worsening food crisis in Somalia"	13 May 2011
625	Witness statement of Abdihakim Omar Jimale, refugee	16 May 2011
626	Witness statement of Ali Musa Abdi	16 May 2011
627	Witness statement of Habiba Moallin Nur	16 May 2011
628	Witness statement of recent arrival from Mogadishu	16 May 2011
629	US Department of State, "Background Note: Somalia"	17 May 2011
630	AFP, "Somali shelling kills 14 civilians at market"	18 May 2011
631	Reliefweb, "Somalia shelling kills 14 civilians at market"	18 May 2011
632	Witness statement of representative of Somali NGO	18 May 2011
633	Witness statement of Tanja Schumer, Somalia NGO Consortium	18 May 2011
634	Reliefweb, "AMISOM civilian staff relocate to Somalia"	19 May 2011
635	Reliefweb, "Sustainable partnerships with the Somali diaspora forged"	19 May 2011
636	Witness statement of Abdi Majid Ali Sabriye	19 May 2011
637	Witness statement of Abdirashid Ali Sharmarke, former Prime Minister of Somalia	19 May 2011
638	Witness statement of Abdullahi Abdi	19 May 2011
639	Witness statement of Bashir Ali Geedi	19 May 2011
640	Witness statement of Hussein Hassan Abdulle	19 May 2011
641	Witness statement of Rahma Mohamed Ali	19 May 2011
642	IASC Somalia, "Protection Cluster Update Weekly Report"	20 May 2011
643	Reliefweb, "AU force says it will not bomb key Mogadishu market"	20 May 2011
644	Witness statement of Ahmed Ismail Zebe	20 May 2011
645	Witness statement of representatives of international NGO operating in Somalia	20 May 2011

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646	Witness statement of Ugas Abdirahman Ugas Khalif	20 May 2011
647	BBC News, "Somalia food aid cut amid UN funding shortfall"	21 May 2011
648	Somalia Report, "Top al-Shabab leader killed at Bakara market"	22 May 2011
649	Africa Defence Journal, "African Union lays siege to Al-Shabab controlled Market"	24 May 2011
650	Reliefweb, "Somalia: Mogadishu's lost generation"	24 May 2011
651	AFP, "At least 7 killed in mortar attack"	25 May 2011
652	GIEWS, "Country Brief: Somalia"	25 May 2011
653	War Victims Monitor, "Somalia: Battle for Mogadishu's Bakara market proves costly, complicated"	25 May 2011
654	UK Border Agency, " COI Report: Somalia"	27 May 2011
655	Reliefweb, "Refugee camp in Kenya swells to crisis point"	30 May 2011
656	Reliefweb, "Latest violence in Mogadishu causes high toll of wounded children under the age of five"	31 May 2011
657	Reliefweb, "Under-fives make up almost half of Mogadishu casualties"	31 May 2011
658	Map based on Tony Burns' report to the Upper Tribunal, "Areas of control – Mogadishu"	May 2011
659	Map based on Tony Burns' report to the Upper Tribunal, "Levels of 'armed conflict' as of April 2011"	May 2011
660	Map based on Tony Burns' report to the Upper Tribunal, "Violence levels in Somalia"	May 2011
661	MICROCON (Susan Zimmermann and Roger Zetter), "Reconsidering the Role of Conflict in the Lives of Refugees: The Case of Somalis in Europe" Research Working Paper 45	May 2011
662	SAACID, "Caring for the Most in Need Report"	May 2011
663	SAACID, "Drought in Somalia Report"	May 2011
664	UNHCR, "Operation in Somalia: Fact Sheet"	May 2011
665	UNHCR, "Population Movement Tracking Monthly Report"	May 2011
666	UNHCR map, "Population Movement Tracking Mogadishu monthly dashboard"	May 2011
667	UNHCR map, "Somalia: Population Movement Tracking monthly report"	May 2011
668	Witness statement of representative of international NGO	May 2011

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669	Foreign and Commonwealth Office letter, "Somali questions"	1 June 2011
670	International Crisis Group, "CrisisWatch Database: Somalia"	1 June 2011
671	LandInfo, "Somalia: armed groups and recruitment in the south"	1 June 2011
672	IASC Somalia, "Protection Cluster Update Weekly Report"	3 June 2011
673	Daily Monitor, "Somalia govt, AMISOM take over al-Shabab supply routes"	5 June 2011
674	New Vision, "AMISOM captures more territory"	5 June 2011
675	Statement of Janice Lyn Marshall, Deputy Director in the Division of International Protection at the Office of the UNHCR	6 June 2011
676	Famine Early Warning Systems Network, "East Africa Food Security Alert"	7 June 2011
677	Himilo News, "Somalia: The Kampala Accord"	9 June 2011
678	Dr Laura Hammond, "Response to query from the Treasury Solicitor's Department in the Somalia Country Guidance Case"	10 June 2011
679	Treasury Solicitor's Department letter to Upper Tribunal, "Foreign and Commonwealth Office information on cost of internal flights within Somalia"	10 June 2011
680	Daily Nation, "Kenya: Locals hunt for business in Somalia"	12 June 2011
681	Garowe Online, "Somalia: AMISOM vows to seize Bakara market"	12 June 2011
682	Garowe Online, "Fighters killed in southern Somalia"	14 June 2011
683	Garowe Online, "Somalia: Al-Shabab executed teenager in Mogadishu"	18 June 2011
684	Garowe Online, "Somalia: 25 people killed in Hirran"	18 June 2011
685	FSNAU Somalia, "Food, Security & Nutrition Quarterly Brief"	20 June 2011
686	Fund for Peace, "The Failed States Index 2011"	20 June 2011
687	Shabelle Media Network, "Al-Shabab starts military movement in central Somalia"	20 June 2011
688	Shabelle Media Network, "Ten killed in Somalia Gedo region fighting"	20 June 2011
689	Treasury Solicitor's Department letter to the Upper Tribunal, "Secretary of State for the Home Department's position on Assisted Voluntary Returns to Somalia"	20 June 2011
690	Reliefweb, "Six die in roadside bomb blast in Mogadishu"	21 June 2011
691	Shabelle Media Network, "Mogadishu roadside bomb kills 4, injures more than 10"	21 June 2011

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692	Shabelle Media Network, "Somali officer: Al-Shabab plotting terrorist attacks in the capital"	21 June 2011
693	Daily Nation / AllAfrica, "Somalia: AU force closing in on Mogadishu's prized market in tricky urban warfare"	22 June 2011
694	Shabelle Media Network, "Calm returns to southern Somalia town after battle"	23 June 2011
695	Shabelle Media Network, "One killed, another wounded in the seaside Somali capital"	23 June 2011
696	Reliefweb, "Kenya sees 20,000 Somali refugees arriving in just two weeks"	24 June 2011
697	Reliefweb, "More details: foreign helicopters raid in southern Somalia town"	24 June 2011
698	Shabelle Media Network, "Somali president: we shall keep on fighting against Al-Shabab"	24 June 2011
699	Shabelle Media Network, "Somalia: residents start displacing after air strike in Kismayo"	24 June 2011
700	UNOCHA, "Weekly Humanitarian Bulletin" Issue # 25	17-24 June 2011
701	Witness statement of Peter Greste, freelance journalist	24 June 2011
702	Shabelle Media Network, "Al-Shabab arrests people for allegedly espionage activities"	25 June 2011
703	Shabelle Media Network, "Somalia's Benadir administration: aid agencies are spies	25 June 2011
704	Shabelle Media Network, "Somali military officer: we are at war on Al Shabab controlled areas"	25 June 2011
705	Shabelle Media Network, "One dies as Somali soldiers clash in the Somali capital"	26 June 2011
706	Reliefweb, "Over eight hundred children a day arriving at Kenyan refugee camp as drought worsens in Somalia"	27 June 2011
707	Street Fight, "AMISOM, TFG forces trigger backlash attacks"	27 June 2011
708	BBC News, "Horn of Africa sees 'worst drought in 60 years'"	28 June 2011
709	Reliefweb, "Eastern Africa: severe food crisis hits region"	28 June 2011
710	Reliefweb, "Millions facing severe food crisis amid worsening drought in Horn of Africa – UN"	28 June 2011

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711	Reliefweb, "Thousands of Somalis fleeing to northern Kenya"	28 June 2011
712	Shabelle Media Network, "Somali government official: some elders are held hostage by Al-Shabab"	28 June 2011
713	Shabelle Media Network, "Somali soldiers clash in the Somali capital"	28 June 2011
714	Shabelle Media Network, "Somalia: small businessmen complain of government soldiers"	28 June 2011
715	Shabelle Media Network, "Two government soldiers killed in Mogadishu roadside bomb"	28 June 2011
716	Reliefweb, "Press conference by UN Resident and Humanitarian Coordinator for Somalia"	29 June 2011
717	SAACID, "The worst of times"	29 June 2011
718	Shabelle Media Network, "15 killed in southern Somali fighting"	29 June 2011
719	IRIN / AllAfrica, "Somalia: cash transfers 'a better aid option'"	30 June 2011
720	Reliefweb, "FSNAU releases the update on the number of people in food security crisis in Somalia"	30 June 2011
721	Reliefweb, "Thousands flee Somalia as devastating drought takes hold"	30 June 2011
722	Shabelle Media Network, "Al-Shabab charged with destabilizing Somalia's central town of Galk"	30 June 2011
723	UNHCR, "Update to May 2010 UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Somalia"	June 2011
724	IASC Somalia "Protection Cluster Update Weekly Report"	1 July 2011
725	KAAFI News, "Somalia: nearly 3,000 extra Ugandan soldiers arrive at Mogadishu"	1 July 2011
726	Reliefweb, "Disturbances at Kenya's Dadaab complex as Somali influx grows"	1 July 2011
727	Reliefweb, "Somalia: on the brink of disaster"	1 July 2011
728	UNHCR, "PMT Mogadishu Dashboard"	1 July 2011
729	UNHCR, "Somalia: Population Movement Tracking since 1st December 2010"	1 July 2011
780	VOA News, "Somalia's birthday gift: a night without violence"	1 July 2011
781	Shabelle Media Network, "Low-level flying aircrafts hover over southern Somalia town"	2 July 2011

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782	Shabelle Media Network, "Somalia calls for international community to help in its battle against Al Shabab"	2 July 2011
783	Shabelle Media Network, "US expands its drone war into Somalia"	2 July 2011
784	Somalia Report, "Al-Shabab in a 'nowhere to run' situation"	2 July 2011
785	Shabelle Media Network, "Al Shabab charged with stoking central Somalia clannish clashes"	3 July 2011
786	Shabelle Media Network, "Clan related confrontation restarts in central Somalia"	3 July 2011
787	Shabelle Media Network, "Somalia: Ahlu Sunna vows it fight newly announced Azania State"	3 July 2011
788	Shabelle Media Network, "Twenty killed as clannish clash intensifies in central Somalia"	3 July 2011
789	Shabelle Media Network, "UPDF in Somalia complain over pay cuts"	3 July 2011
790	Reliefweb, "Halima Omar "I watched four of my children die of hunger""	4 July 2011
791	Reliefweb, "The vital statistics of hunger"	4 July 2011
792	Shabelle Media Network, "Tense is still high in central Somalia, death toll rises to 35"	4 July 2011
793	Reliefweb, "East Africa: famine warning for southern Somalia"	5 July 2011
794	Reliefweb, "Staggering malnutrition rates as quarter of Somalia population uprooted"	5 July 2011
795	Somalia Report, "Al-Shabab escalates punishment of civilians"	5 July 2011
796	Street Fight, "Al-Shabab escalates punishment of civilians"	5 July 2011
797	BBC News, "Somalia Islamists lift aid ban to help drought victims"	6 July 2011
798	Reliefweb, "Somalia: Engaging Somalia's Al-Shabab to allow the delivery of humanitarian aid"	6 July 2011
799	Shabelle Media Network / AllAfrica, "Somalia: Al Shabab calls for Muslims, non-Muslims to help needy people"	6 July 2011
800	Shabelle Media Network / AllAfrica, "Somalia: Shabelle launches a programme collecting aid for drought-hit people"	6 July 2011
801	Somalia Report, "Airstrikes hit Lower Juba… again"	6 July 2011
802	Somalia Report, "Enter the drones"	6 July 2011
803	VOA News, "Somali diaspora helps nation through crisis"	6 July 2011

Item	Document	Date
804	ISS Africa News, "Somalia: failed state and failing responses"	8 July 2011
805	BBC News, "Horn of Africa drought: survival of the fittest"	9 July 2011
806	Shabelle Media Network, "Al Shabab blocks drought-hit people from fleeing to Kenya"	9 July 2011
807	Shabelle Media Network, "Al Shabab fighters in central Somalia take over wells"	9 July 2011
808	BBC News, "Somalis escaping the drought flee to the capital"	10 July 2011
809	Daily Nation / AllAfrica, "Somalia: AU plans new Somali battle rules"	10 July 2011
810	Shabelle Media Network / AllAfrica, "Somalis in Sweden welcome Shabelle's campaign to help the needy"	10 July 2011
811	Reliefweb, "Somalia: USAID provides food to Somalis hit by drought"	11 July 2011
812	Shabelle Media Network, "Somali soldiers clash themselves in Mogadishu"	11 July 2011
813	Somalia Report, "Fighting breaks out in Garbaharey"	11 July 2011
814	RBC Radio, "Somalia: TFG forces give their salaries to help displaced families"	12 July 2011
815	Somalia Report, "ASWJ vows new offensive against Al-Shabab"	12 July 2011
816	BBC News, "Horn of Africa drought: UK charities boost Somalia aid"	13 July 2011
817	Shabelle Media Network, "Al Shabab arrests aid workers in southern Somalia town"	13 July 2011
818	World Food Programme, "Statement by the World Food Programme on humanitarian access to southern Somalia"	13 July 2011
819	Shabelle Media Network, "Somalia asks help destroy Al Shabab, Al Qaeda"	14 July 2011
820	Somalia Report, "Fighting breaks out in Gedo and Hiran"	15 July 2011
821	Shabelle Media Network, "Al Shabab torches vehicle carrying aid medicine in southern Somalia"	16 July 2011
822	Shabelle Media Network, "Govt forces, Al Shabab combat in southern Somalia border town"	17 July 2011
823	Letter from the Chairman of the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea addressed to the President of the Security Council, containing: UN Security Council, "Report of the Monitoring Group on Somalia and	18 July 2011

Item	Document	Date
	Eritrea pursuant to Security Council resolution 1916 (2010)"	
824	Shabelle Media Network, "Somali soldier shoots a civilian driver in Mogadishu"	18 July 2011
825	Somalia Report, "Major rift breaks out over cabinet posts"	18 July 2011
826	Shabelle Media Network, "Al Shabab arrests men, women in southern Somalia town"	19 July 2011
827	Shabelle Media Network, "Somali govt soldiers clash at the presidency in Mogadishu"	19 July 2011
828	Amnesty International, "In the line of fire: Somalia's children under attack"	20 July 2011
829	Shabelle Media Network, "Mogadishu mayor: there is corruption in IDPs camps"	20 July 2011
830	Shabelle Media Network, "Official: Gedo battles against Al Shabab hampered by TFG bickering"	20 July 2011
831	Shabelle Media Network, "Somalia: gunmen open fire on truck killing 2 persons"	20 July 2011
832	LandInfo, "Al Shabab and forced marriage"	21 July 2011
833	LandInfo, "Somalia: vulnerability, minority groups, weak clans and individuals at risk"	21 July 2011
834	Somalia Report, "Al-Shabab opposes famine declaration"	21 July 2011
835	LandInfo, "Somalia: linguistics and dialects"	22 July 2011
836	Shabelle Media Network, "Al Shabab arrests teenagers for allegedly anti-Islamic deeds"	23 July 2011
837	Shabelle Media Network, "Al Shabab beheads two herders in southern Somalia"	23 July 2011
838	Shabelle Media Network, "Al Shabab: relief agencies displace Somalis"	25 July 2011
839	Shabelle Media Network, "Al Shabab apprehends 30 women for not wearing special veils"	26 July 2011
840	Shabelle Media Network, "Somali MP: Al Shabab blocking aid from needy starving people"	26 July 2011
841	Somalia Report, "Five killed in clash after football game"	26 July 2011
842	Somalia Report, "Villagers take on Al-Shabab"	27 July 2011
843	AMISOM, "Somalia: AMISOM / TFG forces contain extremist threat to	28 July 2011

Item	Document	Date
	humanitarian operations in Mogadishu"	
844	Fox News, "Somalia offensive: 300 new militants in Mogadishu"	28 July 2011
845	Shabelle Media Network, "Ahlu Sunna threatens it will clear Al Shabab from central Somalia"	28 July 2011
846	Shabelle Media Network, "Al Shabab, local clan militias to take on in southern Somalia"	28 July 2011
847	Shabelle Media Network, "Official: Al Shabab masterminded bomb blast at Somalia-Kenya border"	28 July 2011
848	Somalia Report, "Al-Shabab bans meats in Afgoye"	28 July 2011
849	Somalia Report, "Government, AU launches offensive in Mogadishu"	28 July 2011
850	Somalia Report, "Nine killed as insecurity grows in Puntland"	28 July 2011
851	Shabelle Media Network, "Somalia: Ahlu Sunna warns threat from Al Shabab"	29 July 2011
852	Somalia Report, "Extensive shelling kills Mogadishu residents"	29 July 2011
853	Shabelle Media Network, "Somalia: fighting is looming in Lower Jubba region"	30 July 2011
854	Somalia Report, "Al-Shabab on fresh forced recruitment drive"	30 July 2011
855	Somalia Report, "10 killed, 20 wounded in fresh fighting"	30 July 2011
856	Shabelle Media Network, "Kenya calls for the eradication of Al Shabab"	31 July 2011
857	UNHCR, "Population Movement Tracking Monthly Report"	July 2011
858	Al Jazeera, "Genocidal politics and Somali famine"	1 August 2011
859	Shabelle Media Network, "Somalia: heavy fighting rocks parts of Gedo region"	1 August 2011
860	Somalia Report, "IED blast hits Puntland celebrations"	1 August 2011
861	Somalia Report, "Al-Shabab retakes Busar"	2 August 2011
862	Somalia Report, "Angry residents kill Al-Shabab leader"	2 August 2011
863	Somalia Report, "Fight at Mogadishu checkpoint kills 4"	3 August 2011
864	UN News, "UN declares famine in another three areas of Somalia"	3 August 2011
865	Reuters, "ICRC wants food for Somalia but can't take UN aid"	4 August 2011
866	Somalia Report, "Snipers kill 4 in Mogadishu Bakara market"	4 August 2011
867	UNOCHA, "Somalia: nutrition interventions – Hiraan, and corresponding table – ongoing and completed interventions by district and sub-sector"	4 August 2011

Item	Document	Date
868	Reliefweb, "Somali gunmen kill five as they loot food aid"	5 August 2011
869	Reliefweb, "Somali rebels stopping men fleeing drought"	5 August 2011
870	Somalia Report, "Al-Shabab burns 12 homes, kills civilians"	5 August 2011
871	Somalia Report, "Pro-government militia in deadly clash"	5 August 2011
872	US Department of State, "Country Reports on Terrorism 2009: Chapter 6. Terrorist Organizations"	5 August 2010
873	BBC News, "Somalia's al-Shabab rebels leave Mogadishu"	6 August 2011
874	New York Times, "Shabab concede control of capital to Somalia government"	6 August 2011
875	Reliefweb, "Extremists flee from Somali capital"	6 August 2011
876	Reliefweb, "Somali Shabab rebels abandon positions in capital"	6 August 2011
877	Reliefweb, "SRSG welcomes news of Al Shabab vacating Mogadishu"	6 August 2011
878	Shabelle Media Network, "Al Shabab admits its withdrawal from Mogadishu"	6 August 2011
879	Shabelle Media Network, "Death toll of Mogadishu aid food violence rises to 11"	6 August 2011
880	Shabelle Media Network, "Seven killed as food aid looted in Mogadishu"	6 August 2011
881	Somalia Report, "Al-Shabab quits Mogadishu"	6 August 2011
882	Somalia Report, "Mogadishu remains tense as Al-Shabab flees"	6 August 2011
883	Somalia Report, "President says his troops in full control"	6 August 2011
884	UN News, "UN envoy welcomes news of Al-Shabab vacating Somali capital"	6 August 2011
885	AlertNet, "Fighting erupts in Somali capital after rebels say leaving"	7 August 2011
886	Somalia Report, "9 killed in heavy gunfire in Mogadishu"	7 August 2011
887	Australian Broadcasting Corporation News, "Al Qaeda-inspired rebels abandon Somalia's capital"	8 August 2011
888	Bloomberg, "Al-Shabab's Mogadishu retreat may bring some respite to starving Somalis"	8 August 2011
889	Reliefweb, "Analyst warns al-Shabab retreat is not victory"	8 August 2011
890	Reliefweb, "Mogadishu residents flee Somali rebel clashes"	8 August 2011
891	Reliefweb, "NGOs and nonstate armed actors: improving compliance with international norms"	8 August 2011

Item	Document	Date
892	Reliefweb, "Number of drought-displaced arriving in Mogadishu "dropping""	8 August 2011
893	Reliefweb, "Q&A: Somalia expert Ken Menkhaus on the famine"	8 August 2011
894	Shabelle Media Network, "Al Shabab: we have plans to increase attacks against Somali govt"	8 August 2011
895	Shabelle Media Network, "Deadly battle rocks parts of southern Somalia"	8 August 2011
896	Shabelle Media Network, "Kenya on high alert after Al Shabab pullout from Mogadishu"	8 August 2011
897	Shabelle Media Network, "Prominent elder killed in central Somalia"	8 August 2011
898	Somalia Report, "Conflict enters new phase"	8 August 2011
899	Somalia Report, "Puntland on high alert for Al-Shabab"	8 August 2011
900	VOA News, "Analyst warns al-Shabab retreat is not victory"	8 August 2011
901	BBC News, "Somalia 'needs more AU troops' after al-Shabab pull out"	9 August 2011
902	IRIN, "Al-Shabab pullout- the beginning of the end?"	9 August 2011
903	Reliefweb, "Al-Shabab pull out – the beginning of the end?"	9 August 2011
904	Reliefweb, "AU Special Representative commends AMISOM and TFG troops on the recent military offensive in Mogadishu"	9 August 2011
905	Reliefweb, "Somali government offers amnesty to insurgent fighters"	9 August 2011
906	Shabelle Media Network, "Al Shabab fighter dies after his explosives laden car went off"	9 August 2011
907	Shabelle Media Network, "Clashes still continue in Mogadishu"	9 August 2011
908	Reliefweb, "Al-Shabab and Somalia's spreading famine"	10 August 2011
909	Reliefweb, "Somali government forces warily enter former rebel areas"	10 August 2011
910	Somalia Report, "Government forces take village"	10 August 2011
911	Somalia Report, "Government on "clean up" operation in Mogadishu"	10 August 2011
912	Somali Report, "Police arrest five Al-Shabab suspects"	10 August 2011
913	"Statement by SRSG Mahiga to the Security Council"	10 August 2011
914	Logistics Cluster, "Somalia famine response situation report"	11 August 2011
915	Reliefweb, "UN official voices concern over reports of rape of Somali women fleeing famine"	11 August 2011
916	Somalia Report, "TFG-AMISOM reach new areas of Mogadishu"	11 August 2011
917	Turnstyle News, "Q&A: Somalia expert Ken Menkhaus on the famine"	11 August 2011

Item	Document	Date
918	UNOCHA, "Humanitarian Country Team – Somalia: meeting notes"	11 August 2011
919	BBC News, "Somali army warns about al-Shabab mines in Mogadishu"	12 August 2011
920	Jamestown Foundation, "Terrorism Monitor" volume 9, issue 32	12 August 2011
921	Médecins Sans Frontières, "Somalia: MSF rapidly scaling up its activities in Mogadishu"	12 August 2011
922	Reliefweb, "Mogadishu mayor says aid not reaching famine victims"	12 August 2011
923	Reliefweb, "Thousands of Somalis fleeing famine and war continue to arrive"	12 August 2011
924	Somalia Report, "Al-Shabab evicts 300 IDP families"	12 August 2011
925	Somalia Report, "Al-Shabab, locals clash in Jowhar"	12 August 2011
926	Somalia Report, "Al-Shabab says it did not give up Mogadishu"	12 August 2011
927	Somalia Report, "TFG and Raskamboni fight in Dhobley"	12 August 2011
928	VOA News, "A glimmer of hope in Somalia"	12 August 2011
929	VOA News, "Al-Shabab vows to use guerrilla tactics in Somalia"	12 August 2011
930	Somalia Report, "Police arrest a dozen suspects in swoop"	13 August 2011
931	Somalia Report, "President declares state of emergency"	13 August 2011
932	UNOCHA, "We have the aid to save the lives of thousands of Somalis but we need safe passage"	13 August 2011
933	Human Rights Watch, ""You don't know who to blame": war crimes in Somalia"	14 August 2011
934	Shabelle Media Network, "Al Shabab declares it began hit and run attacks"	14 August 2011
935	Shabelle Media Network, "MP: Somalia, partner countries will keep on air strikes against Al shabab"	14 August 2011
936	Shabelle Media Network, "Roadside bomb wounds two Puntland soldiers in central Somalia"	14 August 2011
937	The Telegraph, "Africa famine: food aid reaching Somalis after al-Shabab leave Mogadishu"	14 August 2011
938	Reliefweb, "Drawing the right lesson from "Black Hawk Down""	15 August 2011
939	Reliefweb, "Security Council press statement on situation in Somalia"	15 August 2011
940	Reliefweb, "Somali businesses warily return to war-hit market"	15 August 2011
941	Reliefweb, "Somali government's statement towards food aid diversion"	15 August 2011
942	Shabelle Media Network, "Mogadishu residents ask govt for mine	15 August 2011

Item	Document	Date
	clearing"	
943	Somalia Report, "Al-Shabab claims new tactics successful"	15 August 2011
944	Somalia Report, "Al-Shabab, militia clash near Ethiopia border"	15 August 2011
945	Somalia Report, "Al-Shabab redeploys fighters to Gedo region"	15 August 2011
946	Reuters, "Doctors, children flee hospital in Mogadishu fighting"	16 August 2011
947	Shabelle Media Network, "Somali forces, Al Shabab fight in Mogadishu"	16 August 2011
948	Shabelle Media Network, "Thousands of sacks of food aid stolen in Somalia"	16 August 2011
949	Somalia Report, "Pro-government forces advance in Mogadishu"	16 August 2011
950	"Statement by SRSG Mahiga to the AUPSC"	16 August 2011
951	BBC News, "Somalia famine: Andrew Mitchell visits Mogadishu"	17 August 2011
952	Garowe Online, "UK development secretary warns 400,000 children could die in Somalia"	17 August 2011
953	Reliefweb, "Who's who in Somalia's new cabinet?"	17 August 2011
954	Shabelle Media Network, "AMISOM denies one of its tanks destroyed in Mogadishu"	17 August 2011
955	Somalia Report, "Mogadishu clashes continue"	17 August 2011
956	UNHCR, "East and Horn of Africa update: Somali displacement crisis at a glance"	17 August 2011
957	Islamic Relief UK, "Somalia blog"	18 August 2011
958	Shabelle Media Network, "Al Shabab arrests people accused of not performing fasting"	18 August 2011
959	BBC News, "Somalia famine: Turkish PM Erdogan visits Mogadishu"	19 August 2011
960	Jamestown Foundation, "Terrorism Monitor: internal disputes plague Al-Shabab leadership after Mogadishu withdrawal" volume 9, issue 33	19 August 2011
961	Reliefweb, "Large scale emergency response launched amid heartbreaking famine in Somalia"	19 August 2011
962	Reliefweb, "Turkey to reopen embassy in famine-hit Somalia"	19 August 2011
963	Shabelle Media Network, "Two killed in Mogadishu fighting"	19 August 2011
964	The Guardian, "Turkish PM visits famine-hit Somalia and calls on west to do more"	19 August 2011
965	UNOCHA, "Somalia: health services and number of malnourished cases – Banadir"	19 August 2011

Item	Document	Date
966	UNOCHA, "Somalia: nutrition interventions – Bakool, and corresponding table – ongoing and completed interventions by district and sub-sector"	19 August 2011
967	UNOCHA, "Somalia: nutrition interventions – Gedo, and corresponding table – ongoing and completed interventions by district and sub-sector"	19 August 2011
968	UNOCHA, "Somalia: nutrition interventions – Lower Juba, and corresponding table – ongoing and completed interventions by district and sub-sector"	19 August 2011
969	UNOCHA, "Somalia: nutrition interventions – Lower Shabelle, and corresponding table – ongoing and completed interventions by district and sub-sector"	19 August 2011
970	UNOCHA, "Somalia: nutrition interventions – Middle Juba, and corresponding table – ongoing and completed interventions by district and sub-sector"	19 August 2011
971	UNOCHA, "Somalia: nutrition interventions – Middle Shabelle, and corresponding table – ongoing and completed interventions by district and sub-sector"	19 August 2011
972	UNOCHA, "Somalia: nutrition services – Banadir, and corresponding table – ongoing and completed interventions by district and sub-sector"	19 August 2011
973	UNOCHA, "Somalia: WASH interventions and number of malnourished cases – Banadir"	19 August 2011
974	Reliefweb, "Cholera puts mothers and their children at risk"	20 August 2011
975	Shabelle Media Network, "Al Shabab an obstacle to aid in Somalia"	20 August 2011
976	Shabelle Media Network, "Al Shabab loots trucks carrying aid food to starving people"	20 August 2011
977	Somalia Report, "Al-Shabab beheads young man"	20 August 2011
978	Somalia Report, "Fighting among TFG soldiers kills 3"	20 August 2011
979	Somalia Report, "3 Al-Shabab fighters killed in bomb attack"	20 August 2011
980	Shabelle Media Network, "One soldier dies as Somali forces clash in Mogadishu; aid food looted"	21 August 2011
981	Shabelle Media Network, "7 killed as Al Shabab, Ahlu Sunn fight in central Somalia"	21 August 2011
982	Shabelle Media Network, "Somali official: we are to attacks Al Shabab	21 August 2011

Item	Document	Date
	bases in Jubba regions"	
983	Shabelle Media Network, "Somalia: Benadir admin to reopen Mogadishu roads"	21 August 2011
984	Shabelle Media Network, "Tense situation at southern Somalia town"	21 August 2011
985	Somalia Report, "Al-Shabab infighting kills 2, wounds 5"	21 August 2011
986	Somalia Report, "Al-Shabab warns civilians over defeat"	21 August 2011
987	Somalia Report, "Deadly fighting breaks out in Gedo"	21 August 2011
988	Somalia Report, "Grenade aimed at TFG soldiers hits kids"	21 August 2011
989	Australian Broadcasting Corporation News, "The World Today: Mogadishu calm after al-Shabab retreat"	22 August 2011
990	Global Post, "Somalia: Mogadishu still wary after rebels retreat"	22 August 2011
991	Reliefweb, "Mogadishu remains risky despite Al Shabab withdrawal"	22 August 2011
992	Reliefweb, "Somalia to unveil security plan"	22 August 2011
993	Shabelle Media Network, "Somali soldiers clash in Mogadishu; grenade attacks injures 4"	22 August 2011
994	Shabelle Media Network, "Three killed as Somali soldiers fire in IDPs collecting aid"	22 August 2011
995	Somalia Report, "Gunmen assassinate Galkayo official"	22 August 2011
996	UNHCR, "Mogadishu IDP influx"	22 August 2011
997	USAID, "Kenya: Dekadal food security monitoring"	22 August 2011
998	Cable News Network (CNN), "Global Public Square: How to end Somalia's famine and weaken the insurgents"	23 August 2011
999	Garowe Online, "Somalia: international envoys attend security meeting in Mogadishu"	23 August 2011
1000	Garowe Online, "Somalia PM: 'Fighting will not stop until we defeat Al Shabab"	23 August 2011
1001	Médecins Sans Frontières, "Somalia: expanding activities despite significant obstacles"	23 August 2011
1002	Reliefweb, "Joint Security Committee meeting held for the first time in Mogadishu"	23 August 2011
1003	Reliefweb, "The nitty-gritty of flight"	23 August 2011
1004	Shabelle Media Network, "Al Shabab executes three people in Mogadishu for spying"	23 August 2011

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1005	Somalia Report, "Civilians killed in hit and run attacks"	23 August 2011
1006	Somalia Report, "Commander of Darvish forces killed"	23 August 2011
1007	UNOCHA, "Somalia famine & drought: situation report no. 10"	23 August 2011
1008	EU, "Statement of High Representative Catherine Ashton on the EU response to famine in the Horn of Africa"	24 August 2011
1009	Reuters, "Bruised by war, Mogadishu slowly reawakens"	24 August 2011
1010	Shabelle Media Network, "Al Shabab arrests young people accused of having links with TFG"	24 August 2011
1011	Shabelle Media Network, "Unlawful money imposed on aid planes landing at Mogadishu airport"	24 August 2011
1012	Somalia Report, "Al-Shabab orders Somalis to watch Arab only TV"	24 August 2011
1013	Somalia Report, "TFG captures militants with explosives"	24 August 2011
1014	IRIN, "Somalia: countdown to calamity"	25 August 2011
1015	Reliefweb, "Amid restrictions, MSF seeks to widen assistance to malnourished Somalis"	25 August 2011
1016	Reliefweb, "Interview: distributing food in famine-struck Somalia"	25 August 2011
1017	Reliefweb, "Overview of the drought situation in the Horn of Africa"	25 August 2011
1018	Reliefweb, "They have nothing left – not even hope"	25 August 2011
1019	Shabelle Media Network, "Al Shabab kidnaps businessman just outside of Mogadishu"	25 August 2011
1020	Shabelle Media Network, "Headless body of young Somali discovered in Mogadishu"	25 August 2011
1021	Somalia Report, "Family of executed insurgent says he was no spy"	25 August 2011
1022	Somalia Report, "Mogadishu clashes kill 5"	25 August 2011
1023	Somalia Report, "Mogadishu's second largest market reopened"	25 August 2011
1024	UNHCR, "East & Horn of Africa Update: Somali displacement crisis at a glance"	25 August 2011
1025	UNOCHA, "Horn of Africa drought crisis: situation report no. 11"	25 August 2011
1026	USAID, "Horn of Africa – drought"	25 August 2011
1027	Garowe Online, "Somali Islamists behead 11 civilians in capital"	26 August 2011
1028	IASC Somalia, "Protection Cluster Update Weekly Report"	26 August 2011
1029	Reliefweb, "Drought-stricken central Somalia struggling to cope with influx of people fleeing famine in the south – more aid is critical"	26 August 2011

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1030	Reliefweb, "DSRSG chairs meeting with representatives of emerging administrations from southern Somalia"	26 August 2011
1031	Reliefweb, "Security Council commits to strengthening partnership with troop, police contributors in debate on United Nations peacekeeping operations"	26 August 2011
1032	Reliefweb, "UAE Red Crescent intensifies relief operations in Somalia"	26 August 2011
1033	Reuters, "Somali militants behead boys in Mogadishu attacks"	26 August 2011
1034	Shabelle Media Network, "Famine displaced people complain of robbing, looting by govt soldiers"	26 August 2011
1035	Shabelle Media Network, "Somali government charged with graft"	26 August 2011
1036	Somalia Report, "Al-Shabab vows new offensive in Gedo"	26 August 2011
1037	Somalia Report, "Gunmen assassinate top security official"	26 August 2011
1038	Somalia Report, "More die as attacks in Galkayo increase"	26 August 2011
1039	Somalia Report, "Somaliland military build up in Taleh"	26 August 2011
1040	Reliefweb, "UNICEF Somalia situation report #6, 19-25 August 2011 – famine in southern Somalia"	27 August 2011
1041	Shabelle Media Network, "Ahlu Sunna threatens purging Al Shabab from central Somalia"	27 August 2011
1042	Shabelle Media Network, "Al Shabab set a light to water well amid famine in Somalia"	27 August 2011
1043	Somalia Report, "6 killed, 7 injured in Al-Shabab attacks"	27 August 2011
1044	Somalia Report, "Somali youths face the wrath of Al-Shabab"	27 August 2011
1045	Reliefweb, "Horn of Africa crisis – regional situation report #6, reporting period: 19-25 August"	28 August 2011
1046	Shabelle Media Network, "IDPs at Mogadishu's Badbado refugee camp start fleeing"	28 August 2011
1047	Shabelle Media Network, "Somalia: govt creates special forces to assure Mogadishu security"	28 August 2011
1048	Somalia Report, "10 killed as Al-Shabab attacks TFG bases"	28 August 2011
1049	The Telegraph, "Deadly Mogadishu bomb 'targeted peacekeepers'"	28 August 2011
1050	LandInfo, "Somalia: security and conflict in the south"	29 August 2011
1051	Reliefweb, "Border town feels the refugee pressure"	29 August 2011
1052	Reliefweb, "Fighting famine at its source"	29 August 2011

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1053	Reliefweb, "Locals join IDP camps in search for food"	29 August 2011
1054	Reliefweb, "Poor security: a key reason for drought disaster"	29 August 2011
1055	Reliefweb, "RIs Dania Gharaibeh reports from the famine"	29 August 2011
1056	Somalia Report, "Checkpoints source of extortion, kickbacks"	29 August 2011
1057	Somalia Report, "Clan fighting over water kills 10 in Mudug"	29 August 2011
1058	Somalia Report, "Government takes over Gedo villages"	29 August 2011
1059	UN, "Report of the independent expert on the situation of human rights in Somalia, Shamsul Bari"	29 August 2011
1060	Reliefweb, "Hunt for water turns desperate"	30 August 2011
1061	Reliefweb, "Protecting people in the midst of famine – responding to urgent risks in the Horn of Africa: dangerously low levels of funding for life-saving activities in the Horn of Africa"	30 August 2011
1062	Reliefweb, "UNHCR chief Guterres calls for scaled-up aid effort inside Somalia"	30 August 2011
1063	Reuters, "Somalian militant leader denounces reluctant fighters"	30 August 2011
1064	Shabelle Media Network, "Eid celebrated in Somalia, Al Shabab vows more attacks"	30 August 2011
1065	Somalia Report, "Galkayo grenade attack kills three"	30 August 2011
1066	UN Security Council, "Report of the Secretary-General on Somalia"	30 August 2011
1067	AllAfrica, "Somalia: agency identifies 23,000 IDP shelters in Mogadishu"	31 August 2011
1068	Garowe Online, "Food aid looting kills 15 in Somalia"	31 August 2011
1069	Shabelle Media Network, "Somali soldier kills a civilian driver in Mogadishu"	31 August 2011
1070	Somalia Report, "50 arrested in Garowe security crackdown"	31 August 2011
1071	Somalia Report, "Paranoid insurgents ramp up beheadings"	31 August 2011
1072	UNITAR / UNOSAT, "Overview of IDP shelter changes in Mogadishu, Somalia (as of 22 August 2011)"	31 August 2011
1073	UNITAR / UNOSAT, "Update 1: emergency assessment of Somali IDP shelter concentrations in Mogadishu, Somalia (22 August 2011)"	31 August 2011
1074	Oxfam, "Briefing on the Horn of Africa drought 2011"	August 2011
1075	Oxfam, "Briefing on the Horn of Africa drought: climate change and future impacts on food security"	August 2011
1076	SAACID, "The human cost of international failure"	August 2011

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1077	Somalia Report, "Background to the TFG"	August 2011
1078	UN, "Somalia Humanitarian Overview" vol. 4 issue 8	August 2011
1079	UNHCR, "Population Movement Tracking Monthly Report"	August 2011
1080	WHO, "Emergency humanitarian action: weekly highlights 20-26 August 2011"	August 2011
1081	AFP, "Starving Somalis make new life in war-torn Mogadishu"	1 September 2011
1082	Logistics Cluster, "Somalia famine response situation report"	1 September 2011
1083	Reliefweb, "UNHCR chief visits Mogadishu, urges massive humanitarian assistance"	1 September 2011
1084	Shabelle Media Network, "Seven wounded in southern Somalia grenade attack"	1 September 2011
1085	Somalia Report, "Grenade attack injures eight"	1 September 2011
1086	Somalia Report, "Puntland battles Al-Shabab suspects in Galkayo"	1 September 2011
1087	Garowe Online, "Somalia: Puntland forces kill 'over 20 Al Shabab militants' in Galkayo"	2 September 2011
1088	Shabelle Media Network, "Displaced famine hit people called to back in Mogadishu's IDPs camp"	2 September 2011
1089	Shabelle Media Network, "15 killed as fighting is still continuing in central Somalia town"	2 September 2011
1090	Shabelle Media Network, "Somalia: Mogadishu residents welcome security operation by the govt"	2 September 2011
1091	Somalia Report, "Another ten beheaded bodies found"	2 September 2011
1092	Somalia Report, "Assassination of Somaliland president foiled"	2 September 2011
1093	UK Border Agency, "COI Somalia Bulletin: Al Shabab's withdrawal from Mogadishu"	2 September 2011
1094	UNOCHA, "Somalia: famine (as of 2 September 2011)"	2 September 2011
1095	Garowe Online, "At least 21 dead in Somali rebel clashes"	3 September 2011
1096	Shabelle Media Network, "Al Shabab accused of committing violations against humanity"	3 September 2011
1097	Shabelle Media Network, "Bernama TV cameraman killed in Somalia shooting"	3 September 2011
1098	Shabelle Media Network, "Somalia: govt forces clash with armed militias in Mogadishu"	3 September 2011

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1099	Somalia Report, "Al-Shabab steals livestock in Hiiraan"	3 September 2011
1100	Somalia Report, "Army commander killed in Galkayo"	3 September 2011
1101	Somalia Report, "4 killed in military clashes in Mogadishu"	3 September 2011
1102	Somalia Report, "Leaders console Malaysia over scribe's killing"	3 September 2011
1103	Shabelle Media Network, "Seven killed in central Somalia clan related clash"	4 September 2011
1104	Shabelle Media Network, "Somalia: blast at Al Shabab gun store kills eight, witnesses say"	4 September 2011
1105	Somalia Report, "Al-Shabab fighters killed in an explosion"	4 September 2011
1106	Somalia Report, "Gunmen kill civilians in Middle Shabelle Region"	4 September 2011
1107	Somalia Report, "The gold rush begins"	4 September 2011
1108	Somalia Report, "2 dead as building collapses"	4 September 2011
1109	Garowe Online, "Somalia: Somaliland to 'expel foreigners within 30 days'"	5 September 2011
1110	Hiiraan Online, "Somalis fear tyranny of al-Shabab as they flee drought stricken areas"	5 September 2011
1111	Shabelle Media Network, "Al Shabab imposes curfew on southern Somalia town"	5 September 2011
1112	Shabelle Media Network, "Armed men force 300 families to flee from IDPs camp in Mogadishu"	5 September 2011
1113	Shabelle Media Network, "Malaysia evacuates its aid workers from Somalia"	5 September 2011
1114	Shabelle Media Network, "Somalia: Al Shabab impose curfew in Afgoye corridor for IDPs"	5 September 2011
1115	Shabelle Media Network, "Somalia: famine displaced people warned to settle at broken buildings"	5 September 2011
1116	UNOCHA, "Somalia: famine"	5 September 2011
1117	Hiiraan Online, "US drone attacks kill 35 in S Somalia"	6 September 2011
1118	IRIN, "Somalia: insurgents divert famine IDPs from aid"	6 September 2011
1119	Shabelle Media Network, "Two beheaded bodies discovered in war torn Mogadishu"	6 September 2011
1120	Somalia Report, "TFG and AMISOM battle Al-Shabab in Mogadishu"	6 September 2011
1121	Hiiraan Online, "A man-made disaster: how militant Islamism, the war	7 September 2011

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	against terror and famine are connected in Somalia"	
1122	Hiiraan Online, "Mortar attacks cause civilian fatalities in Mogadishu"	7 September 2011
1123	Hiiraan Online, "Special Forces in Mogadishu"	7 September 2011
1124	Integrated Regional Information Networks (IRIN), "Mogadishu after Al-Shabab"	7 September 2011
1125	Shabelle Media Network, "Mogadishu artillery shell leaves 3 persons dead"	7 September 2011
1126	The Guardian, "Insurgents prevent Somalis fleeing famine from reaching Mogadishu"	7 September 2011
1127	Shabelle Media Network, "Somali soldier kills six civilians in Mogadishu shooting spree"	8 September 2011
1128	Somalia Report, "AMISOM takes 3 more districts, gets attacked"	8 September 2011
1129	IASC Somalia, "Protection Cluster Update Weekly Report"	9 September 2011
1130	New York Times, "As an enemy retreats, clans carve up Somalia"	9 September 2011
1131	Refworld, "Amid improved security, UNHCR scales up operations inside Somalia"	9 September 2011
1132	Shabelle Media Network, "Four killed, 10 injured in Mogadishu bomb blast"	9 September 2011
1133	Shabelle Media Network, "Somali soldier kills six civilians in Mogadishu shooting spree"	9 September 2011
1134	Somalia Report, "Al-Shabab controls Mogadishu returnees"	9 September 2011
1135	Somalia Report, "Kids die playing with explosives in market"	9 September 2011
1136	UNHCR, "PMT Mogadishu Dashboard"	16 June-9 September 2011
1137	UNOCHA, "Somalia: nutrition services and number of malnourished cases – Banadir"	9 September 2011
1138	African Union Peace and Security Council, "Report of the Chairperson of the Commission on the situation in Somalia"	13 September 2011
1139	Bar-kulan, "Turkish delegation visits Mogadishu, Somalia"	13 September 2011
1140	ABC News, "Somalia famine: measles epidemic hits Mogadishu"	14 September 2011
1141	UN Security Council, "In Somalia 'seeds of hope and progress have begun to sprout, but they need to be carefully and generously nurtured' Security council told"	14 September 2011

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1142	Shabelle Media Network, "Somali forces stop again aid workers from reaching Al Shabab areas"	15 September 2011
1143	Shabelle Media Network, "Somalia soldier fires at bus, killing two passengers in Mogadishu"	16 September 2011
1144	Somalia Report, "Airstrikes continue in southern Somalia"	16 September 2011
1145	Somalia Report, "TFG soldier fires on minibus, killing 3"	16 September 2011
1146	The Globe and Mail, "Fear of al-Shabab brings Mogadishu to a standstill"	16 September 2011
1147	The Nation, "Blowback in Somalia"	16 September 2011
1148	Reuters, "Somalia bans foreign aid workers from rebel areas"	17 September 2011
1149	Shabelle Media Network, "Roadside bomb targeted AMISOM convey in Mogadishu"	17 September 2011
1150	Somalia Report, "ASWJ declares all out war against Al-Shabab"	17 September 2011
1151	Somalia Report, "Fierce fighting leaves 3 dead"	17 September 2011
1152	Somalia Report, "Suspected IED kills 3 in Mogadishu"	17 September 2011
1153	Somalia Report, "Al-Shabab seizes 10 youths in Middle Shabelle"	18 September 2011
1154	Somalia Report, "Militants vow to retake Mogadishu"	18 September 2011
1155	The Times Live, "SA doctors to the rescue in Somalia"	18 September 2011
1156	Bar-kulan, "Somalia's National Security Committee meets in Mogadishu"	19 September 2011
1157	Shabelle Media Network, "Somalia: Mogadishu airport authorities – aid planes are not charged"	19 September 2011
1158	AMISOM, "Opening remarks by DSRCC, HON. Wafula Wamunyinyi at the Mogadishu consultative meeting on ending the transition"	20 September 2011
1159	Bar-kulan, "Mogadishu IDPs receive relief food"	20 September 2011
1160	Reliefweb, "Flying in the food"	20 September 2011
1161	Shabelle Media Network, "Somalia: armed militias dressed govt military uniforms arrested in Mogadishu"	20 September 2011
1162	Shabelle Media Network, "Somalia: in Mogadishu, an enemy retreats but fear remains"	20 September 2011
1163	UN News, "Newsmakers: UN Special Envoy for Somalia, Augustine Mahiga"	20 September 2011
1164	UNOCHA, "Somalia Famine and Drought: Situation Report no. 14"	20 September 2011

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1165	IRIN, "Lives before politics"	21 September 2011
1166	Reliefweb, "OIC Contact Group Meeting on Somalia discuss peace building and humanitarian assistance"	21 September 2011
1167	Bar-kulan, "Defence ministry working on bolstering security in Mogadishu, claims minister"	22 September 2011
1168	Somalia Report, "Violence claims three soldiers in Mogadishu"	22 September 2011
1169	UNICEF, "Situation report – Horn of Africa Somalia"	22 September 2011
1170	UNOCHA, "Somalia: humanitarian access and coverage"	22 September 2011
1171	Bar-kulan, "Security agency displays donkey-driven-cart laden with explosives"	23 September 2011
1172	RBC Radio, "Somalia: security forces foil suicide attempt used for a donkey"	23 September 2011
1173	UNHCR, "Mogadishu IDP influx"	23 September 2011
1174	Bar-kulan, "Al-Shabab militias fight themselves outside Mogadishu"	25 September 2011
1175	Garowe Online, "Prime Minister of Somalia's statement, General debate of the 66th session of the United Nations General assembly"	25 September 2011
1176	RBC Radio, "Somalia: first aid from Somaliland arrives Mogadishu"	25 September 2011
1177	Reliefweb, "To pledging conference for Horn of Africa, Deputy Secretary-General says, 'If we do not respond we will be asked how we stood by and watched a generation die'"	25 September 2011
1178	Somalia Report, "Mogadishu city life returning to normal"	25 September 2011
1179	Reliefweb, "Somali government establishes committee of experts on draft constitution"	26 September 2011
1180	Shabelle Media Network, "Somalia: President "Al Shabab's power weakened""	26 September 2011
1181	Somalia Report, "Somali President warns youths against al-Shabab"	26 September 2011
1182	Reliefweb, "Somalia: the struggle against food insecurity continues"	27 September 2011
1183	Somalia Report, "AMISOM urges more troops to fight al-Shabab"	27 September 2011
1184	UK Border Agency, "COI Somalia Bulletin: Security Situation In Mogadishu"	27 September 2011
1185	UK Foreign and Commonwealth Office letter to European Court of Human Rights regarding Elmi and Sufi v United Kingdom	27 September 2011
1186	AllAfrica, "Somalia: Somali disaster management agency denies food	28 September 2011

Item	Document	Date
	aid is corrupted"	
1187	Reliefweb, "Human Rights Council holds interactive dialogues with experts on Somalia and Cambodia"	28 September 2011
1188	LandInfo, "Somalia: protection and conflict resolution mechanisms"	30 September 2011
1189	Amnesty International, "Annual Report 2011: Somalia"	2011
1190	Bar-kulan, "News in English"	Undated
1191	Central Intelligence Agency, "Country Comparison: Death Rates"	Undated
1192	"Checkpoints in Mogadishu"	Undated
1193	CNN, "African Union forces capture last western outpost in Mogadishu"	Undated
1194	Expert evidence submitted by Dr Joseph Mullen	Undated
1195	Expert report submitted by Dr Laura Hammond	Undated
1196	IDMC, "Factsheet: Somalia"	Undated
1197	Islamic Relief UK, "East Africa crisis appeal"	Undated
1198	Map, "Mogadishu: estimated positions as of 16 December 2010"	Undated
1199	SAACID, "Employment for Peace II – Accident / Incident / UXO Report"	Undated
1200	SAACID, "Urban Development Planning"	Undated
1201	Security Council Committee on Somalia and Eritrea Issues List of Individuals Identified Pursuant to Paragraph 8 of resolution 1844 (2008)	Undated
1202	Shabelle Media Network, "Al Shabab arrests aid workers in southern Somalia town"	Undated
1203	Shabelle Media Network, "Al Shabab bans selling meat in southern Somalia town"	Undated
1204	Shabelle Media Network, "Somalia: battle, shelling in capital leaves five hurt"	Undated
1205	Somalia Report, "About us"	Undated
1206	Statement of Stephen Paul Morris, legal representative of AM	Undated
1207	UK Border Agency, "Managing Enforced Returns: The Challenges of Documentation and Return"	Undated
1208	UNDP map, "Hiraan Region – Belet Weyne District"	Undated
1209	UNDP map, "Lower Shabelle Region – Afgooye District"	Undated
1210	UNDP map, "Lower Shabelle Region – Baraawe District"	Undated

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1211	UNDP map, "Lower Shabelle Region – Marka District"	Undated
1212	UNDP map, "Middle Shabelle Region"	Undated
1213	UNOCHA map, "Somalia: Education: Who, what, where – Funding Agencies"	Undated
1214	Witness statement of a businessman	Undated
1215	Witness statement of a country director of an international NGO	Undated
1216	Witness statement of a representative of the European Union	Undated
1217	Witness statement of a senior policy advisor to an international NGO, including a survey of media reports	Undated
	Documentation specific to AF	
1218	Letter from Dr B Chaliha to a Consultant Gastroenterologist, regarding AF	10 May 2011
1219	Gastroenterology appointment letter, regarding AF	Undated
	Documentation specific to FM	
1220	Witness statement of FM	12 July 2006
1221	Witness statement of FM	15 August 2006
1222	Expert evidence of Asha-Kin Duale	30 September 2006
1223	Expert report from Samuel Bekalo	19 October 2007
1224	Cellmark, "DNA relationship analysis case report"	5 November 2007
1225	Statement of cousin of FM	3 September 2008
1226	Witness statement of FM	3 September 2008
1227	Letter from Halliday Reeves	11 July 2008
1228	Supplementary expert report from Samuel Bekalo	17 July 2008
1229	Expert report of Dr Virginia Luling	18 August 2008
1230	Cellmark, "DNA relationship testing"	28 November 2008
1231	Statement of uncle of FM	12 December 2008
1232	Witness statement of FM	12 December 2008
1234	Witness statement of FM	26 May 2011
1235	Statement of uncle of FM	Undated
	Documentation specific to MW	

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1236	US Department of State, "Somalia: Report on Female Genital Mutilation (FGM) or Female Genital Cutting (FGC)"	June 2001
1237	Asha-Kin Duale, "Expert report: notes on female genital mutilation (FGM)"	15 May 2006
1238	BBC News, "'I'm not afraid of al-Shabab'"	28 January 2008
1239	Options Consultancy Services / Forward, "FGM is always with us: experiences, perceptions and beliefs of women affected by female genital mutilation in London"	July 2009
1240	Witness statement of Jabril Ibrahim Abdulle, Centre for Research and Dialogue"	14 September 2009
1241	Witness statement of Mariam Yassin Hagi, Women's Development Organization	15 September 2009
1242	Witness statement of MW	16 September 2009
1243	Witness statement of Dr Nazra Shire Mohamed, GP	16 September 2009
1244	Witness statement of Zacharia Mohamed Sheikh, Lawyer	16 September 2009
1245	Witness statement of someone who works in Mogadishu	17 September 2009
1246	Witness statement of a male active in human rights work	18 September 2009
1247	Witness statement of a women active in human rights work	18 September 2009
1248	Witness statement of an aid worker	18 September 2009
1249	Witness statement of Hassan Noor, Oxfam GB	18 September 2009
1250	Witness statement of Sahra Omar Moallim	19 September 2009
1251	Witness statement of Shamsa Ahmed, Midwife	30 September 2009
1252	Witness statement of a Somali journalist	September 2009
1253	Witness statement of Abdillahi M. Yusuf, Oxfam GB	September 2009
1254	Witness statement of Amina Haji Elmi, Save Somalia Women and Children	September 2009
1255	Witness statement of Faiza Mohamed, Save the Children UK	September 2009
1256	Witness statement of Maryan Seylac, Somalia Media Women's Association	September 2009
1257	Witness statement of MAM	September 2009
1258	Witness statement of Tanya Schumer, Somali NGO Consortium	September 2009
1259	Witness statement of Tony Burns, SAACID	September 2009
1260	Witness statement of a Somali women's NGO	2 October 2009

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1261	US Department of State, "Trafficking in Persons Report 2010 – Somalia"	14 June 2010
1262	Population Reference Bureau, "Female Genital Mutilation/Cutting: Data and Trends: Update 2010"	2010
1263	Witness statement of James Elliott, Solicitor, Partner in Wilson Solicitors LLP	27 May 2011
1264	Report by an independent social worker, regarding the children of MW	30 May 2011
1265	GBV Prevention Network, "Two Somali journalists arrested in Baidoa"	Undated
1266	Witness statement of Comfort Momoh	Undated