



**Upper Tribunal
(Immigration and Asylum Chamber)**

MOJ & Ors (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC)

THE IMMIGRATION ACTS

**Heard at Field House, London
On 10, 11, 12, 13, 25 February and 9
September 2014**

Determination Promulgated

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Before

**The President, the Hon. Mr Justice McCloskey
Upper Tribunal Judge Storey
Upper Tribunal Judge Southern**

Between

MOJ, MAA AND SSM

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

(Anonymity order made)

Representation:

For the Appellant MOJ: Mr M. Gill QC and Mr A. Pretzell (of Counsel),
instructed by Duncan Lewis and Company,
Solicitors

For the Appellant MAA: Ms S. Panagiotopoulou (of Counsel), instructed by
Trott and Gentry LLP

For the Appellant SSM: Mr R. Toal and Ms G Loughran (both of Counsel),
instructed by Wilson Solicitors LLP

For the Respondent: Mr B. Rawat (of Counsel), instructed by the Treasury Solicitor and Mr I. Jarvis (Senior Home Office Presenting Officer)

LEGAL GUIDANCE

- (i) *The operation of the Upper Tribunal Immigration and Asylum Chamber Guidance Note no. 2 of 2011, "Reporting Decisions of the Upper Tribunal Immigration and Asylum Chamber" and, particularly, [11] thereof, does not render the process of composition of country guidance decisions procedurally unfair.*
- (ii) *As a general principle, where attendance of an appellant is a prerequisite to the vindication of the person's right to a fair hearing, the appellant must be present.*

COUNTRY GUIDANCE

- (i) *The country guidance issues addressed in this determination are not identical to those engaged with by the Tribunal in AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia CG [2011] UKUT 445 (IAC). Therefore, where country guidance has been given by the Tribunal in AMM in respect of issues not addressed in this determination then the guidance provided by AMM shall continue to have effect.*
- (ii) *Generally, a person who is "an ordinary civilian" (i.e. not associated with the security forces; any aspect of government or official administration or any NGO or international organisation) on returning to Mogadishu after a period of absence will face no real risk of persecution or risk of harm such as to require protection under Article 3 of the ECHR or Article 15(c) of the Qualification Directive. In particular, he will not be at real risk simply on account of having lived in a European location for a period of time of being viewed with suspicion either by the authorities as a possible supporter of Al Shabaab or by Al Shabaab as an apostate or someone whose Islamic integrity has been compromised by living in a Western country.*
- (iii) *There has been durable change in the sense that the Al Shabaab withdrawal from Mogadishu is complete and there is no real prospect of a re-established presence within the city. That was not the case at the time of the country guidance given by the Tribunal in AMM.*
- (iv) *The level of civilian casualties, excluding non-military casualties that clearly fall within Al Shabaab target groups such as politicians, police officers, government officials and those associated with NGOs and international organisations, cannot be precisely established by the statistical evidence which is incomplete and unreliable. However, it is*

established by the evidence considered as a whole that there has been a reduction in the level of civilian casualties since 2011, largely due to the cessation of confrontational warfare within the city and Al Shabaab's resort to asymmetrical warfare on carefully selected targets. The present level of casualties does not amount to a sufficient risk to ordinary civilians such as to represent an Article 15(c) risk.

- (v) It is open to an ordinary citizen of Mogadishu to reduce further still his personal exposure to the risk of "collateral damage" in being caught up in an Al Shabaab attack that was not targeted at him by avoiding areas and establishments that are clearly identifiable as likely Al Shabaab targets, and it is not unreasonable for him to do so.*
- (vi) There is no real risk of forced recruitment to Al Shabaab for civilian citizens of Mogadishu, including for recent returnees from the West.*
- (vii) A person returning to Mogadishu after a period of absence will look to his nuclear family, if he has one living in the city, for assistance in re-establishing himself and securing a livelihood. Although a returnee may also seek assistance from his clan members who are not close relatives, such help is only likely to be forthcoming for majority clan members, as minority clans may have little to offer.*
- (viii) The significance of clan membership in Mogadishu has changed. Clans now provide, potentially, social support mechanisms and assist with access to livelihoods, performing less of a protection function than previously. There are no clan militias in Mogadishu, no clan violence, and no clan based discriminatory treatment, even for minority clan members.*
- (ix) If it is accepted that a person facing a return to Mogadishu after a period of absence has no nuclear family or close relatives in the city to assist him in re-establishing himself on return, there will need to be a careful assessment of all of the circumstances. These considerations will include, but are not limited to:*
 - circumstances in Mogadishu before departure;*
 - length of absence from Mogadishu;*
 - family or clan associations to call upon in Mogadishu;*
 - access to financial resources;*
 - prospects of securing a livelihood, whether that be employment or self employment;*
 - availability of remittances from abroad;*
 - means of support during the time spent in the United Kingdom;*
 - why his ability to fund the journey to the West no longer enables an appellant to secure financial support on return.*

- (x) *Put another way, it will be for the person facing return to explain why he would not be able to access the economic opportunities that have been produced by the economic boom, especially as there is evidence to the effect that returnees are taking jobs at the expense of those who have never been away.*
- (xi) *It will, therefore, only be those with no clan or family support who will not be in receipt of remittances from abroad and who have no real prospect of securing access to a livelihood on return who will face the prospect of living in circumstances falling below that which is acceptable in humanitarian protection terms.*
- (xii) *The evidence indicates clearly that it is not simply those who originate from Mogadishu that may now generally return to live in the city without being subjected to an Article 15(c) risk or facing a real risk of destitution. On the other hand, relocation in Mogadishu for a person of a minority clan with no former links to the city, no access to funds and no other form of clan, family or social support is unlikely to be realistic as, in the absence of means to establish a home and some form of ongoing financial support there will be a real risk of having no alternative but to live in makeshift accommodation within an IDP camp where there is a real possibility of having to live in conditions that will fall below acceptable humanitarian standards.*

DETERMINATION AND REASONS

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1. In this determination, to which each member of the panel has made a contribution, the Upper Tribunal addresses the current situation in Mogadishu in order to determine the individual appeals and to give guidance limited to the following issues:

Whether the current situation in Mogadishu is such as to entitle nationals of Somalia whose home area is Mogadishu or whose proposed area of relocation is Mogadishu to succeed in their claims for refugee status, humanitarian protection status under Article 15(c) or protection against refoulment under Articles 3 or 2 of the ECHR solely on the basis that they are civilians and do not have powerful actors in a position to afford them adequate protection.

2. We should make clear, at the outset, that the Tribunal has made an order under rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 the effect of which is that nothing is to be published that may lead to the identification of any of the appellants or any person who has contributed to the evidence submitted by the parties other than those whose names are disclosed in this determination.
3. These appeals come before us because in each case the decision of the First-tier Tribunal has been found to disclose legal error such as to require it to be set aside and remade by the Upper Tribunal. The decisions of the Upper Tribunal identifying those errors of law are

reproduced in Annex D but for present purposes the position can be summarised as follows:

- a. The decision of the First-tier Tribunal to dismiss MOJ's appeal against a deportation decision made as a consequence of his conviction for an offence of robbery in January 2011 for which he was sentenced to 2 years' imprisonment was set aside by Upper Tribunal Judge Storey, following a hearing on 5 July 2013. The judge found that the First-tier Tribunal erred by failing to give sufficient reasons for departing from the Country Guidance in force. The findings of fact made by the First-tier Tribunal were preserved.
- b. MAA's appeal against the removal decision that accompanied refusal of his asylum and human rights claim was dismissed by the First-tier Tribunal by a determination promulgated on 23 July 2013. Deputy Upper Tribunal Judge I. A. Lewis found, following a hearing on 5 March 2013, that in doing so the First-tier Tribunal had erred in law but only in respect of the humanitarian protection claim. That was because the First-tier Tribunal judge had failed to identify a cogent basis for concluding, in the light of the applicable country guidance, that the appellant fell within a class of persons who could live to a reasonable standard upon return. Once again, the findings of fact that had been made were preserved.
- c. SSM's appeal to the First-tier Tribunal was against a decision of the respondent to refuse to revoke a deportation order that had been made as a result of his conviction on 28 November 2008 of an offence of violent disorder for which he was sentenced to 3 years and 4 months imprisonment. On 4 November 2013 the decision of the First-tier Tribunal to dismiss the appeal was set aside by Upper Tribunal Judges Dawson and Reeds. That was because they found that the First-tier Tribunal had failed to resolve difference in the evidence offered by the parties and failed to provide adequate reasons for departing from current country guidance.

There is a summary of agreed facts in respect of each of the appellants, which is set out below.

4. The appeal was heard over five days in February and the hearing was briefly reconvened on 9 September in order to provide the parties with an opportunity to advance submissions concerning section 117 of the Nationality, Immigration and Asylum Act 2002, introduced by section 19 of the Immigration Act 2014 which, having come into effect on 28 July,

was potentially applicable. In the event, submissions were advanced only on behalf of MOJ and the respondent, as neither MAA or SSM are pursuing a claim under Article 8 of the ECHR before the Upper Tribunal. Before undertaking our analysis of the evidence, we will address some preliminary issues.

The Attendance of the Parties

5. The Appellant MOJ is in custody, by virtue of having been convicted of a criminal offence. Arrangements for his attendance at the hearing lay with the Prison Service and its agents. He was not brought to the Tribunal Hearing Centre on the first day of the substantive hearing, for reasons which are not entirely clear. His Counsel, Mr Gill QC, while making clear that his client's preference was to be present, acknowledged that his non-attendance was not a reason to prevent this long-arranged and important hearing from proceeding. Mr Gill maintained the same stance on the second day of hearing, the second half whereof was attended by his client. At this juncture, the Tribunal acceded to Mr Gill's request to adjourn for a period to enable him to confer with his client. This Appellant was also in attendance at the beginning of the third day of the hearing. At this stage, Mr Gill informed the Tribunal that, having conferred with his client, he would not be giving evidence. Throughout the period of the Appellant's attendance, the hearing had proceeded in a secure hearing room. Given the proliferation of personnel attending and the abundance of bundles of documents, this was proving unsatisfactory because of the relatively small size of that court room. The Tribunal invited the legal representatives to discuss this issue. Having done so, Mr Gill stated that there would be no objection to the hearing continuing in a larger, more satisfactory court room in his client's absence. This was a sensible and practical stance which should properly be commended.
6. We take this opportunity to reiterate what we said at the hearing. Where attendance of an appellant is a prerequisite to the vindication of a person's right to a fair hearing, the appellant must be present. This is a general principle. While it has certain exceptions, we need not examine these in the present context. From the perspective of the Appellant MOJ, the hearing had certain noteworthy features. In the first place, witnesses were not testifying against him. Secondly, this Appellant had testified at a previous hearing before the First-tier Tribunal which had found that he had not given a credible account in certain respects. Thirdly, the present appeal proceeded on the basis of agreed statements of facts in respect all three Appellants. Fourthly, all of the witnesses who testified were doing so on behalf of this Appellant and the others. Fifthly, a decision was made that this Appellant would not give oral evidence. Sixthly, he was represented by Senior Counsel, Junior Counsel and a Solicitor

throughout. In these circumstances, his attendance was not essential to ensure that he received a fair hearing. Mr Gill acknowledged this. We consider that he was correct to do so.

7. We would add, by way of further guidance, that there are several contexts in which hearings in the Upper Tribunal can properly proceed in the absence of the litigant concerned without compromising such person's right to a fair hearing. Renewed applications for permission to apply for judicial review are a paradigm example. So too are case management hearings. Furthermore, most error of law hearings can be fairly transacted in the litigant's absence. Recent examples of the latter, in the experience of panel members, include deportation error of law appeals where similar difficulties viz the non-production of the litigant at the hearing by the agents of the Prison Service, or heavily delayed arrivals, have occurred. This is not designed to be an exhaustive list.

The composition of judgments in country guidance cases

8. The process whereby County Guidance Judgments of this Chamber of the Upper Tribunal are composed is challenged on behalf of one of the three Appellants, SSM. This prompts some reflection on the nature and purpose of this distinctive species of judicial decision. In brief compass, decisions of this kind are designed to provide guidance on the question of whether the United Kingdom Government would be acting unlawfully in compelling certain persons or classes of person to travel to and enter a specific country or area thereof. Each decision of this kind constitutes "*an authoritative ruling upon the state of affairs in any given territory*": S and Others v SSHD [2002] EWCA Civ 539, paragraph [29]. In HM (Iraq) v SSHD [2011] EWCA Civ 1536, Richards LJ observed that Country Guidance determinations "*.... have a status and significance comparable to that which declarations can have in public law cases*": paragraph [39]. See also SG (Iraq) v SSHD [2012] EWCA Civ 940; HF (Iraq) & Ors v SSHD [2013] EWCA Civ 1276; and, KS (Burma) & Anor v SSHD [2013] EWCA Civ 67. In PO (Nigeria) v SSHD [2011] EWCA Civ 132, Carnwath LJ described the mechanism of Country Guidance decisions as "*well established*" and commended reading of chapter 7 of Administrative Justice and Asylum Appeals (Thomas). Carnwath LJ also adverted to section 107(3) of the Nationality, Immigration and Asylum Act 2002, wherein lies the genesis for the Practice Directions of the Upper Tribunal:

“(1) *The President of the Tribunal may give directions as to the practice to be followed by the Tribunal*

- (3) *A Practice Direction may, in particular, require the Tribunal to treat a specified decision of the Tribunal as authoritative in respect of a particular matter."*

There is also a power, vested in the Tribunal President, to issue Guidance Notes: see paragraph 7 of Schedule 4 to the Tribunals, Courts and Enforcement Act 2007.

9. At this juncture, it is appropriate to refer to the Upper Tribunal Immigration and Asylum Chamber Guidance Note No 2 of 2011, which is entitled "Reporting Decisions of the Upper Tribunal Immigration and Asylum Chamber". For present purposes, the most pertinent provision is paragraph [11]:

"Special arrangements are made for the reporting of country guidance cases. Before a case is promulgated and designated as a Country Guidance case it is considered by the relevant country convenor and the Reporting Committee and advice may be tendered to the determining judges. Practice direction 12.2 states:

'A reported determination of the Tribunal, the AIT or the IAT bearing the letters CG shall be treated as an authoritative finding on the country guidance issue identified in the determination, based on the evidence before the members of the Tribunal that determine the appeal. As a result, unless it has been expressly superseded or replaced by any less later CG determination, or is inconsistent with other authority that is binding on the Tribunal, such a Country Guidance case is authoritative in any subsequent appeal, so far as that appeal:

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

If there is credible fresh evidence relevant to the issue that has not been considered in the Country Guidance Case or if a subsequent case includes further issues that have not been considered in the CG case, the judge will reach the appropriate conclusion on the evidence, taking into account the conclusion in the CG case so far as it remains relevant."

Paragraph [12] of the Guidance note provides that where a Country Guidance decision has become outdated by reason of developments in the country in question, it is anticipated that a Judge of the First-Tier Tribunal will have considered such credible fresh evidence as is envisaged in paragraph [11]. Where there is a reasonable doubt as to whether a Country Guidance decision is still applicable, the First-tier

Tribunal will determine the appeal, following which permission to appeal to the Upper Tribunal may well be appropriate.

10. The submissions on behalf of the Appellant SSM draw particular attention to the initial passage in paragraph [11] of the Guidance Note relating to the role of the relevant country convenor and the Reporting Committee. In summary, the procedural fairness of the committee's interaction with the panel of judges is questioned. We distil the essence of Counsel's submission to be that this practice is procedurally unfair. It was submitted that it is procedurally unfair to exclude appellants from this process and that they should have the opportunity of making further representations at this post-hearing stage. These submissions also relied in part on certain decided cases relating to improper access to the court by one party to the disadvantage of the other. We reject these arguments for the reasons elaborated in the following paragraphs.
11. There are certain texts and sources bearing on this issue. Assessed collectively, we consider that these confirm the legitimacy of the practice described in paragraph [11] of the aforementioned Guidance Note. We are satisfied that this practice reflects a respected, long standing tradition in the common law world. We consider that it does not savour of the impropriety advanced in the submissions on behalf of this Appellant. It is, rather, properly to be viewed as a mechanism which, judiciously employed and respecting the relevant principles, in particular the inalienable duties of the appointed panel of Judges, ranks as a positive virtue in furtherance of the universally recognised aim of producing judgments which are of the highest quality possible and of the maximum utility to all stakeholders as well as to the wider society: in sum the very essence of the rule of law itself. We preface our consideration of the available texts, the governing principles and this Appellant's submissions in this way.
12. The tradition and practice to which we have alluded above were specifically recognised some time ago by Lord Bingham in his essay "Judicial Ethics" (published in *The Business of Judging*, page 69), in which he stated (pages 82 - 83):

"Fifthly, there has, particularly in the United States, been some debate about the ex parte communications a judge may properly have when preparing his judgment. The view there seems to be that a judge may consult with other judges but not with any law teacher. It is without doubt fundamental that a Judge should not decide a case on a point which has not been raised in argument without giving notice to the parties and allowing them to make submissions. That is a rule which arbitrators are expected to observe and so are judges. But subject to that, English practice would not, in my view, frown on a judge who sought to clear his mind or test his views by discussing the

matter with a colleague or a law teacher. I do not think consultation with an appellate judge would be thought improper provided the trial judge did not cede the responsibility for decision which was properly his."

[Emphasis added.]

We consider that, in these passages, Lord Bingham was acknowledging, with unmistakable approval, a well-established tradition in the common law world. In our estimation, this practice is unobjectionable provided that it is harmonious with the principles of independent and impartial judicial adjudication and does not infringe any party's right to a fair hearing. We consider these to be the key touchstones by reference to which this practice is to be measured and evaluated.

13. We are of the opinion that the argument on behalf of this Appellant invites reflection on the judicial oath of office, as specified by Schedule 8 of the Tribunals, Courts and Enforcement Act 2007. This is contained in the Constitutional Reform Act 2005 and is in the following terms:

"I will do right to all manner of people after the laws and usages of this Realm, without fear or favour, affection or ill-will."

By virtue of this oath, independent and impartial judicial adjudication is not a mere aspiration. It is, rather, a solemn duty of constitutional stature. In this context, taking into account the arguments developed on behalf of this Appellant, it is appropriate to reflect on the appearance of bias principle. Impartiality connotes the absence of bias, actual or perceived. The test, well established, is whether a reasonable, fair minded and informed person would reasonably apprehend bias on the part of the Court or Tribunal concerned. In Porter v Magill [2002] 2 AC 357 at [103], Lord Hope devised the test of whether:

"... the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility of bias."

It is well established that the hypothetical observer is possessed of certain traits: he is neither complacent nor unduly sensitive or suspicious. Furthermore, and of some importance in the present context, the observer is well informed and in possession of quite extensive knowledge: Belize Bank Limited v Attorney General of Belize [2011] UKPC 36, at [38]. In the specific context under scrutiny in these proceedings, the fund of knowledge held by the hypothetical observer will include the terms of the judicial oath of office, the pedigree, scale and longevity of the practice and the alertness of the Judges concerned to

the constraints imposed by principle and the overarching duties of the appointed panel.

14. A more distant gaze confirms the prevalence of the practice under scrutiny in other countries with a common law tradition. We draw attention to the judgment reporting system operated in the recent past by the International Refugee Board (“IRB”) of Canada. Under section 159(1)(h) of the Immigration and Refugee Protection Act the IRB Chairperson “may issue guidelines in writing to members of the Board and identify decisions of the Board as jurisprudential guides...to assist members in carrying out their duties”. Since March 2003 the Board has had a published policy on the use of jurisprudential guides. It states that:

“Guidelines and jurisprudential guides are complementary tools, the purpose of which is to promote consistency, coherence and fairness in the treatment of cases at the Board. The inclusion of such a statutory provision on guidelines and jurisprudential guides indicates Parliament’s intent that the Chairperson should be involved in the adjudication strategy of the IRB as a whole, in order to assist decision makers on matters of substantive and procedural importance.”

The published policy states that the adjudication strategy “is aimed at identifying the relatively small number of cases that merit the division’s particular attention because they are cases that have the potential to shape the Board’s jurisprudence. These cases are the exceptional, as opposed to the routine, cases”. The policy identifies a range of “tools” that the Board has at its disposal in administering its adjudication strategy: Chairperson’s guidelines, identification of decisions as jurisprudential guides, designation of decisions as persuasive decisions, use of three-member panels, conduct of a lead case and “consultation amongst members on draft decisions in accordance with the principles in Consolidated-Bathurst Packaging Ltd. v International Woodworkers of America, Local 2-69, [1990] 1 S.C.R.282”. While there are other aspects of the IRB’s published policy, these are not germane for present purposes.

15. As noted, the policy of the Canadian IRB makes express reference to the principles enunciated in Consolidated-Bathurst Packaging (*supra*). This is a decision of the Canadian Supreme Court. The background was that the Ontario Labour Relations Board (“the Board”) had, in accordance with convention, convened a three member panel which determined an application under the Labour Relations Act. In the course of deliberations about the decision, a meeting of the full Board, which has 48 members, was held to discuss a draft of the proposed reasons. In accordance with practice, the facts contained in the draft decision were accepted and discussions were limited to the policy implications of the draft decision. The Board’s decision was then promulgated. It was

challenged by an application for judicial review grounded on a contention that the rules of natural justice had been infringed.

16. The Supreme Court, by a majority of 5/2, held that the Board's decision was lawful. The majority decided that where deliberations of this kind occur, the members of the panel which heard the parties' evidence and arguments must be in attendance. There was no objection to other Board members attending the subsequent discussions. A discussion of this kind does not prevent a decision maker from adjudicating in accordance with his own conscience and does not constitute an obstacle to this freedom. Whatever the content of the discussions, the ultimate decision is that of the decision maker. The criteria for independent judicial adjudication are not the absence of influence, rather the freedom to decide according to one's own conscience and opinions. The Court decided that the full Board meeting was an important element of a legitimate consultation process which was not tantamount to participation in the decision of the panel. There was no reasonable apprehension of bias or lack of independence. Furthermore, there was no breach of the *audi alteram partem* rule. This was ensured by excluding from the ambit of the full Board deliberations the facts as found by the panel. The purpose of these discussions was not to determine which of the parties should succeed, rather to identify the various legal standards which may be adopted by the Board and to discuss their relative value. These safeguards were sufficient to allay any fear of violations of the rules of natural justice provided that the parties were alerted to any new evidence or grounds not already addressed in their arguments and given an opportunity to do so. Thus there was a reconciliation between the characteristics and exigencies of the decision making of this specialised tribunal and the procedural rights of the parties.
17. The Canadian Supreme Court held that the practice under scrutiny had the additional virtue of promoting consistency of decision making, thereby increasing public confidence in the Board's decisions and respecting the principle of equality before the law. The judgment cited with approval the statement of Meredith CJCP in Toronto and Hamilton Highway Commission v Crabb [1916] 37 OLR 656 (CA), p659:

"If every judge's judgment were vitiated because he discussed the case with some other judge, a good many judgments existing as valid and unimpeachable ought to fall; and that if such discussions were prohibited many more judgments might fall in an appellate court because of a defect which must have been detected if the subject had been so discussed."

This prompted the following observation (p245):

“... Discussions with colleagues do not constitute, in and of themselves, infringements of the panel member’s capacity to decide the issues at stake independently. A discussion does not prevent a decision maker from adjudicating in accordance with his own conscience and opinions nor does it constitute an obstacle to this freedom. Whatever discussion may take place, the ultimate decision will be that of the decision maker for which he assumes full responsibility.”

The Supreme Court was also satisfied that (p347):

“... the danger that full board meetings may fetter the individual independence of panel members is not sufficiently present to give rise to a reasonable apprehension of bias or lack of independence”

With specific reference to the *audi alteram partem* rule, the Justices considered that there was no contravention:

“.... provided that factual issues are not discussed at a full board meeting and that the parties are given a reasonable opportunity to respond to any new ground arising from such a meeting.”

Their Lordships were satisfied that the process entailed advantages which were “*obvious*”. These were the avoidance of inadvertent contradictory decisions, the enhancement of the overall quality of individual decisions and the attainment of the highest degree of coherence possible (at p 347). They gave the final word to the authors of “*La Decision Institutionnelle*” (Professors Blache and Comtois), page 708:

*“The institutionalising of decisions exists in our law and appears to be there to stay. The problem is thus not whether institutional decisions should be sanctioned, but to organise the process in such a way as to limit its dangers. **There is nothing revolutionary in this approach: it falls naturally into the tradition of English and Canadian jurisprudence that the rules of natural justice should be flexibly interpreted.**”*

[Emphasis added.]

18. The Ethical Principles for Judges published by the Canadian Judicial Council explicitly recognise the necessity of Judges enhancing “*the skill and knowledge necessary for effective judging*” (page 18 – and see also page 19). This is a universally recognised requirement of all judicial office holders. In an interesting treatise entitled “The Effects of Collegiality on Judicial Decision Making” (University of Pennsylvania Law Review, May 2003), Professor Edwards highlights a telling nexus. Developing the concept of a “*collegial court*”, he states:

“..... What I mean is that judges have a common interest, as members of the judiciary, in getting the law right and that, as a result, we are willing to listen, persuade and be persuaded, all in an atmosphere of civility and respect. Collegiality is a process that helps to create the conditions for principled agreement, by allowing all points of view to be aired and considered

Collegiality helps ensure that results are not preordained. The more collegial the court, the more likely it is that the cases that come before it will be determined solely on their legal merits (page 1644 - 1645)

While a judge spends much time working alone, the crucial decisional points in appellate judging occur in the company of, and in active engagement with, one's colleagues.”

We consider that the sentiments and principles expressed in these passages reflect the widespread and established tradition in the common law world, embracing both members of the allocated panel of Judges and other members of the chamber from which the panel is drawn which we have identified above.

19. Against this backdrop, we turn to examine the central elements of Counsel's submissions. These draw attention to, *inter alia* In Re Dyce Sombre [1849] 1 MAC & G, where Lord Cottenham LC stated, p1209:

“Every private communication to a Judge, for the purpose of influencing his decision upon a matter publicly before him, always is, and ought to be, reprobated; it is a course calculated, if tolerated, to divert the course of justice and is considered and ought more frequently than it is to be treated as what is really is, a high contempt of Court”.

We consider that this passage belongs to the quite different context of a party seeking, by private communication, to improperly influence a judicial decision by conduct ranking as contumelious. This expresses a long-established and fundamental prohibition which we consider to be distant from the present context. So too is the statement in In the matter of the Ludlow Charities [1837] 2 MY and CR 316, p 342, that it is a contempt of the highest order to engage in conduct designed “to taint the source of justice”. Our attention was also drawn to the statement of Lord Diplock in Attorney General v Times Newspapers [1974] 1 AC 273, p309:

“Once the dispute has been submitted to a court of law, [the parties] should be able to rely upon their being no usurpation by any other person of the function of that court to decide it according to law”.

Once again, this statement was made in the context of contempt of court. The law of contempt of court has, as its overarching purpose, the maintenance of the authority and dignity of the Courts. It is designed to prevent interference with the administration of justice. We are satisfied that the practice described in paragraph [11] of the Guidance Note does not entail any usurpation by any other agency of the function of the designated judicial panel, does not undermine the authority or dignity of the Tribunal and, fundamentally, does not constitute an interference with the administration of justice in this context. It is far removed from conduct which would be considered contumelious and, properly understood, does not entail any usurpation of the duties of the adjudicating judges.

20. This Appellant's argument also relies on the following passage in Wade and Forsyth's *Administrative Law* (10th edition), p 259:

"...The participation of non-members in the deliberations of a collective body may invalidate its acts. The decision of the disciplinary committee, for example, is likely to be invalid if any non-member of the committee has taken part in its proceedings"

A correct appreciation of the context of this passage establishes that it provides no support to the Appellant's argument. The main focus of the authors' attention is a combination of the doctrine of "*ultra vires*" and the principle "*delegatus non potest delegare*". Neither of these principles is infringed in the present context. Furthermore, as the quotation from Middlesex County Evaluation Committee v West Middlesex Assessment Area Committee [1937] Ch 361 makes clear, the practice described in the Guidance Note does not entail any improper influence on the part of any interested person. We are further satisfied that this practice does not entail, in the words of Lord Upjohn in Re K (Infants) [1965] AC 201 any withholding of material "*information*" from any of the parties. As the decision in Re K makes clear, "*information*" equates with evidence: in the present context we would emphasise that all of the parties have had access to all of the evidence. Furthermore, we are satisfied that this practice accords with the long standing principle articulated by Lord Bingham in Davidson v Scottish Ministers [2004] UKHL 34, [2004] UKHRR 1079, at [7], also invoked in this Appellant's arguments:

"In maintaining the confidence of the parties and the public in the integrity of the judicial process it is necessary that judicial tribunals should be independent and impartial and also that they should appear to be so. The Judge must be free of any influence which could prevent the bringing of an objective judgment to bear or which could distort the Judge's judgment and must appear to be so".

We are confident that the practice described in the Guidance Note and approved by Lord Bingham himself in his essay (paragraph [12], *supra*) is harmonious with this principle.

21. Finally, we consider that the practice described in the Guidance Note is distorted in Counsel's submissions. The word "*advice*" must be considered both in the discrete context in which it appears and the broader context formed by the principles and practices to which we have referred above. It is to be distinguished from, for example, advice tendered by a professional adviser, legal or otherwise. Furthermore, it does not contemplate either interested representations or adversarial argument. Nor does it accommodate the reception of any evidence not available to the parties or comments thereon. Metaphorically, the impugned practice neither disrupts the level playing field nor moves the goal posts. We would further observe that the arguments developed on behalf of this Appellant were not based on any authoritative judgment or respected academic text challenging the propriety of the arrangements specified in paragraph 11 of the Guidance Note.
22. For the reasons elaborated above we are satisfied that the arrangements described in paragraph 11 of Guidance Notes No. 2 of 2011 and operated in practice do not infringe any legal rule or principle. Thus we reject the contrary submission on behalf of the Appellant SSM.

The duties of the expert witness

23. We consider it appropriate to draw attention to this subject, given the prevalence and importance of expert evidence in Country Guidance cases. Mindful that substantial quantities of judicial ink have been spilled on this subject, we confine ourselves to highlighting and emphasising what appear to us to be amongst the most important considerations. The general principles are of some vintage. In National Justice CIA Naviera SA v Prudential Assurance Company Limited [1993] 2 Lloyd's Reports 68, Cresswell J stated, at pp 81 – 82:

"The duties and responsibilities of expert witnesses in civil cases include the following:

1. *Expert evidence presented to the court should be, and should be seen to be, the independent product of the expert uninfluenced as to form or content by the exigencies of litigation*
2. *An expert witness should provide independent assistance to the Court by way of objective unbiased opinion in relation to matters within his expertise*

An expert witness in the High Court should never assume the role of an advocate ...

3. *An expert witness should state the facts or assumption upon which his opinion is based. He should not omit to consider material facts which could detract from his concluded opinion.
....*
4. *An expert witness should make it clear when a particular question or issue falls outside his expertise.*
5. *If an expert's opinion is not properly researched because he considers that insufficient data is available, then this must be stated with an indication that the opinion is no more than a provisional one. In cases where an expert witness who has prepared a report could not assert that the report contained the truth, the whole truth and nothing but the truth without some qualification, that qualification should be stated in the report
....*
6. *If, after exchange of reports, an expert witness changes his view on a material matter having read the other side's expert's report, or for any other reason, such change of view should be communicated (through legal representatives) to the other side without delay and when appropriate to the Court."*

This code was duly approved by the Court of Appeal: see [1995] 1 Lloyd's Reports 455, at p496. It has been considered in a series of subsequent report cases: see, for example, Vernon v Bosley (No 2) [1997] 1 All ER 577, at page 601. In the latter case, Evans LJ stated, at page 603:

"... Expert witnesses are armed with the court's readiness to receive the expert evidence which it needs in order to reach a fully informed decision, whatever the nature of the topic may be. But their evidence ceases to be useful, and it may become counter-productive, when it is not marshalled by reference to the issues in the particular case and kept within the limits so fixed."

Judicial condemnation of an expert who does not appreciate his responsibilities is far from uncommon: see, for example, Stevens v Gullis [2000] 1 All ER 527, where Lord Woolf MR at pp.532-533 stated that the expert in question had:

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"... demonstrated by his conduct that he had no conception of the requirements placed upon an expert under the CPR

It is now clear from the rules that, in addition to the duty which an expert owes to a party, he is also under a duty to the court."

24. The requirements of CPR 31 also featured in Lucas v Barking Hospitals NHS Trust [2003] EWCA Civ 1102, where the emphasis was on CPR 31 and CPR 35. These provide (*inter alia*) that:

- (i) a party may apply for an order for inspection of any document mentioned in an expert's report which has not already been disclosed,
- (ii) every expert's report must state the substance of all material instructions, whether written or oral, on the basis of which the report was written, and
- (iii) such instructions are not privileged against disclosure.

Laws LJ made the following noteworthy observation:

"[42] As it seems to me the key to this case ... is the imperative of transparency, a general theme of the CPR but here specifically applied to the deployment of experts' reports. Thus the aim of rule 35.10(3) and (4) is broadly to ensure that the factual basis on which the expert has prepared his report is patent."

25. Thus in the contemporary era the subject of expert evidence and experts' reports is heavily regulated. The principles, rules and criteria highlighted above are of general application. They apply to experts giving evidence at every tier of the legal system. In the specific sphere of the Upper Tribunal (Immigration and Asylum Chamber), these standards apply fully, without any qualification. They are reflected in the Senior President's Practice Direction No 10 (2010) which, in paragraph 10, lays particular emphasis on a series of duties. We summarise these duties thus:

- (i) to provide information and express opinions independently, uninfluenced by the litigation;
- (ii) to consider all material facts, including those which might detract from the expert witness' opinion ;
- (iii) to be objective and unbiased;
- (iv) to avoid trespass into the prohibited territory of advocacy;

- (v) to be fully informed;
 - (vi) to act within the confines of the witness's area of expertise; and
 - (vii) to modify, or abandon one's view, where appropriate.
26. In the realm of expert testimony, important duties are also imposed on legal practitioners. These too feature in the aforementioned Practice Direction. These duties may be summarised thus:
- (i) to ensure that the expert is equipped with all relevant information and materials, which will include information and materials adverse to the client's case;
 - (ii) to vouchsafe that the expert is fully versed in the duties rehearsed above;
 - (iii) to communicate, promptly, any alterations in the expert's opinion to the other parties and the Tribunal, and
 - (iv) to ensure full compliance with the aforementioned Practice Statement, any other relevant Practice Statement, any relevant Guidance Note, all material requirements of the Rules and all case management directions and orders of the Tribunal.

These duties, also unqualified in nature, are a reflection of the bond between Bench and Representatives which features throughout the common law world.

27. The interface between the role of the expert witness and the duty of the Court or Tribunal features in the following passage in the judgment of Wilson J in Mibanga v Secretary of State for the Home Department [2005], EWHC 367:

"[24] It seems to me to be axiomatic that a fact finder must not reach his or her conclusion before surveying all the evidence relevant thereto....

The Secretary of State argues that decisions as to the credibility of an account are to be taken by the judicial fact finder and that, in their reports, experts, whether in relation to medical matters or in relation to in-country circumstances, cannot usurp the fact finder's function in assessing credibility. I agree. What, however, they can offer is a factual context in which it may be necessary for the fact finder to survey the allegations placed before him; and such context may prove a crucial aid to the decision whether or not to accept the truth of them.

It seems to me that a proper fact finding enquiry involves explanation as to the reason for which an expert view is rejected and indeed placed beyond the spectrum of views which could reasonably be held."

To this we would add that, as the hearing of the present appeals demonstrated, this Tribunal will always pay close attention to the expert's research; the availability of empirical data or other information bearing on the expert's views; the quality and reliability of such material; whether the expert has taken such material into account; the expert's willingness to modify or withdraw certain views or conclusions where other evidence, or expert opinion, suggests that this is appropriate; and the attitude of the expert, which will include his willingness to engage with the Tribunal. This is not designed to be an exhaustive list.

28. In the present appeal, the Appellants relied on the testimony of three expert witnesses. The constituent elements of this evidence were the experts' reports; their written responses to questions posed on behalf of the Secretary of State; examination in chief; cross examination; supplementary materials produced during the course of the hearing; and their responses to the Judges' questions.

LEGAL FRAMEWORK

Introduction

29. As identified earlier, the country guidance issue addressed in this case is focussed on the general situation as it affects the civilian population in Mogadishu. This must not lead us to confine our assessment of Article 15(c). We would sound the same note of warning that the Tribunal gave in HM and others (Article 15(c)) Iraq [2012] UKUT 00409 (IAC) at [260]:

“260. Our primary focus in these appeals is strictly confined to Article 15(c) of the Qualification Directive, and a discrete issue relating to risk on return to BIAP. However, since this case deals with the current situation in Iraq it will inevitably be a reference point for decision-makers deciding asylum-related appeals brought by Iraqis that are not confined to the Article 15(c) issue. In this context we would reiterate the observations made recently by the Tribunal in AK (Afghanistan) at [154]-[156] that in the general run of appeals decision-makers should ordinarily deal first with the issue of refugee eligibility and only deal with the issue of subsidiary protection (including Article 15(c) second. They should not deal with Article 3 until last:

“154. That is so for two main reasons. First of all, decision-makers are obliged by the structure of the Qualification Directive to give primacy to the issue of eligibility for refugee protection; whereas Articles 15(b) and (c) are species of “subsidiary” protection: see recitals 3, 5. Second, to skip over refugee eligibility would be to lend support to the misconception that persons fleeing armed conflict cannot fall within the Article 1A(2) Refugee Convention definition. That has never been so, even if there has been recurrent hesitation about the criteria that should apply to such cases: see AM & AM (armed conflict: risk categories) Somalia CG [2008] UKAIT 00091, paras 17, 68.

155. In relation to why Article 3 ECHR should be dealt with last, the reason is simple. By virtue of Article 15(b) of the Qualification Directive, a person who can establish an Article 3 risk, will (save in one limited respect relating to health cases) be able to show he is entitled to subsidiary (humanitarian protection) under 15(b). By contrast with Article 3 ECHR, subsidiary protection (humanitarian protection), including under Article 15(b), entitles the beneficiary to a legal status both at the level of EU law

(Article 24(2) of the Qualification Directive) and in UK law (paragraph 339C of the Immigration Rules).

156. As regards whether or not to deal with Article 15(b) or 15(c) first, it might seem that because the Court of Justice in Elgafaji has held that Article 15(c) has an additional scope to Article 3 ECHR that it would always be easier to address Article 15(c) first as having broader scope. But establishing subsidiary protection eligibility under Article 15(b) may sometimes be more straightforward than seeking to do so under Article 15(c). This may arise where, for example, the claimant falls within a risk category but cannot show a Refugee Convention ground (e.g. where he is at real risk of persecution/serious harm at the hands of a powerful criminal gang). It may also arise where there is a recent ECHR case that establishes comprehensively that there is an exceptionally high level of generalised violence in the claimant's country that amounts to a violation of Article 3 ECHR (see NA v UK Application no. 25904/07, paras 115-116; Sufi and Elmi v UK Applications nos. 8319/07 and 11449/07, paras 218, 250) and there is no valid reason to take a different view. Another problem is that whilst it is now established that Article 15(c) has an additional scope to Article 3 ECHR (a near equivalent to Article 15(b) of the Qualification Directive), the ascertainment of that additional scope may not always be a simple matter."

The law relating to Article 15(c) of the Qualification Directive

30. Article 15(c) provides as follows:

"Serious harm consist of

- (a) death penalty or execution;
- (b) torture or inhuman or degrading treatment or punishment of an Applicant in the country of origin; and
- (c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict."

Article 15 is applied by Article 2(e) which defines a person eligible for subsidiary protection (described as humanitarian protection in paragraph 339C of the Immigration Rules HC395 (as amended) ("the

Immigration Rules”) which applies Article 15 using the same terminology save for the addition of ‘unlawful killing’) as follows:

“... a third country national ... person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for disbelieving that the person concerned, if returned to his or her country of origin ... would face a real risk of suffering serious harm as defined in Article 15 ... and is unable or, owing to such risk, unable to avail himself or herself of the protection of the country.”

There are now two decisions of the Court of Justice of the European Union (CJEU) which deal with Article 15(c): Case (C-465/07) Elgafaji v Staatssecretaris van Justitie [2009] 1 WLR 2100, and Case (C-285/12) Diakite v Commissaire general aux refugies [2014] WLR(D) 37, [2014].

31. In Elgafaji, the ECJ construed Article 15(c) as dealing with a more general risk of harm than that covered by 15(a) and (b).

The essence of the Court’s ruling in Elgafaji was:

“43. Having regard to all of the foregoing considerations, the answer to the questions referred is that Article 15(c) of the Directive, in conjunction with Article 2(e) of the Directive, must be interpreted as meaning that: the existence of a serious and individual threat to the life or person of an applicant for subsidiary protection is not subject to the condition that that applicant adduce evidence that he is specifically targeted by reason of factors particular to his personal circumstances; the existence of such a threat can exceptionally be considered to be established where the degree of indiscriminate violence characterising the armed conflict taking place assessed by the competent national authorities before which an application for subsidiary protection is made, or by the courts of a Member State to which a decision refusing such an application is referred reaches such a high level that substantial grounds are shown for believing that a civilian, returned to the relevant country or, as the case may be, to the relevant region, would, solely on account of his presence on the territory of that country or region, face a real risk of being subject to that threat.”

32. In Diakite, the Court, having provided a definition of internal armed conflict at [28], reaffirmed in [30] its view that for civilians as such to

qualify for protection under Article 15(c) they would need to demonstrate that indiscriminate violence was at a high level:

“30. Furthermore, it should be borne in mind that the existence of an internal armed conflict can be a cause for granting subsidiary protection only where confrontations between a State’s armed forces and one or more armed groups or between two or more armed groups are exceptionally considered to create a serious and individual threat to the life or person of an applicant for subsidiary protection for the purposes of Article 15(c) of Directive 2004/83 because the degree of indiscriminate violence which characterises those confrontations reaches such a high level that substantial grounds are shown for believing that a civilian, if returned to the relevant country or, as the case may be, to the relevant region, would – solely on account of his presence in the territory of that country or region – face a real risk of being subject to that threat (see, to that effect, Elgafaji, paragraph 43).”

At [31] the Court reaffirmed the view it expressed in Elgafaji at [39] that Article 15(c) also contains (what UNHCR has termed) a “sliding scale” such that “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.” The Court thereby recognised that a person may still be accorded protection even when the general level of violence is not very high if they are able to show that there are specific reasons, over and above them being mere civilians, for being affected by the indiscriminate violence. In this way the Article 15(c) inquiry is two-pronged: (a) it asks whether the level of violence is so high that there is a general risk to all civilians; (b) it asks that even if there is not such a general risk, there is a specific risk based on the “sliding-scale” notion.

33. In the United Kingdom, the principal decision of the higher courts dealing with Article 15(c) remains QD (Iraq) v Secretary of State for the Home Department [2011] 1 WLR 689. QD helpfully explains and indicates how Elgafaji should be applied. In addition we have the guidance set out in HM and others (Article 15(c) Iraq CG [2012] UKUT 409 (IAC). At [42]-[45] of HM (Iraq) the Tribunal stated that:

“42. We recognise that the threat to life or person of an individual need not come directly from armed conflict. It will suffice that the result of such conflict is a breakdown of law and order which has the effect of creating the necessary risk. It is obvious that the risk is most likely to

result from indiscriminate bombings or shootings. These can properly be regarded as indiscriminate in the sense that, albeit they may have specific or general targets, they inevitably expose the ordinary civilian who happens to be at the scene to what has been described in argument as collateral damage. By specific targets, we refer to individuals or gatherings of individuals such as army or police officers. The means adopted may be bombs, which can affect others besides the target, or shootings, which produce a lesser but nonetheless real risk of collateral damage. By general targets we refer to more indiscriminate attacks on, for example, Sunnis or Shi'as or vice versa. Such attacks can involve explosions of bombs in crowded places such as markets or where religious processions or gatherings are taking place. "

43. The CJEU requires us to decide whether the degree of indiscriminate violence characterising the armed conflict taking place reaches such a high level as to show the existence for an ordinary civilian of a real risk of serious harm in the country or in a particular region. When we refer below to the "Article 15(c) threshold", this is what we have in mind. Thus it is necessary to assess whether the level of violence is such as to meet the test.

...

44. In HM1 at [73] the Tribunal decided that an attempt to distinguish between a real risk of targeted and incidental killing of civilians during armed conflict was not a helpful exercise. We agree, but in assessing whether the risk reaches the level required by the CJEU, focus on the evidence about the numbers of civilians killed or wounded is obviously of prime importance. Thus we have been told that each death can be multiplied up to seven times when considering injuries to bystanders. This is somewhat speculative and it must be obvious that the risk of what has been called collateral damage will differ depending on the nature of the killing. A bomb is likely to cause far greater "collateral damage" than an assassination by shooting. But the incidence and numbers of death are a helpful starting point.
45. The harm in question must be serious enough to merit medical treatment. It is not limited to physical harm and can include serious mental harm such as, for example,

post-traumatic stress disorder. We repeat and adopt what the Tribunal said in HM1 at [80]:

“In our judgment the nexus between the generalised armed conflict and the indiscriminate violence posing a real risk to life or person is met when the intensity of the conflict involves means of combat (whether permissible under the laws of war or not) that seriously endanger non-combatants as well as result in such a general breakdown of law and order as to permit anarchy and criminality occasioning the serious harm referred to in the Directive. Such violence is indiscriminate in effect even if not necessarily in aim. As the French Conseil d’Etat observed in *Baskarathas*, it is not necessary for the threat to life or person to derive from protagonists in the armed conflict in question: it can simply be a product of the breakdown of law and order.”

The law relating to Article 3 ECHR

34. Being well-established, it is unnecessary to set out the relevant case law on Article 3 except to highlight that in NA (UT Rule 45: Singh v Belgium) Iran [2014] UKUT 00205 (IAC) the Court recognised that if the level of violence in a country or an area of a country reaches an exceptionally high level, that could mean anyone being required to return there could face a real risk of serious harm, irrespective of their individual circumstances. It remained the case that individuals could also succeed on Article 3 grounds by showing they faced particular harms personal to them or a combination of general and personal dangers.

Leading cases dealing with Somalia

- (a) Mogadishu and Article 15(c)
35. In AM & AM (armed conflict: risk categories) Somalia CG [2008] UKAIT 00091 at [178]-[179], decided in October 2008, the AIT held that the situation in Mogadishu was such that it would amount to persecution, serious harm and ill treatment contrary to Article 3 to return anyone there unless they have close connections with powerful actors:

“178. In light of the above, we accept that since HH the situation in Mogadishu has changed significantly, both in terms of the extent of population 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 case 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.

179. It will be evident from the above findings relating to Mogadishu that although we follow KH (Iraq) in considering that Article 15(c) has 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.”

36. In AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia CG [2011] UKUT 445 (IAC), decided in November 2011, the Tribunal decided that it should take the previous country guidance case of AM & AM as a starting-point to be read in the light of the subsequent decision of the Strasbourg Court in Sufi and Elmi. At [345] it stated that:

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”.

37. The Tribunal then went on to conclude that given the recent history of Mogadishu and the starting point provided by the conclusions in AM & AM, taken together with the most up-to-date evidence, “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.” ([350]).

38. At [357]-[358] the Tribunal identified a category of person who would not face a general Article 15(c) risk:

“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. “

39. At [363] the Tribunal added this caveat:

“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) Mogadishu and Article 3 ECHR

40. As already noted, the Tribunal in AM and AM considered that the situation in Mogadishu was such that it would be contrary to Article 3 (and also contrary to Article 1A(2) of the Refugee Convention and Article 15(c) of the Qualification Directive) to require anyone to return there save for those connected with powerful actors.

In Sufi and Elmi the ECtHR confirmed that it did not exclude that in exceptional circumstances characterised by a high degree of generalised violence it was possible to consider that all persons were at Article 3 risk of harm:

“Therefore, following NA v the United Kingdom, the sole question for the Court to consider in an expulsion case is whether, in all the circumstances of the case before it, substantial grounds have been shown for believing that the person concerned, if returned, would face a real risk of being subjected to treatment contrary to Article 3 of the Convention. If the existence of such a risk is established, the applicant’s removal would necessarily breach Article 3, regardless of whether the risk emanates from a general situation of violence, a personal characteristic of the applicant, or a combination of the two. However, it is clear that not every situation of general violence will give rise to such a risk. On the contrary, the Court has made it clear that a general situation of violence would only be of sufficient intensity to create such a risk “in the most extreme cases” where there was a real risk of ill-treatment simply by virtue of an individual being exposed to such violence on return (*ibid.*, § 115).”

At [248]-[250] the ECtHR concluded:

“248. The Court considers 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 has had regard to the 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.

249. The Court notes that in AM & AM (Somalia) the Asylum and Immigration Tribunal left open the possibility that certain individuals who were exceptionally well-connected to

“powerful actors” in Mogadishu might be able to obtain protection and live safely in the city. The Court has not received any submissions specifically addressed to this issue and observes that it is one on which the country reports have been largely silent. As Article 3 requires the decision-maker to focus on the foreseeable consequences of removal for each individual applicant, it would not exclude that it might be shown that a well-connected individual 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. For example, it would not be enough to show that an individual was a member of a majority clan. Secondly, it recalls that in HH (Somalia) and Others v Secretary of State for the Home Department [2010] EWCA Civ 426 the Court of Appeal 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 in question had recently been in Somalia.

250. Consequently, the Court concludes that the violence in Mogadishu is of such a level of intensity that anyone in the city, except possibly those who are exceptionally well-connected to “powerful actors”, would be at real risk of treatment prohibited by Article 3 of the Convention.”

41. In AMM, reported in November 2011, The Tribunal’s conclusion in relation to Article 3 was as follows:

“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). "

42. In KAB v Sweden (Application no.886/11), [2013] ECHR 814 the Court noted what its view had been in Sufi and Elmi and what the view of the Tribunal in AMM had been regarding safety in Mogadishu and Central and Southern Somalia more generally. The Court decided that there had been a significant change in the situation in Mogadishu since the Sufi and Elmi judgment. It gave its reasons as follows:

"86. Therefore, the Court is now called upon to assess whether the violence in Mogadishu is, at present, still of such a level of intensity that anyone in the city would be at real risk of treatment contrary to Article 3 of the Convention. In doing so, it will have regard to, among other things, the criteria it applied in the case of Sufi and Elmi (see paragraph 77 above).

87. The most recent information suggests that the security situation in Mogadishu has improved since 2011 or the beginning of 2012. Al-Shabaab withdrew from the city in August 2011 and the withdrawal was complete by the end of May 2012 (see the joint report from the Danish and Norwegian immigration services of May 2013, paragraph 39 above). Thereafter the Transitional Federal Government (TFG) and AMISOM had control of the whole of Mogadishu (see, among other authorities, Lifos' report of 24 October 2012, paragraph 33 above). TFG's mandate ended on 20 August 2012 and a new

administration was inaugurated (see the Human Rights Watch World Report, paragraph 46 above). The main challenge for the new Somali National Government is improving security (*ibid*) and at least one source states that the security situation deteriorated again in the first two months of the new administration, i.e. September and October 2012 (see the joint report from the Danish and Norwegian Immigration services of January 2013, paragraph 35 above, referring to a director of operations of a local NGO).

88. The sources appear to agree that the general level of violence in the city has decreased. There is no frontline in the city anymore (see Lifos' report, paragraph 33 above and the joint reports from the Danish and Norwegian Immigration services of January 2013 and of May 2013, paragraph 34 and 40 above). Consequently, there have been improvements for the ordinary citizens and a certain normalisation of the daily life in the city (same sources, paragraphs 33 to 35 above). However, al-Shabaab is still present in the city and does perform attacks which are mainly targeted against specific groups but can also affect the ordinary citizen. The violence in the city mainly consists of bomb attacks but can also consist of shootings between different militias, TFG or AMISOM (Lifos, paragraph 33 above).

89. Exact figures about civilian casualties do not appear to be readily available but sources indicate that the number of civilian casualties has decreased because front-line fighting has moved out of the city (see paragraph 34 above) and there is no shelling any more (see paragraph 44 above). However, civilian casualties do remain a daily occurrence (see paragraph 34 above). Sources also appear to agree that al-Shabaab does not, in general, target civilians deliberately; its attacks are directed against government affiliates, the police, SNAF and other such groups (see paragraph 41 and 42 above).

90. Moreover, the relevant country information indicates that people are returning to Mogadishu, although it is not yet clear to which extent. Reports mention that people from the diaspora are returning as are also some refugees from across the border in Kenya. The numbers do not appear to be high at the moment, seen in light of the significant number of displaced persons.

91. The Court is aware that the human rights and security situation in Mogadishu is serious and fragile and in many ways unpredictable. However, in the light of the above, in particular the fact that al-Shabaab is no longer in power in the city, there is no front-line fighting or shelling any longer and the number of

civilian casualties has gone down, it finds that the available country information does not indicate that the situation is, at present, of such a nature as to place everyone who is present in the city at a real risk of treatment contrary to Article 3 of the Convention. Therefore, the Court has to establish whether the applicant's personal situation is such that his return to Somalia would contravene the relevant provisions of the Convention.

92. The Court notes that the applicant was heard by both the Migration Board and the Migration Court, that his claims were carefully examined by these instances and that they delivered decisions containing extensive reasons for their conclusions, albeit on the basis of a return to Somalia and not to Somaliland.

93. The Court agrees with the Swedish authorities that the applicant has substantiated that he originates from Mogadishu. However, as noted by the authorities, he has failed to substantiate that he lived there in the years prior to leaving the country in 2009. In that context, the Court notes, in particular, the inconsistencies in the applicant's submissions and the conflicting information submitted by his brother and his nephew's wife. The Court also notes that he has submitted conflicting information on the whereabouts of his children. In the light of this, the Court finds that there are credibility issues concerning a number of the applicant's submissions.

94. Moreover, the Court finds, as noted by the Swedish authorities, that the applicant's submissions regarding his work for the American Friends Service Community were vague and lacking in detail. He had not been able to submit information about the nature of his work or how the Islamist courts and al-Shabaab had become aware of it. The Court also finds it surprising that al-Shabaab would start to threaten the applicant on the ground of his work four years after he stopped the work.

95. The Court further notes, as did the Swedish authorities, that the threats against the applicant allegedly took place in a period during which he has not substantiated that he in fact lived in Mogadishu.

96. Lastly, the Court notes that the applicant does not belong to any group that is at risk of being targeted by al-Shabaab and that allegedly he has a home in Mogadishu, where his wife lives.

97. Having regard to the above, the Court concludes that the applicant has failed to make it plausible that he would face a real risk of being killed or subjected to ill-treatment upon return to Somalia. Consequently, his deportation to that country would not involve a violation of Article 2 or 3 of the Convention.”

(c) Mogadishu and the interrelationship between Article 15(c) and Article 3 ECHR

43. In Sufi and Elmi at [226] The Court observed:

“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 Directive. 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.”

In AMM the Tribunal considered whether this development in Strasbourg jurisprudence meant that there was no longer any basis for considering that Article 15(c) had an additional scope to Article 3 ECHR.

At [366]-[367] it concluded that whilst for the great majority of its citizens the situation in Mogadishu reached the threshold of Article 15(c) general risk, the same could not be said for Article 3 threshold:

“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)."

The Court in KAB did not take the opportunity to add anything further to what it had said about this interrelationship in Sufi & Elmi.

The Evidence

44. To assist and inform the resolution of the question set out at the beginning of this determination concerning the country guidance questions to be addressed, the parties have put before the Tribunal a substantial body of documentary evidence: this is itemised in the Appendices to this determination. Such is the scale and extent of that documentary evidence that it is not possible to discuss all of it in this determination, although, for the avoidance of any possible doubt, we have had regard to all that has been put before us. In addition, we have the benefit of expert evidence, written and oral, from three expert witnesses as well as extensive oral and written submissions on behalf of each party to this appeal. A summary of the written expert evidence is set out in the annex to this determination.
45. There has not been a complete consensus in the expert evidence. This illustrates an important point. Simply because an expert witness asserts something does not mean that it must or should be accepted to be correct. As we shall see, well informed and objectively minded witnesses

can reach different views even though drawing upon substantially the same body of evidence. It is the task of the Tribunal to assess all of the evidence available and reach conclusions. In doing so careful regard is had to the opinions expressed by each of the expert witnesses, but in resolving tensions in that evidence, where they arise, the Tribunal may have to, in some respects, depart from an expert view expressed.

The expert evidence

46. We received expert evidence from three witnesses, each of whom prepared lengthy written reports and then provided written responses to questions posed by the respondent. Two of those experts have produced reports on behalf of more than one appellant, and so inevitably there is some duplication of the ground covered in those reports. Thus, in addition to the advantage of very detailed written evidence, we received oral evidence at some considerable length from each. Although, as we have observed, this evidence was not completely in alignment in every respect, there were a number of clear threads common to the evidence of each expert witness:

- a. First, the relevance of clan membership, though remaining important in some respects, has changed in overall significance for those living in Mogadishu. Significant population movements have changed the numerical presence of clans in districts in Mogadishu and Al Shabaab has referred to discrimination on the basis of clan membership as being “un-Islamic” because everyone is equal in the eyes of Allah;
- b. Second, an accurate assessment of the reach of Al Shabaab into Mogadishu is central to any assessment of the level of risk facing those living in that city. Although the withdrawal of Al Shabaab was mainly completed by mid 2012, in the sense that it no longer purported to be in control of areas of the city other than those districts from which withdrawal was completed later, it is plain that it continues to be capable of launching attacks upon carefully chosen targets within the city;
- c. Third, the nature of the way in which Al Shabaab seeks to inflict damage has changed from classic battle methods in which armed combatants confront each other and exchange fire to what is described as “complex attacks” or “asymmetrical warfare” associated with guerrilla activities. In short, this often involves a combination of elements involved in an attack with either multiple

targets hit simultaneously or successive attacks on the same target, for example with a grenade attack following on from a suicide bomb attack, a technique that those representing the appellants submit is designed to inflict casualties upon the civilians who gather in the aftermath of the initial incident.

- d. There is a broad spectrum of circumstances in which people are living in Mogadishu today. At one end are the dispossessed living in IDP camps. As we shall see, there is a discussion to be had about who is and who is not an IDP. The evidence discloses references to “wealthy IDPs”. It is plainly the case, though, that significant numbers of people continue to live in Mogadishu in conditions of or close to destitution. At the other end of the spectrum there are those who have been referred to by some commentators as living in “privileged” circumstances, either because they enjoy the very significant levels of protection provided by the African Union Mission in Somalia (“AMISOM”) or because they have access to considerable resources which enable them to assemble personal security arrangements and to live in safe and secure areas of the city behind high walls and guarded gates to ensure that those gaining entry are carefully monitored. There is evidence of a very considerable economic “boom” with significant numbers of people returning from the Diaspora to take advantage of business and investment opportunities that are presently available in Mogadishu as land prices are said to be rocketing and a good deal of new construction work proceeds.
- e. Finally, there was agreement between the expert witnesses that statistics available concerning numbers of civilians killed or injured as a consequence of the violent attacks perpetrated by Al Shabaab and others are not comprehensive or necessarily a reliable indication of overall casualties.

Dr Joseph Mullen

47. Dr Mullen has maintained a longstanding professional interest in Somalia and is well placed to express an expert opinion on current country conditions. He sets out in his report a full account of his researches and sources. For present purposes it is sufficient to say that he has conducted primary research in Somalia and has drawn

extensively upon a wide range of contacts in Somalia and elsewhere as well as having carried out a comprehensive study of the documentary evidence available. He has not himself visited Mogadishu since 2005 but that does not disqualify him from offering an expert view of the current conditions in that city based on his research and network of contacts.

48. At paragraph 6 of his report, Dr Mullen explains his approach:

“In the light of the improved governance in Somalia and the enhanced security measures in Mogadishu with the departure of Al Shabaab, it appears to be the intention of the Courts to update the country guidance given in AMM and, by implication, that of AM & AM and HH in relation to the Refugee Convention and associated serious harm issues (Art 15(c)) of the Qualification Directive and humanitarian considerations....

...

This paper will summarise the security parameters upon which AMM was historically based and compare these to the current situation, focussing in particular on the influence of Al Shabaab, changed humanitarian situation, increasing stabilisation and eliciting a risk assessment in the event of returning Somali citizens...”

49. The initial conclusion reached by Dr Mullen is to be found at the section of his report beginning at paragraph 93:

“... the critical question is whether there are currently any factors which would justify the broadening of the AMM exclusion which previously applied to businessmen, politicians and those of substantial economic means, to include the returning citizenry at large.... Do the improvements in governance, security, increased territorial control, relocation of aid agency and diplomatic offices from Nairobi to Mogadishu and large influx of Diaspora members warrant a universal retention of Art. 3 and arts. 15(c) eligibility?

Having observed that:

“No life solution in Mogadishu is without some degree of risk”

Dr Mullen said this:

“... In current circumstances of supposed improved security in Mogadishu, in contrast to that of July 2011 at the time of AMM,

it would be unreasonable to assume that virtually the whole population (apart from the exceptional groups cited in AMM) of Mogadishu would qualify under this definition for Art. 3 treatment...

...

The ultimate question is whether the level of safety currently prevailing is adequately robust and sustainable. On the basis of the evidence submitted, its quality, coherence, it is my opinion that there are cogent evidential facts to support the proposition that Mogadishu remains unsafe for certain vulnerable groups of returning asylum seekers.... Which would suggest that AMM's analysis of risk and its correlation to Art. 2, Art. 3 and Art. 15(c) continues to subsist for certain vulnerable categories but the exceptions should be widened."

50. Having given oral evidence over two days during which he was questioned closely about his report and invited to comment upon other material now available to the Tribunal, Dr Mullen was asked whether, in his expert opinion, there had in fact been a durable change in conditions in Mogadishu since the period under consideration in AMM. He said:

"Proportionately, given that the population of Mogadishu has increased, level of economic activity has increased, the currency has increased, visible returning diaspora, decisions being made by people's pockets and choices do suggest there is a degree of durability."

Dr Mullen then posed for himself the question of whether one should extend the group of those identified in AMM as not being at an unacceptable level of risk on return and provided the following answer:

"Yes, I think that the groups at risk currently in Mogadishu are those linked to poverty. Those lacking in resources. Those without social capital. In other words, without a clan framework to fall back on... groups who would be candidates for IDP camps. If one would be consigned to an IDP camp on return then he should be entitled to protection.... A case by case assessment is required to ensure those applying for protection are those who would not receive it from other sources."

51. In order to place that carefully considered conclusion, reached upon reflection of all that he had been asked to comment upon, into context, it is necessary to look closely at Dr Mullen's evidence in respect of the complex nature of country conditions in Mogadishu since country guidance was last given, and in particular at the trends that can be detected in changing events.

52. Initially, Dr Mullen's position was more guarded, reflecting a view echoed by each of the expert witnesses that the security situation had worsened in 2013. At paragraph 32 of his report he said:

"However, as the security situation has improved to a degree in Mogadishu since the departure of Al Shabaab in July/August 2011, there is speculation that AMM findings in relation to Art 15(c) are no longer relevant to the current situation because of the change in the level of security. The facts cited above, which refer to post August 2011 and up to April 2013, after which security benefits appear to taper off, would suggest a situation of security that is temporary and fragile and falls short of the standard of durability required under AMM. Furthermore, there is a trend to understate security risks in the general enthusiasm to support the new government and to attract development funding...."

53. It is clear from Dr Mullen's evidence that Mogadishu saw an improvement in the security situation following the withdrawal from the city of Al Shabaab. This was not just because the withdrawal heralded an end of classic confrontational warfare within the city which manner of fighting gave rise to cross-fire in which civilians could be caught up. There was then, before that withdrawal, an additional risk no longer present, from the forces deployed by the Transitional Federal Government (TFG) as they shelled areas of the city from where Al Shabaab launched rocket attacks. This improvement in the security situation was described by Dr Mullen as "the key driver" in the assessment of the current situation:

"With the withdrawal of Al Shabaab from Mogadishu in Aug 2011, the security situation in Mogadishu has unquestionably improved but in a rather eclectic manner.... Mogadishu has seen a period of relative stability over the last 24 months in contrast to the last 21 years... but from a very low base. The city has moved away from its recent history of running street battles involving mortars, rockets and tanks and indiscriminate bombing between Al Shabaab and the allied forces of the SNA and AMISOM. More significantly, with the election of a new President, Hassan Sheikh Mohamud, and the selection of a new Prime Minister with a newly reduced cabinet in November 2012, there have been substantive changes in governance for the better underpinning the improved security situation."

In his oral evidence, Dr Mullen added that the withdrawal of Al Shabaab from the last few districts of Mogadishu where it had maintained a

presence was completed in January 2013. In his report, noting that President Mohamud had spoken of Somalia “entering a new era with a more legitimate government and progress on security”, he pointed to less optimistic views of improvements that were to be detected, one commentator having observed that it “would take decades to establish functioning institutions”, but his own view was that:

“It would be disingenuous to argue that the Human Rights situation in Somalia has not improved, particularly at the level of legislation since AMM. The report of the UN Human Rights Commission’s Independent Expert, Shamsul Bari of 29 August 2011, or close to the date of AMM, considers that there has been an “unending saga of human rights deprivation. By contrast, the same Expert, Shamsul Bari, two years later is now full of hope” on the issue of human rights.... Within this legislative framework, the protection of vulnerable sections of the population such as IDPs, minorities, failed asylum seekers and women would be ensured....”

54. It is also clear from Dr Mullen’s evidence that Mogadishu saw an improvement in what Dr Mullen termed the humanitarian situation in Mogadishu, although significant numbers of people remain in need of some form of food aid. The declared state of famine was rescinded with effect from January 2013. The evidence disclosed a substantial disparity in quality of life for citizens of Mogadishu with those living in the IDP camps coping with the worse conditions. We examine below in more detail what Dr Mullen has to say about that group of people.

The reach of Al Shabaab into Mogadishu

55. We next consider Dr Mullen’s evidence in respect of the second of the issues identified at paragraph 42 above: the reach of Al Shabaab into Mogadishu subsequent to its withdrawal from an established visible presence in the city. At paragraph 17 of his report, Dr Mullen referred to an Inter Press Service Report published on 3 August 2013 which confirmed that:

“... there has been a rise in the number of ambushes, assassinations and suicide bombs in the Somali capital. The city has experienced its deadliest attacks in recent times during the last two weeks.”

In this context he referred also to one of the trilogy of joint reports from the Danish Immigration Service and Norwegian Landinfo’s fact finding mission to Nairobi and Mogadishu (to which reference is made as

Danish 1, 2 and 3), which have featured prominently in the expert evidence generally, saying:

“As outlined in section 2.1 of Danish 2 there has been a litany of armed attacks bearing the hallmark of a sophisticated terrorist cell, including suicide bombings remote controlled IEDs and assassinations. Soldiers travel around in armoured personnel carriers and not on foot, targeted assassinations continue, civilian casualties far outnumber military ones, as late as May 2013 a series of attacks have taken place in Mogadishu. 34 people were killed in a series of coordinated suicide attacks on 14 April 2013. So far, it was the deadliest attack since the inauguration of the new government...”

In cross-examination Dr Mullen was invited to identify where in Danish 2 it was asserted that civilian casualties “far outnumbered” military ones and he was unable to do so. He was referred to a report suggesting that there had been, in fact, a decrease in civilian casualties but Dr Mullen dismissed this as being a report by a “briefcase NGO” with no in-depth knowledge of the situation. This, therefore, is his own view of the balance of casualties between the military and the civilian and that view needs to be assessed in the light of the discussion below about that which is known of what has been referred to as weapons-related casualties or fatalities.

56. Drawing upon information provided in the Danish 1 report, Dr Mullen set out what he described in his report as “a taster” of the incidents that took place in one week, that being the week between 1 January to 8 January 2012. His purpose in doing so was to illustrate the instability to be found in Mogadishu and the ability of Al Shabaab to carry out attacks throughout the city, notwithstanding its withdrawal from Mogadishu. The following incidents or events are listed:

1. armed conflict in Hurwaa and Karan Districts between Al Shabaab and TFG/AMISOM
2. hand grenade attacks against TFG troops in Hawalwadag
3. mortar shelling of the Burundian AMISOM compound in Hoosh
4. armed clashes and shelling at SOS hospital in Hurwaa District
5. hand grenade attacks on hotel in Waberi District
6. heavy gunfire and shelling between TFG/AMISOM and Al Shabaab near Dayniile
7. criminal murders (3) of random minibus passengers
8. IED devices targeted at AMISOM soldiers in Wardighley

9. TFG/AMISOM and AS exchanged heavy shelling and gunfire in Karan
10. Heavy exchange of fire between TFG/AMISOM and AS
11. Exchange of fire between Somali National Police and clan militia over illegal checkpoint at Dharkenley
12. IED in Hodan District and IED near Tarbubka IDP camp

Dr Mullen observed that in all there were 25 fatalities and “numerous unreported injured” which constituted a significant bedrock of risk applicable to all citizens irrespective of clan or occupation.

57. As was pointed out in cross-examination, there are a number of difficulties about this evidence. First, it is not altogether easy to see why events that took place more than two years ago are indicative of the present position. It is common ground between the expert witnesses, and plain from the documentary evidence as a whole that, generally, the exchange of mortar shelling and gunfire in the form of direct confrontational clashes between Al Shabaab and forces deployed on behalf of the Somali authorities is no longer to be encountered within Mogadishu. Second, and again generally but not without exception, there are no longer checkpoints to be routinely encountered within Mogadishu. Also, this was a week during which Al Shabaab had not completed its withdrawal from Mogadishu. For those reasons it might be thought that this was unlikely to be illustrative of the position today.
58. The third problem with Dr Mullen’s reliance on this evidence is that it discloses a difficulty with his approach to information or other reports. The documentary material to which Dr Mullen had regard to support his evidence that in all there were 25 fatalities during this period in fact did not say that at all. That evidence spoke of 11 fatalities only, of which 2 were military, and 15 people injured. Pressed to explain how his evidence could be as asserted in the light of that, Dr Mullen said that in the light of under reporting of casualties he:

“ ... then looked at the data sheet and where there was ambiguity I adjusted numbers to give a more likely picture of what might have occurred. ”

In his written response to questions raised by the respondent arising from his report, Dr Mullen had said (Q18) that:

“In reporting casualties AMISOM often equates casualties with fatalities. Many military casualties bypass the Mogadishu hospitals.... AMISOM reporting of incidents regularly uses the vague expression “exact number of casualties/fatalities could not be established” Al Shabaab generally underestimates the

number of its own casualties and exaggerates the damage it has inflicted on AMISOM while ignoring the casualties it has caused to civilians...”

In cross-examination it was put to Dr Mullen that he was simply wrong to say that AMISOM did not distinguish between casualties and fatalities, a criticism he appeared, at least in part, to accept in responding:

“This is, admittedly, a more rounded interpretation.”

59. A further difficulty is that, as Dr Mullen accepted in his written response to the questions arising from his report that he was asked to address, the term “numerous unreported injured” was not used in the Danish 1 report relied upon as the source of his comments.
60. That Dr Mullen’s focus may not have been sufficiently current, is reinforced by the words he used at paragraph 24 of his report when recording an asserted concern that the President was not in control of all of Mogadishu as being expressed “as late as 3-4 December 2012”, which is more than a year ago.
61. There is, though, ample evidence identified by Dr Mullen of continuing recent attacks being carried out in Mogadishu by Al Shabaab. He points to an Al Shabaab attack on the United Nations Headquarters in Mogadishu on 14 April 2013 which led to the deaths of 29 people including international staff. At paragraph 28 of his report he cites from a UN Security Body report:

“There are on average several targeted killings per week in Mogadishu, four to five weekly hand grenade attacks in Mogadishu and usually more.”

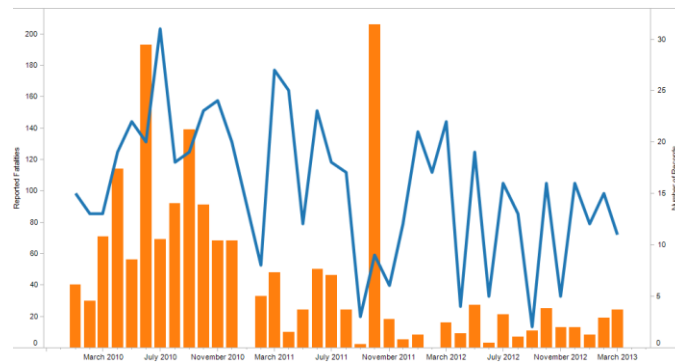
And from the Danish 3 report:

“Targeted assassinations could be undertaken by anyone who could pay for this.”

62. We observe that, of course, targeted killings and assassinations are precisely that. The question to be grappled with is who is at risk of being targeted, or if not personally targeted, at risk of getting caught up in the targeted attack, even though it was not aimed at them.

The level of weapons-related civilian casualties

63. It is Dr Mullen’s evidence that, although Al Shabaab carried out targeted attacks in Mogadishu, the targets being recognisable groups or categories of people or locations, it is in the very nature of the manner in which those attacks are carried out that civilian casualties and fatalities are inevitable. Indeed, his opinion, as we have pointed out, was that civilian casualties far outnumber military casualties. Therefore we must look closely at his evidence relating to the analysis that can be carried out of casualty levels due to the activities of Al Shabaab in Mogadishu.
64. At paragraph 60 of his report Dr Mullen reproduces a chart taken from the Armed Conflict Location & Event Data Project (“ACLED”) (and readily accessible on the ACLED website) depicting conflict events and reported fatalities between 2009 and March 2013. In this chart the bars relate to the number of fatalities and the line to the number of events. This is said to provide support for the view that the risk of getting caught up in a violent attack remains undiminished.



65. But this is of very little assistance because it relates to the whole of Somalia and not just Mogadishu. Indeed, the two “unprecedented spikes” to which Dr Mullen referred to in support of his view that “the risk of violence is not confined to a pre AMM timeframe” relate to events outside Mogadishu. Although the trend in that chart, relating to the whole of Somalia, is said to be upwards, in the Danish 2 report a chart relating to events in Mogadishu alone is said by the respondent to indicate that the situation in Mogadishu since February 2012 “is reversing”. Dr Mullen was referred to comment in the Danish 2 report made by an international organisation :

“However, the international organisation believed that there is a decrease in the number of civilian casualties in Mogadishu, relative to the last few years. This decrease is due to front-line fighting having moved out of Mogadishu. There are now fewer mass-casualty attacks and killings, in particular due to the cessation of shelling in Mogadishu...”

It is important to note the overall context in which that view had been expressed, the report continuing:

“Still civilian casualties remain a daily occurrence, principally due to assassinations, improvised explosive devices (IEDs) and suicide attacks, and reactions to these attacks by the armed forces. Recent grenade and suicide bomb attacks on theatres and cafes, such as the August 2012 attack on the Jezira Hotel, cause numerous civilian casualties.”

Thus, the view offered in this report, that there had been a decrease in the number of civilian casualties, was expressed notwithstanding the continued use of IEDs and suicide attacks on targets identified by Al Shabaab. This part of the Danish 2 report to which Dr Mullen was referred in cross examination continued:

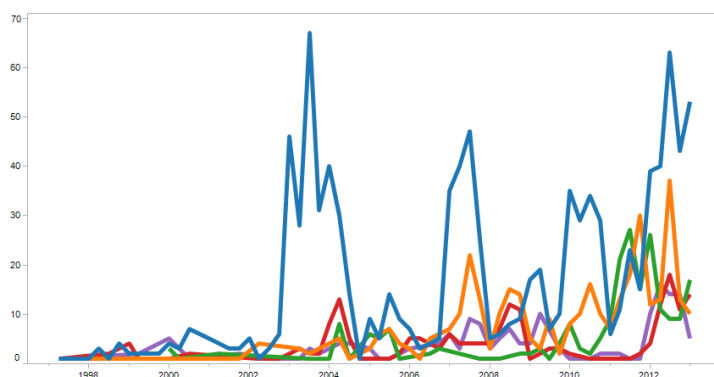
“According to an international NGO working in S/C Somalia the number of civilian casualties in Mogadishu has decreased considerably compared to February 2012 and today civilian casualties are at a minimum. In July 2011 two thirds of Mogadishu was under al-Shabaab control. Bombardment and shelling killed many, but this is no longer taking place. Today you have targeted attacks and sometimes by-passers get killed. It’s a question of being at the wrong place at the wrong time.”

66. Although Dr Mullen drew heavily upon the three Danish reports in assembling his written evidence, he had not dealt with this. He offered no disagreement when invited to comment in oral evidence. Further, when referred to a comment by Mr Tony Burns, of SAACID, someone upon whose appraisal of the current situation in Mogadishu Dr Mullen has placed reliance, that:

“...today there are occasional bombings, assassinations, etc...”

Dr Mullen said simply that he accepted Mr Burns’ professional competence. SAACID is an indigenous Somali, not-for-profit, non-religious, non-political, Non-Governmental Organisation (NGO) founded and directed by Somali women, that focuses on practical measures to enhance the life-options of women, children and the poor.

67. However, at paragraph 61 of his report, Dr Mullen reproduces a chart from the same source, ACLED, which depicts violent conflict events “in top 5 most violent regions” one of which regions is Mogadishu.



68. Dr Mullen suggested that “it is reasonable to assume that the numbers of casualties correlate to the number of events”. That, though, does not take us very much further without information of the scale of casualties and fatalities in fact generated by those events, bearing in mind what we have been told about the different nature of the attacks carried out by Al Shabaab following withdrawal from Mogadishu. More civilians are likely to be caught up in a shelling attack upon an urban area such as a busy commercial district than in a suicide bomb attack on a specific military or government target. In any comparative analysis carried out to inform an assessment of risk due to indiscriminate violence, in addition to the numbers of attacks regard must be had to the nature of those attacks as well as their capacity to inflict “collateral damage”. The difficulty encountered here is that there is a paucity of reliable data from which to draw reliable conclusions as to the overall numbers of casualties and fatalities generated by those violent events in Mogadishu.
69. In this respect, Dr Mullen drew upon a World Health Organisation (WHO) report that confirmed that during “the period of 2010-2011” more than 14,700 war-wounded civilians were admitted to three main hospitals in Mogadishu and during May 2011 alone, which was just before the date of hearing of AMM, more than 3,047 weapons-related injuries were treated. WHO reported also that between 1 January and 12 February 2012, 647 casualties from weapons-related injuries were treated in four Mogadishu hospitals. The difficulty with this, however, is that, although plainly 647 is a significantly lower figure than either the 3,047 recorded casualties in May 2011 or an average figure of 1,225 that can be calculated from the overall 2010-2011 figure, it tells us not very much about overall casualty numbers because there are more than four hospitals in Mogadishu and, in any event, these figures relate to the period before Al Shabaab withdrew from Mogadishu after which the nature of their attacks changed.
70. Dealing with the post withdrawal change in the nature of attacks launched by Al Shabaab, Dr Mullen spoke in oral evidence of an “international Jihadist trend” emerging, favouring methods of war seen in Afghanistan, Pakistan and Yemen. This involved a seeking out of

strategic targets such as the High Court and hotels expected to be frequented by military and police personnel and prominent politicians, together with what Dr Mullen described as:

“... a much more sinister form of targeting geared towards peacemakers.”

By way of example he referred in oral evidence to the assassination of the head of an organisation that was carried out at his home. He did not identify the organisation but his comment was made in the context of his evidence of the targeting of “peacemakers”.

71. In his written response to questions posed by the respondent, Dr Mullen said:

“The ability of Al Shabaab to kill indiscriminately is linked to two tactics widely used in Mogadishu: one is asymmetrical warfare based on IEDs, mine deployment and assassination of known individuals, such as those associated with the government, defection from Al Shabaab ranks, aid agency personnel and journalists. Events have demonstrated that Al Shabaab has the capacity through asymmetrical warfare to attempt the assassination of low ranking officials up to security chiefs, international UN personnel and even the President himself. The second tactic is the exertion of moral and religious pressure on individuals at the level of the mosque and of the street. This is aptly described at Danish3 p.7.”

In cross examination Dr Mullen accepted that there is in fact nothing to be found at page 7 of that report concerning religious pressure being exerted by Al Shabaab. He said that his source for that observation was in fact interviews he had conducted with 15 unidentified informants. What is to be found on page 7 of the Danish 3 report, though, is this:

“The international NGO (B), Mogadishu, stated that al-Shabaab does not kill civilians indiscriminately. On the other hand, when it is staging large scale attacks it does not mind if civilians are killed.”

72. Dr Mullen went on to say, in his oral evidence, that:

“Frequently now we see lobbing of grenades, for example at Bakara Market. This is a different type of strategy. There are so many incidents they are no longer documented.”

Dr Mullen said also that there was now no conventional fighting as before when civilians were used as human shields but civilians remained “fair game”. He was referred to page 9 of the Danish 3 report:

“UNDSS, Mogadishu, explained that there are no recent reports of al-Shabaab having attacked or killed civilians deliberately through armed attacks....

...

Regarding IED attacks UNDSS, Mogadishu, explained that remote controlled IED attacks or roadside bombs tend to target AMISOM, SNAF and convoys and such attacks sometimes result in the killing of civilians, i.e. collateral damage.”

and he accepted that to be a correct statement.

73. In this respect we bear in mind that Dr Mullen, in his oral evidence, made frequent reference to the report of the UN, published in January 2014, “International Protection Considerations with Regard to People fleeing Southern and Central Somalia” (hereafter “the 2014 UN report”) in which it is said of Mogadishu, nominally under control of government forces since August 2011:

“ While the security situation in Mogadishu has improved since then, with a reduction of open conflict and signs of a resumption of economic activity in the city, Al Shabaab retains the ability to stage lethal attacks even in the most heavily guarded parts of the city, with civilians reportedly bearing the brunt of its attacks. The SFG is reported to be failing to provide much of its population with basic security. Thus the reality on the ground, as reported by observers, remains that civilians are injured and killed every week in targeted attacks by gunmen, or attacks by IEDs and grenades.”

Forced recruitment to Al Shabaab.

74. When asked to address this issue in his written evidence, Dr Mullen wrote:

“As a prelude to this discussion, there is a major emphasis on whether forced recruitment could have occurred in Mogadishu post the Al Shabaab withdrawal from the central districts of Mogadishu in August 2011...”

..

Given the territorial integration of the districts into the TFG/AMISOM jurisdiction, any continued recruitment into Al

Shabaab from the madrasses would have to be more circumspect. There is also the vital intelligence function to which children were recruited...

... While overt military recruitment may have reduced, it is extremely likely that recruitment into Al Shabaab's intelligence wing increased..."

And later in the same section of his written evidence:

"I have personally interviewed some 15 young men between the age of 16 and 24 over the past 2 years, ten of whom were interviewed post August 2011, who all claim to have been approached by Al Shabaab in and around Mogadishu and were "invited" to join their fighting units... They have recounted that it is generally a process of contacts over many months, with increasing intensity. When the approach is resisted, in most cases other family members become involved in the form of threats or forced marriage of female siblings. Ultimately assassinations of family members is threatened and sometimes carried out.... The consistency in the various narratives by persons totally unknown to each other would suggest that the narrative of forced recruitment into Al Shabaab is plausible."

75. It might be observed that this approach, if correct, appears focussed on particular groups: children and young men who are settled, in the sense that contact can be maintained over a long period while "grooming" takes place, and who are members of families, members of which can be used as levers in terms of threats of harm to others. It might be observed also that Dr Mullen himself identifies no evidence of successful forced recruitment actually taking place, relying instead upon consistency of the accounts given. The evidence before us is silent, though, as to whether there is a common or popular perception about this that informs those accounts.

76. In an appendix to his written report Dr Mullen has more to say about this issue, noting that Danish 2 at page 27 states of that document that it:

"...shows mixed evidence. There is a trend for Al Shabaab to forcibly recruit but this is now mainly in the non-central districts of Mogadishu, which are more difficult to infiltrate. On the other hand, Al Shabaab can offer financial incentives to young men who are unemployed to encourage them to join their ranks.... The coercive element in these approaches is obviously much less. ... In outlying areas around Mogadishu, such as Elasha Biyaha and Afgoye it is probable that forced recruitment continues... The Elman Peace and Human Rights Centre

consider that children in IDP camps and homeless children are particularly vulnerable to recruitment.”

While all of that is indeed contained within the report, it is interesting to note that Dr Mullen has not made any mention of the opening paragraphs of the section of the report from which he draws that view:

“UNDSS stated that there is no way al-Shabaab would be able to forcibly recruit or mobilize persons in Mogadishu. Al Shabaab only recruits in areas in SC Somalia where it is in control.

Regarding recruitment to al-Shabaab in Mogadishu Ayaki Ito, UNHCR, stated that he found it hard to believe that al-Shabaab is able to recruit systematically, and there are no reports on al-Shabaab undertaking forced recruitment or threatening people to be recruited. Forced recruitment by al-Shabaab in Mogadishu today does not make economic sense. However, al-Shabaab may pay persons to undertake operations on its behalf.”

And the further one reads into this section of the report the more difficult it becomes to agree with Dr Mullen’s assessment that forced recruitment is still encountered in Mogadishu. The views expressed to the contrary seem hard to resist:

“The local NGO (C) had no reports of forced recruits to al-Shabaab in the city of Mogadishu...”

“When asked... an international NGO working in SC Somalia (D) stated that it had not heard about this...”

“The NGO reiterated that it did not believe that al-Shabaab is able to undertake forced recruitment in Mogadishu...”

“Saferworld found it unlikely that al-Shabaab undertakes forced recruitment today”

“Regarding forced recruitment to al-Shabaab in Mogadishu an international NGO working in S/C Somalia (C) stated that al-Shabaab does not have the leverage to undertake forced recruitment today... and the NGO was confident that al-Shabaab is incapable of recruiting in Mogadishu.

Dr Mullen comments that:

“An outstandingly reliable commentator on the situation in Mogadishu, Tony Burns of SAACID is of the opinion that “Al

Shabaab may still recruit in Mogadishu... it still has the brand and the brand is fear”

But he does not complete the comment attributed to Tony Burns, as is set out in the Danish report:

“Tony Burns... explained that he and his staff hadn’t heard of forced recruitment in Mogadishu since the 2010 Ramadan offensive.”

Significance of clan membership

77. Perhaps a good indication of the very real change that has taken place in Mogadishu is that some commentators when referring to a “minority clan” now base that not on ethnicity but the fact of the clan being in a numerical minority in a particular area, despite its status as a majority clan on a national basis. It is clear that there have been very significant population movements in Mogadishu in recent years. In his report, Dr Mullen quoted from a report from the government of Netherlands in 2012:

“... On the other hand, there are also indications that Mogadishu is becoming a multi clan environment where discrimination against the Reer Hamar in particular has declined but not disappeared.”

78. We deal below with the evidence of Dr Mullen concerning the protection that can be provided to civilians by police, but at paragraph 20 of his report he relies upon a statement made by a leading Mogadishu politician to make the point that clan membership remains important in terms of securing personal safety:

“The Mayor of Mogadishu has underlined the vulnerability of citizens in general by stating that “the only real protection which people will have at their disposal is their own arms as well as clan protection mechanisms.”

However, the source for this quote is the Operational Guidance Note of 2012 and this statement was in fact made in March 2010. That does not mean necessarily that it is not still accurate but, being an observation made about four years ago, this would require reinforcement from other sources if it were to be taken as holding good today.

79. Indeed, the indicated relevance of looking to one’s clan for support is more nuanced in the Danish 3 report. At paragraph 33 of his report, Dr Mullen said:

“The quoted Danish 3 report emphasises the continuing need for clan support and sometimes protection in the establishment of a viable livelihood. The 16 districts of Mogadishu are shaped by their clan configurations and this reflects itself in the choice of District Commissioners and their militia support. This clan dimension runs parallel to the Al Shabaab phenomenon where allegiance is to a theocratic hegemony of sharia rather than to a clan. These two concepts coexist side by side as Chapter 2 of Danish 3 elaborates.”

But it is informative to draw more extensively upon that source than the relatively brief extract reproduced in Dr Mullen’s report:

“Regarding clan protection a UN agency, Nairobi, explained that there is less risk for anyone being attacked or violated only because of clan affiliation. It does not matter whether you belong to a strong or a weak clan, or an ethnic minority group..... The clan has now become a social structure rather than a protective structure. This could be due to lessons learned during the previous clan conflicts and the civil war. People are now relating to government structures rather than clans, especially when it comes to business.

Regarding clan protection an international NGO (A) explained that this is much less of an issue than it was two to three years ago. Clan protection is no longer important as there are no clan based militias in Mogadishu. Persons returning from abroad are not at particular risk because of their clan affiliation. When asked if this also include members of small minority clans as well as members of ethnic minority groups the international NGO stated that this is the case. The NGO made reference to the Chief of Police in Mogadishu who is a member of a Bravanese minority group.”

And a little later in the same section of that report:

“Elman Peace and Human Rights Centre; Mogadishu, reiterated that it is a huge step forward that clan affiliation is no longer a concern. Even marginalized groups such as the IDPs and minority groups are no longer marginalized, harassed or intimidated only because of their clan affiliations. Thus, the security situation for members of small, weak clans and ethnic minority groups has increased considerably during the last year. It is not important which clan or group you belong to. Elman Peace and Human Rights Centre emphasized that there are no

limitations in freedom of movement in Mogadishu. Anyone regardless of clan affiliation or sex is free to move around in Mogadishu and no one is being harassed at checkpoints only because of sex or clan affiliation.”

It is not altogether easy to see how this section of the Danish 3 report provides support for Dr Mullen’s conclusion that clan support is required to establish a livelihood. What this part of the Danish 3 report actually says is this:

“Regarding access to livelihood in Mogadishu, UNHCR-Somalia explained that the presence of a nuclear family is a requirement for livelihood support, as clan will not help with livelihood.”

80. The Danish 3 report collects together similar views expressed by a range of commentators sighted on the current situation in Mogadishu:

“Regarding clan protection a representative of a Diaspora organization in Mogadishu stated that people no longer rely on clan protection. Clan protection is no longer an issue in Mogadishu, and if you feel you are exposed you will adapt by ‘laying low’. If you are laying low you are not in need of additional security or protection. This is the strategy of most of the returning Diaspora. One does not rely on the police or the SNAF for protection or justice. The representative stated that she would not even think of approaching the police as the police forces are all corrupt.

...

The representatives of an international agency, Mogadishu, agreed that the clan is no longer a main issue in Mogadishu. The need for clan protection is ‘going down’ and no one will ask you about your clan affiliation any longer. The only concern is whether you are affiliated with Al-Shabaab or not. On the other hand, whenever a person is planning to settle in Mogadishu he or she will most likely consider his or her clan affiliation before deciding where to settle down.

...

According to Mohamed Farah Siad, Mogadishu, clan is ‘zero’ today in Mogadishu; clans do not offer any protection as there are no clan militias threatening people. Clanism is only common among “primitive clans in the bush.”

Mohamed Farah Siad added that clans are only relevant when it comes to business, marriage, respect and work, and stated that “clans should not be involved in politics”.

That view is hard indeed to reconcile with what is said at paragraph 69 of Dr Mullen’s report:

“As a minority clan member in Mogadishu protection would have to be purchased at some considerable cost in order to gain a majority clan patron.”

81. The view that clan membership remains important in terms of access to economic activity is emphasised by Dr Mullen in his own report:

“A corollary of clan control by the Abgal and Habr Gedir (main sub-clans of Hawiye) is that they have a shared interest in maintaining a degree of peace as the peace dividend is prosperity and an enabling economic environment. The approach is inclusive and offers opportunities to the select few with services to offer or resources to invest, but excludes the vulnerable minority clan member or person of modest means. This situation would adversely affect a low income Somali citizen such as a Gadabursi.”

Nor is it altogether easy to understand why the benefits of the peace dividend should be open only to those with services to offer or resources to invest, if such a person had a clan or nuclear family network to fall back on. The “enabling economic environment” requires not just investors and entrepreneurs but people working at all levels, including as labourers in the widespread reconstruction projects that Dr Mullen describes.

82. In his oral evidence Dr Mullen accepted that the clan affiliation of a returning member of the Diaspora “does not matter much” provided that person has access to resources. He said also that clan membership informed the type of employment that someone would undertake. He gave the example that the manufacture of shoes was the exclusive preserve of one particular clan and that members of other clans “would not touch it”, although when asked for evidence of that being the position today he was unable to point to any.
83. Returning to the issue of the emerging importance of the nuclear family rather than clan membership alone, in answer to questions posed by Mr Toal, Dr Mullen agreed that clan support is diminishing, saying:

“Absolutely. Sub sub clans are unable to fulfil their obligations and so you have to fall back on the nuclear family..... The nuclear family is gaining prominence over the clan.”

Although Dr Mullen said at paragraph 78 of his report that there were other views about the continuing significance of clan membership:

“However, by contrast, the key UN organisation working with refugees, UNHCR, maintains that “clan dynamics in combination with other factors are an important element when considering risk” (Danish 3 2.1). “Newcomers would certainly attract adverse attention; including those originating from Mogadishu but have left a long time ago.””

Those brief extracts from the Danish 3 report may be better understood seen in their context:

“UNHCR-Somalia, Mogadishu, confirmed that someone in Mogadishu will not be at risk today solely because he/she is of a different clan, although clan dynamics in combination with other factors are an important element when considering risk, including for the IDP population. It is obvious that one is safer when he or she is residing in an area dominated by his or her own clan or if one has good relations with a dominating clan.

... Information about a newcomer, particularly, when he/she does not belong to the existing clans or nuclear families or when he/she originates from an area formerly or presently controlled by an insurgent group; would certainly attract adverse attention. Even those who originate from Mogadishu may be perceived as newcomers, if they left a long time ago and have lost all links with their clan-based community.”

84. Dr Mullen makes the point clearly, for example at paragraph 70 of his report where he considers how business enterprises operate across different clan areas, that “clanship may be partly replaced by wealth”. Addressing the position of the appellant MOJ, by whose representatives he was commissioned to prepare his report, he expresses this view:

“A Gadabursi (the clan of which MOJ is a member) which is a majority clan but numerically minor in Mogadishu, would therefore require cross-clan alliances and the resources to fund them to survive. Therefore, low income migrants.... or failed asylum seekers... are unlikely to be able to achieve the level of security acceptable to Arts 2, 3 ECHR and Art 15(c). This would

imply exposure to violence and conversely the ability of the state to provide security safeguards to its citizens.”

With respect to Dr Mullen, this in our view is simply a *non sequitur* and an illustration of why broad generalisations are unlikely to point to the true position of an individual upon return. Further, and importantly, neither Dr Mullen nor either of the other expert witnesses referred to any evidence of clan-based persecutory treatment in Mogadishu in recent times. Not all failed asylum seekers lack resources or access to them. Elsewhere in his report he refers to “relatives of warlords” who have gone to the west. Dr Mullen made clear in his oral evidence generally, a Somali national who travelled to the west to make an asylum claim is very likely to have had access to significant resources:

“If one calculates the cost of human trafficking: \$15,000 to \$25,000. This has to be raised by family members. A returning minority clan member would be under a social obligation to reimburse a proportion of the cost of travel to Europe.... The person travelling represents a group of people because it is entirely beyond the capacity of the vast majority of Somalis to travel to Europe.”

85. At paragraph 80 of his report, Dr Mullen reaches the conclusion, perhaps reflecting those issues, that:

“There are enhanced vulnerabilities arising from minority clan profiles (including someone like a Gadabursi who would be a de facto minority in a cosmopolitan Mogadishu) but this would have to be examined on a case by case basis.”

And at paragraph 91:

“The major clans do not appear to be demonstrably exploitative in relation to minority groups but access to livelihood opportunities are blocked unless they (minorities) have resources to invest. The question then arises is whether the characteristics of social exclusion is more operative than life threatening mechanisms in Mogadishu. Social exclusion because of cultural or economic reasons is not a life threatening experience. Therefore there is a need to have a hierarchy of risk within the new dispensation since the election of President Mohamud and a degree of substantial normalisation of conditions in Mogadishu...”

Police Protection in Mogadishu

86. The evidence of Dr Mullen concerning the level of protection provided by the police to citizens of Mogadishu can be summarised quite briefly. He explained in his oral evidence that there are three arms to the security forces: the Somali National Army, the National Police Force and the District Police Force. He is clear that it is only the District Police Force that is potentially an available instrument of protection but in fact residents of Mogadishu cannot look to the police for protection but must take for themselves whatever steps are necessary to secure their own protection. In his written evidence he reproduces a comment made by the Mayor of Mogadishu who said:

“the only real protection which people will have at their disposal is their own arms as well as clan protection mechanisms.”

We set out below our findings on the issue of sufficiency of protection, which are informed by the evidence generally. The concluding words of this comment by Dr Mullen do not sit easily with the other evidence before us which is to the effect that clan membership has become less significant in terms of protection, as opposed to social and economic support. The explanation is, no doubt, that although the source for this comment is given as the 2012 Operational Guidance Note, when that document is itself examined it can be seen that the Mayor’s comment was in fact made as long ago as 2 March 2010.

87. Dr Mullen said that the District police are known to be clan centred, with the District Police Commissioner and the personnel of the force in that area reflecting the clan makeup in the district. He has also observed, though, in his written evidence, that there are indications that Mogadishu “is becoming a multi clan environment.”

Population Movement within and into / out of Mogadishu

88. It was common ground and agreed between the expert witnesses that there is no reliable figure for the present population of Mogadishu. There was also a disagreement between those witnesses as to the probable present population of that city. In oral evidence, Dr Mullen said that the present population of Mogadishu was currently between 2 million and 2 ½ million people. He described other estimates of the present population of 3 million as being “wildly inaccurate”. Addressing the reasons for population movement around Mogadishu, Dr Mullen said this at paragraph 62 of his report:

“... With increasing stabilisation, there have been three factors which have acted as drivers to population movements around Mogadishu: one, post famine returns to agricultural areas where agro-pastoralism is practiced, such as the inter-riverine areas of Shabelle and Juba, two, the downsizing of the Afgoye corridor encampment due to the withdrawal of Al Shabaab from the camp and from the area in general and travel back to areas of greater stability in urban and rural settings and three: the expulsion of IDPs from inner city informal sites that are being re-occupied by their original owners and where land values have rocketed.”

Also found in this paragraph of the report is a table setting out the reduction of movement of population “within Mogadishu” stated as being 66,232 in 2011; 28,289 in 2012 and 15,723 in 2013. The total for 2013 is in fact for the first 10 months of the year and it is reasonable to calculate a “grossed up” total for the full year of 18,867, that being a reduction in the movement of persons around Mogadishu of more than 70% when compared to 2011.

89. Dealing next with population movement out of Mogadishu to other locations, Dr Mullen sets out a table, taken from UNHCR, that discloses an equally stark change. In 2011 43,695 people are said to have left Mogadishu and in 2013, again grossing up the 10 month figure to a 12 month figure, 6,372. Put another way there has been, since 2011, a reduction of something in the region of 85% in the numbers of people leaving Mogadishu. Dr Mullen offers the view that the reduction of movements within Mogadishu “could be indicative of a greater degree of normalisation of residential patterns within the city” and the reductions of the numbers leaving the city “could suggest a degree of preference for Mogadishu in the resident’s own personal risk and livelihood assessment in relation to other up-country locations”.

IDPs and IDP camps

90. At paragraph 84 of his report, Dr Mullen says of IDPs:

“... Internally Displaced Persons (or IDPs) who, in the main are destitute, vulnerable and clan vulnerable, but are highly sensitive and responsive to stabilisation, decline of conflict, risk reduction because their survival strategy has been strongly risk averse. In many respects they are the weathervane of the security status of an area...”

He said that there is ample evidence to demonstrate that life in a IDP camp is extremely difficult and challenging. At paragraph 75 of his report Dr Mullen said:

“The issue of the humanitarian dimension of the IDP problem is highlighted in the Amnesty Report. The situation is quite dire. IDPs have been living in overcrowded and unsafe settlements and remain extremely vulnerable to various forms of human rights abuses, including widespread sexual violence...”

He sets out also an extract from “the recently published Global Overview Report on People Displaced by Conflict and Violence (2013) by the much respected IDMC of the Norwegian Refugee Council”:

“Humanitarian law and human rights abuses were committed by all parties. They have reportedly attacked IDP camps, perpetrated widespread sexual and other gender-based violence, forcibly recruited internally displaced children and fought each other near civilian settlements. IDP’s health situation remained critical with most outbreaks of contagious diseases coming in areas hosting displaced people. Developments such as increased security, an improving economy and urban migration led to an increase in forced evictions of IDPs in urban centres across the country such as Mogadishu.... A number of the most vulnerable victims were unable to seek refuge elsewhere because of their limited resources.”

91. But care has to be taken with this information about IDPs. Dr Mullen says of people categorised as IDPs:

“They are of two kinds: those who have left their homes in Mogadishu for security reasons and have come back to re-occupy them but retain food entitlements, or others who have literally moved camp from an out of town location to an urban one (though given the current pressure on urban land, these would be in a minority).”

In a written response to a question posed by the respondent arising from his report, Dr Mullen said that he was unable to point to a “legal definition” of an IDP but referred to a 1998 UN report that used the following “descriptive definition”:

“internally displaced persons (IDPs) are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of residence in order to avoid the effects of

armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised State border.”

Thus, once an individual or a family has left their home to seek safety elsewhere, they may well continue to be regarded as IDPs, even after they have decided to settle in another district of Mogadishu in living conditions, in a physical sense, equivalent to those they vacated. The 2014 UN report has been drawn up on the assumption that all those categorised as IDPs are persons “who have not returned to their places of origin” (see page 6 of that report). It emerged from the evidence discussed by Dr Mullen that there was no basis upon which a person once regarded as an IDP would cease to be considered such, even if their current circumstances were not in themselves such as to fall below acceptable standards.

92. Put another way, an IDP may be someone living in conditions at or near to destitution, having no access to means of supporting themselves and being vulnerable to a range of actors of persecutory ill-treatment or possibly someone who presently lives in their own, settled, home and is economically active (although retaining access to food relief), retaining that classification simply on account of having relocated from their original home at a previous time in response to an adverse security situation in their local area that no longer subsists.
93. The question that therefore arises to be addressed is whether it is possible to establish with any degree of accuracy the number of people presently living in Mogadishu as internally displaced persons living in conditions that fall below the level that it acceptable. Dr Mullen draws upon information provided by UNHCR concerning the “Population of IDPs” in Mogadishu as follows:

April 2012	184,000
October 2012	184,000
February 2013	184,000
September 2013	369,000

It will be noted that the country guidance of AMM was published three months before April 2012. Dr Mullen recognises that this data, suggesting a doubling of the number of IDPs between February 2013 and September 2013 is surprising:

“Such a lack of variation between time periods in an emergency situation is an unusual phenomenon and generally indicates that there are problems in either collection or analysis of data. This becomes evident in February 2013 when it is acknowledged

that there are adjustments required and the figures should be “triangulated” or cross-verified by observation. Then in September 2013, in what is assumed to be after the cross-verification having taken place, revised figures are published.”

Dr Mullen observed that the source of “the excess population” has been the sprawling IDP camp on the Afgoye road known as the Afgoye corridor or “Eelasha Biyaha” where there had been a strong Al Shabaab presence, which in 2008 had housed some 400,000 persons. He went on to say this:

“The pressure from being associated with Islamists on the one hand and the reduced tension in Mogadishu on the other, combined to convince many former Eelasha Biyaha residents to return to their homes in the city of Mogadishu. The influx of former residents back to Mogadishu and the decline in numbers at Eelasha Biyaha is a significant explanatory variable for the increase in IDPs.”

From which it can be seen that a possibly significant number of those representing the increased number of IDPs living in Mogadishu today are in fact people who have returned to their former homes rather than arriving as strangers to seek out whatever accommodation they can find. Dr Mullen continued:

“The considerable movement of IDPs to Mogadishu may be indicative of an association between relocation and improved security but it could equally be associated with an increased number of family reunions, seeking out employment opportunities, evictions or cross border repatriations. It is significant that UNHCR, in its Population Movement Trends for October 2013 at the national level, as distinct from Mogadishu, cites the principal reasons for movement as: drought, lack of livelihood, forced return, eviction, cross border return (particularly from Kenya) ahead of insecurity, which comes near the bottom of the list...”

94. There is an additional concern about the indicated level of IDPs said now to be living in Mogadishu. In cross-examination Dr Mullen accepted that the figure of 369,000 arises from data collected in relation to population *movements* and not the *counting of heads*. He was also referred to a document at page 2815 of the respondent’s bundle, that being produced by the United Nations Office for the Coordination of Humanitarian Affairs (“OCHA”) dealing with “nutrition interventions” in Mogadishu between April – June 2013 and which asserted that just 30,000 people were categorised, in this context, as either “crisis” or “stressed”. Dr

Mullen said simply that he did not recognise that figure, which we take to be an indication that he did not accept it as accurately representing the true position.

Who are the returnees? Risk faced by returnees

95. Dr Mullen's view of the vulnerability of returnees is plainly informed by economic, as well as social support issues. At paragraph 67 of his report he said:

"The ability to access protection in Mogadishu would be contingent on three significant resources: financial wealth, social status and clan protection.... Returning migrant citizens without a minimal combination of these attributes are unlikely to gain access to livelihoods or safety and are likely to end up in an IDP camp. The vulnerability is compounded if the returning citizen is from a minority clan..."

He continued:

"This immutable vulnerability can only be reversed through access to resources or patronage from a major clan member or group..."

and at paragraph 68 of his report stated:

"The very poor and ostracised are, of course, powerless to act and become passive agents in the threat-violence continuum and whose risk rating goes off the charts. Only those with a degree of power, either political or economic, can influence and shape decisions relating to their security and reduce their vulnerability.... Prosperous businessmen, with close links to the Diaspora, have at their disposal bodyguards and have means of protection. Meantime, the humanitarian crisis has worsened and minority populations have become more vulnerable. Using any classical risk index, there is a pervasive and systemic environment of risk affecting the vulnerable and minority populations of Mogadishu and this has to be acknowledged in any new CG..."

Which led him to conclude:

"Arguably, the destitute minority populations because of the lack of a social network or social capital or protective mechanisms are at highest risk and as confirmed in the UNHCR report on IDPs, are the least likely to migrate..."

96. There are two groups of people who fall to be considered: those who stayed and those who now face a return, after an absence from Mogadishu, that being either a voluntary return or a forced one. Plainly, those who choose to return are exercising a choice and some of those who have chosen to remain, as opposed to those who lacked the means to leave, may also be taken as having exercised a choice. At paragraph 30 of his report Dr Mullen observed:

“Forced repatriation of individuals of modest means, without powerful clan support networks would face a situation where, in the words of Tony Burns statement 19 August 2013... “there remains an unacceptable risk that returnees to Mogadishu city would be at risk of direct and/or indiscriminate threat of personal, psychological and economic harm from a broad range of actors and drivers” . This view is shared by the representative of a Diaspora organisation who explained “that those who are returning to Mogadishu... are mostly resourceful people who see opportunities... have business to do and/or seek political influence and positions. It would be extremely difficult to return to Mogadishu if you have no one to rely on when you get back.” Danish 3 7.2 “Diaspora returning from abroad”. The same report at 7.2 also acknowledges that some people are “staying despite the difficulties” but there is no clear indication of what distinguishes the “stayers” from the “leavers” apart from suggestions of social class, access to resources, family and clan networking. This signifies wealth, clan connections and power or the sets of factors which, in the case of AMM paragraph 1 exclude individuals from Art 15(c) consideration.”

It is, though, informative to set out a longer extract from what Danish 3, published in May 2013, has to say at 7.2 about the Diaspora returning from abroad, this being a source quoted by Dr Mullen in support of his stated view. It will be seen from this extract that there is reference also to “ordinary people” returning from the Diaspora:

“According to UNHCR-Somalia, Mogadishu, many people from the Diaspora have returned to Mogadishu, also, because they see business opportunities. In general, there is no discrimination for the sole reason of belonging to the returning Diaspora.

Regarding returns from the Diaspora, an international agency, Nairobi, explained that ordinary people returning to Mogadishu and other locations in S/C Somalia are citing improvements in the security situation as some of the reasons for returns. Others

have also been shocked by what they see when they come back, especially those who have been abroad for many years.

An international agency, Nairobi, explained that Mogadishu is now a 'buzz', people are going around minding their own business and there is an increasing freedom of movement for everyone.

Elman Peace and Human Rights Centre, Mogadishu, explained that there is an increasing number of Somalis returning to Mogadishu from abroad as compared to October 2012. However, the 14 April [2013] attack may result in a slight decrease for the time being as many will give it a second thought before going back to Mogadishu.

A representative of a Diaspora organization in Mogadishu explained that those who are returning to Mogadishu and other locations in S/C Somalia are mostly resourceful people who see opportunities, have business to do and/or seek political influence and positions. It would be extremely difficult to return to Mogadishu if you have no one to rely on when you come back.

The representative stated that an increasing number of Somalis from the Diaspora are returning. Safety and security are issues to consider before you return as there are frictions between those who stayed behind and those who are now returning from their refuge abroad. The Diaspora is being perceived as competitors as they may take up jobs from the locals and their increasing presence in Mogadishu has resulted in price increases on goods as well as on properties.

...

Concerning the Diaspora people coming back to Somalia, Mohamed Farah Siad, Mogadishu, said that they are most welcome with their money and skills. He did not know about a general tension between local people and the ones who have returned from the Diaspora. In his opinion, the ones who have negative attitudes towards the Diaspora might suffer from an inferiority complex.

Mohamed Farah Siad added that he has told three of his sons now living in Ohio, USA, to come back to Mogadishu to work with him. He expects his sons to be back in Mogadishu in three months...

...

The representative of a Diaspora organization in Mogadishu explained that the first three months in Mogadishu are the hardest for a returned member of the Diaspora. However, most people from the Diaspora are staying despite the difficulties they may face during the first few months. On the other hand, a number of returnees are going back to their country of asylum because they could not find a job in Mogadishu. Males as well as females are returning to Mogadishu.

...

An international NGO (B), Mogadishu, explained that there are many people coming to Mogadishu these days. All flights from Nairobi, Istanbul and the Middle East are fully booked. However, the 14 April attack may for a while make people more hesitant to return. On the other hand, many people are coming to Somalia to settle.

An international NGO (C), Nairobi, stated that the most important developments at the moment are that people are coming back and staying, and making investments. This is very positive and important.

According to the international NGO (C), Nairobi, many Somalis from the Diaspora are these days coming to Mogadishu to invest and seek opportunities for economic activity. These people are dependent on a reasonable level of security to pursue their activities. Al-Shabaab's recent attacks on the Lido Beach and on a restaurant where the new westernized middle class of Mogadishu gather had the intention to create fear among these people. So far al-Shabaab has not managed to scare people away from Mogadishu, but it is crucial that the SNG as soon as possible, and in a convincing way, can demonstrate that it is able to prevent terrorist attacks in the city."

97. In his oral evidence Dr Mullen specifically adopted what he had said in response to a written question (50) posed by the respondent:

"The profile of returning Diaspora members includes the better educated and businessmen seeking out investment opportunities."

He referred to two sources in this regard. First, a BBC report by Andrew Harding dated 23 May 2013 from which we reproduce the following:

"After two decades of anarchy and misery, Mogadishu is enjoying something of a renaissance. The spectacular ruins are

being patched up. Hotels are being built. There are even streetlights in some places. And everywhere you hear accents: Texan, Geordie, Minnesotan, south London, Scandinavian. Somalia's far-flung Diaspora is coming back – in big numbers – to visit, to help out, to make money, and to find out if this renaissance has any chance of lasting. The jury is still out on that one."

This report includes observations by residents of the city to the effect that volatility remains apparent and that "anything can happen here". There are also examples of returnees from the United Kingdom, including a 29 year old who returned a year ago in order "to do his bitto rebuild Mogadishu" of whom Mr Harding wrote:

"He has been working for a charity that helps young people struggling to find jobs. Right now he is organising a hugely popular televised talent competition, Idols – Somali-style."

Also found in this report is an account of an estate agent from Essex who has started to clear ground for a new development on a beach to the north of Mogadishu, having brought his 13 year old son with him.

98. The second source drawn upon here by Dr Mullen is a Voice of America report dated 25 October 2013 suggesting that Diaspora returnees are taking jobs at the expense of locals because they are better educated and more cosmopolitan.
99. Dr Mullen has pointed also at the importance of remittances from abroad for those living in Mogadishu, quoting a report that estimated an annual inflow of \$1.6 billion. He said in oral evidence that between 20% and 30% of Somali families benefit from such remittances from abroad. However, the main medium by which funds are sent to those living in Mogadishu, the financial institution Dahabshiil, despite adhering to Islamic banking norms, has been declared "an enemy" by Al Shabaab who carried out a bombing attack on its premises in April 2013. Also, Dr Mullen said that Barclays Bank had moved to suspend international currency transfers to Dahabshiil because of money laundering concerns. We cannot see, though, anything in the evidence before us to establish that these issues have caused any significant disturbance in the rate of such remittals.
100. At paragraph 54 of his report Dr Mullen accepts that:

"... Individualised returns clearly take place on a voluntary basis and it is evident from the volume of air traffic landing in Mogadishu that many expatriates are returning. These tend to

be from the upper income groups but whose families remain at safe European locations.”

His source, identified in a footnote, for providing support for that assertion, is a BBC World Service report said to be “circa 29 October 2013”:

“There is anecdotal evidence suggesting that the families of virtually all the warlords have gained asylum in Europe and that the business class seats on the Turkish Airlines flights from Ankara to Mogadishu are generally the first to be sold.”

Indeed, the evidence before us indicates that all flights into Mogadishu are heavily booked and it is necessary to book in advance to secure travel on a particular date. Dr Mullen, however, says:

“... it is my opinion that even given the strong demand factor for inward and outward flights there is a weak correlation between the availability of these flights and security concerns on the ground, as travel on these flights already suggests a behaviour of a high level of risk taking...”

But this appears to be reasoning of a circular nature: rather than accepting the possibility that the heavy demand for air travel into Mogadishu indicates that increasing numbers of people consider that it is now safe enough for them to return, Dr Mullen assumes that the risk is undiminished but travellers are now prepared to accept an increased level of risk. It is not at all clear that such an approach is the correct one.

101. When asked to address the issue of risk on return, Dr Mullen’s evidence disclosed a number of difficulties. He said at paragraph 56 of his report that:

“... returnees are viewed as being influenced by western thinking and lifestyle which would be in total contrast to the Wahabist jihadism pursued by Al Shabaab and would be likely to elicit punishments in the form of amputations of limbs, torture, beatings and even killings, thus clear ECHR infringements.”

But in oral evidence he accepted that there was no evidence, at all, of that having actually occurred in Mogadishu in recent years.

102. Similarly, at paragraph 58 of his report Dr Mullen said of MOJ:

“While a Gadabursi returnee may not stand out like a blue-eyed white European, as a returnee from the UK, his demeanour, dress, possessions would distinguish him from indigenous Somalis who have remained behind.”

Indeed, we heard oral evidence from the other expert witnesses that Mogadishu is a conservative society in which traditional dress was the norm such that a returnee would be immediately apparent because of manner of dress. However, the photographs of Bakara Market, taken recently during the visit to Mogadishu by the third expert witness to give oral evidence before us, the journalist Miss Mary Harper, discloses a man wearing what appears to be a Manchester United football shirt and another wearing a baseball cap but none of the male persons pictured in the photographs of this crowded market was wearing what appeared to be traditional dress, although all of the women were. Casual trousers and casual shirts appear to be the norm.

103. When asked to identify groups at risk in Mogadishu today, Dr Mullen said that individuals, generally, were at risk because Al Shabaab mingle with the local population. Aid workers, both national and international, form a particular risk group. The choice of residential area and proximity to clan members would contribute to reducing risk and Dr Mullen accepts, as we have already discussed above, that there is freedom of movement within Mogadishu. He said, at paragraph 94 of his report, that:

“... The groups that would require particular attention are those considered to be “at the bottom of the heap” and most vulnerable, such as Bantu groups, the Banjuni, the Midgaan and the other occupational caste clans such as the Eyle, Boon, Tumul and the Yibir. Coincidentally, these groups are all considered to be “Gibil madow” (dark coloured). They are also, in majority, vulnerable economically and most likely to be involved in daily labouring activities, often former agricultural workers, and residing in IDP camps. They have no homeland or land entitlements apart from by patronage. Extreme poverty therefore emerges as a key feature of continuing Art. 3 eligibility, while acknowledging its strong correlation to minority clan status. The second major group to be considered for Art. 3 status is those who have been threatened on religious grounds by Al Shabaab.”

104. When asked in oral evidence to identify likely Al Shabaab targets, Dr Mullen said, notably omitting returnees from the diaspora:

“Financial transfers; internet; journalists; peacemakers; religious leaders; clan leaders”

And then added:

“Generally the targets selected have a link to government or international aid agencies”

And he observed also that regard should be had to the list of potential risk profiles in the 2014 report by UNHCR which, as can be seen, is somewhat more extensive:

“Potential Risk Profiles:

1. Individuals associated with, or (perceived as) supportive of the SFG and the international community, including the AMISOM forces;
2. Individuals (perceived as) contravening Islamic *Sharia* and decrees imposed by Al-Shabaab, including converts from Islam, other “apostates” and moderate Islamic scholars who have criticized Al-Shabaab extremism;
3. Individuals (perceived as) opposing the SFG and related interests and individuals (suspected of) supporting armed anti-Government groups;
4. Individuals in certain professions such as journalists, members of the judiciary, humanitarian workers and human rights activists, teachers and staff of educational facilities, business people and other people (perceived to be) of means;
5. Individuals (at risk of being) forcibly recruited;
6. Members of minority groups such as members of the Christian religious minority and members of minority clans;
7. Individuals belonging to a clan engaged in a blood feud;
8. Women and girls;
9. Children;
10. Victims and persons at risk of trafficking;
11. Sexual and/or gender non-conforming persons (lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals);
12. Persons with a mental disability or suffering from mental illness.”

It is notable that this extensive list does not include a specific category of diaspora returnees. There is reference to those opposing Islamic *Sharia* and apostates and there is evidence before the Tribunal from some sources that Al Shabaab is likely to regard those returning from the west

as “poisoned” by exposure to an anti Islamic way of life so as to be regarded as spies or apostates. However, if that approach were thought to be taken towards returnees generally we would expect a more specific reference to have been made. For those reasons we consider the omission of such a specific reference to diaspora returnees to be significant.

105. It can readily be appreciated that it is not altogether easy to reconcile the UNHCR list of risk categories with some of the evidence we have set out above. We do not take Dr Mullen’s reference to this list as him having adopted it in its entirety. In any event, this list of groups at risk relates to Somalia as a whole and not Mogadishu alone. The position outside that city is very different in a number of respects, not least because of the presence and activity of Al Shabaab outside the capital.

Dr Markus Hoehne

106. Dr Hoehne has studied Somali culture, history and politics since 2001 and has spent some time in Somaliland and Puntland. As well as monitoring news and country reports he maintains contact with a network of informants in the region by internet and telephone. In this context, the fact that he has never himself visited Mogadishu, does not in any way disqualify him from offering an expert opinion upon the current situation in that city today.
107. Having described an escalation in operations carried out in Mogadishu by Al Shabaab during 2013 and the changing nature of those attacks since withdrawal from a formal presence in the city, the position adopted by Dr Hoehne is summarised at paragraph 41-42 of his report which we reproduce below precisely as it is written. It will be seen that this is a less positive assessment than that made by Dr Mullen, seeing no justification for a relaxation of the narrow categorisation of the Tribunal in AMM of those not likely to face risk at a level such as to require the protection of Article 15(c):

41: “This shows, in my view, that the battle against Al Shabaab is far from over and that Mogadishu, but also other parts of south-central Somalia, is not a safe place where ordinary Somalis (locals or those deported there) would be able to live without a considerable threat to their physical integrity and psychological well-being. The positive news that are occasionally transmitted from within Somalia are certainly correct (although I have the feeling that the enthusiasm about "Somalia rising" that was prevailing after the presidential elections in the second half of 2012 has thinned out by now. Things are getting better, but only for some people and in some places. Most people who benefit from the current situation are

(diasporic or local) businessmen and members of the political elite who engage in lucrative deals with foreign companies and foreign governments.

42 Against this background, it is my view that an Article 15(c) risk exists, as described by the tribunal in the case of *AMM & Ors (Somalia) v SSHD* [2011] UK UT445 (IAC) (22 November 2011) "as a general matter, in respect of the majority of those in Mogadishu" and those returning from the diaspora without special arrangements and protection in place. Article 15(c) is, according to Paragraph 328 of the Tribunal's decision in the case of *AMM*, 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" In my view, this assessment in the case of *AMM & Ors* is still – or better, again- valid regarding the situation in Mogadishu in October 2013."

108. Dr Hoehne's view is that it is only those with access to financial resources and who can make "special arrangements" for protection that do not face a real risk of harm from indiscriminate violence in Mogadishu today. We now examine in detail the route that led Dr Hoehne to those conclusions, which, it will be seen, are more guarded than those reached by Dr Mullen.
109. At paragraph 9 of his report, Dr Hoehne provides a concise overview of the background to the present position relating to the threat to security posed by Al Shabaab:

"From 2009 to mid-2011, Al Shabaab had been the de facto government in most parts of south-central Somalia. It had physically controlled vast areas including 90 per cent of the capital city, and had delivered services from justice to health care and schooling. Out of a mixture of fear and appreciation for keeping law and order, many ordinary people supported Al Shabaab's rule or at least tolerated it. But from mid-2012 onwards, a new trend regarding the security situation in southern Somalia including Mogadishu emerged. On the one hand, Al Shabaab was severely weakened as a military power in Somalia. It was evicted from its most important remaining strongholds in Kismayo and Jowhar in December 2012. The security in Mogadishu was strengthened to some degree and in early 2013, a sense of optimism reigned in the international media and among some external observers and Somalis that

Somalia could rise again as a stable and peaceful entity -- despite the many challenges facing the new administration."

110. A recurring theme in Dr Hoehne's evidence is the significance of changes within Al Shabaab itself. At paragraph 30 of his report:

"The evidence suggests that Al Shabaab recently reorganised itself, if anything, as a smaller movement under the radical leadership of Ahmed Abdi Godane, its *amir*. This, in my view, is an important reason for the stepping up of the group's attacks in Mogadishu and elsewhere in southern Somalia. It also resulted, in my view, in the recent complex terror attack in Nairobi, Kenya. Most probably, Al Shabaab will continue to be active in Mogadishu... and will be able to create considerable insecurity in the city and beyond for the time being. It may even "divide labour" and split in an inner - Somali terror cell and a "global jihad" branch that is concerned with terror attacks in the neighbouring countries. "

Dr Hoehne detects evidence of significant changes in the structure and ideology of Al Shabaab since their withdrawal from Mogadishu. He explained how, since May or June 2013 it has purged from its ranks those that stood in the way of its version of jihad, including some senior commanders. "Pragmatists" have given way to "radical purists". Those eliminated from Al Shabaab:

"were those standing for a less extreme course; at least they were not so much in favour of international or "global jihad" but were rather concerned about Somali (national) issues."

Explaining that, having given up ambitions of retaining territorial control within parts of Mogadishu, Al Shabaab needs less resources in order to operate, Dr Hoehne added:

"This again frees capacities and resources to engage in more complex and vicious attacks inside Somalia and in the neighbouring countries..."

111. That analysis is not one that attracts complete consensus between well-informed observers. Dr Hoehne maintained his view despite being referred to the report of the UN monitoring group published in July 2013 which expressed the view that:

"... to interpret divisions within Al Shabaab in binary terms - between nationalists and internationalists - is misleading and simplistic..."

Escalation in violent attacks by Al Shabaab during 2013

112. In describing the changing nature of Al Shabaab's campaign after having withdrawn from Mogadishu, Dr Hoehne drew upon the report of the joint mission of the African Union and the United Nations conducted in Somalia between August and September 2013:

"The findings of the joint mission indicate that Al-Shabaab has deliberately shifted tactics since May 2013, from conventional to asymmetrical warfare, in recovered areas, including the Somali capital. They target particularly the Government, State institutions and the international presence working in Somalia, including the United Nations."

Once again, the omission of any reference to returnees from the Diaspora from this list of primary targets is to be noted. Although there had been improvements in the security situation in Mogadishu following the departure of Al-Shabaab, Dr Hoehne pointed to evidence that violent attacks launched by Al Shabaab in 2013 had increased, causing casualties. In reaching his conclusions, Dr Hoehne relied upon and referred at some length in his evidence to data produced by the NGO Safety Program ("NSP"), that data being tabulated in four charts reproduced at paragraph 18 of his report. He introduces this evidence by saying:

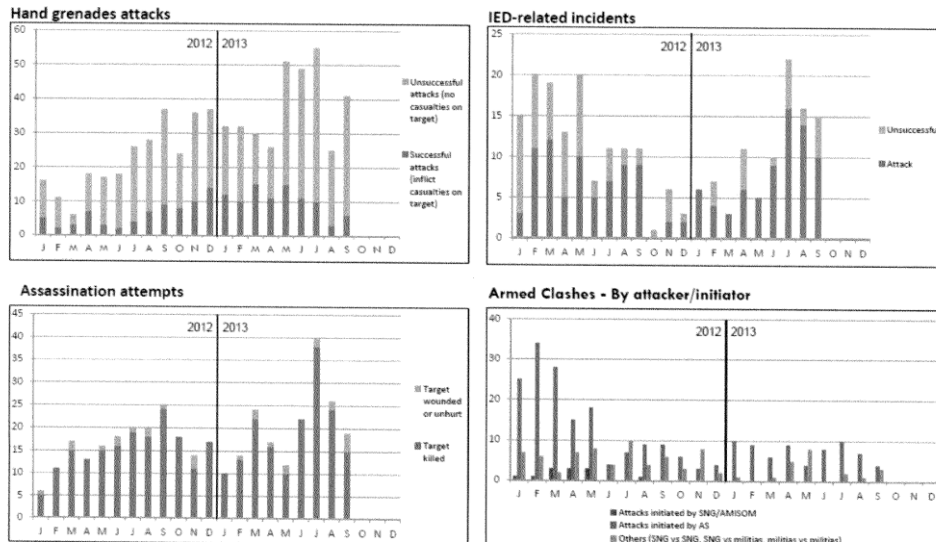
"Between November 2011 the time when the most recent country guidance case was concluded, and October 2013 the security situation in Mogadishu has changed considerably on several occasions. In fact, as indicated by table 1 below on security related incidents in Mogadishu January 2012 to September 2013 there was a sharp decline in security related incidents between the end of 2012 and early 2013, and an equally sharp rise of such incidents again in the first half of 2013 regarding most forms of security incidents. Only the intensity of armed clashes inside Mogadishu between Al Shabaab and its enemy forces has durably declined since May 2012. This demonstrates that Al Shabaab lost ground in the city since its withdrawal in August 2012... However, the fact that hand grenade attacks, attacks with improvised explosive devices and assassinations/assassination attempts are on the increase again since April or May 2013 shows that Al Shabaab retained a clandestine presence in Mogadishu and actually reorganised its operations in the city."

Mogadishu Stats 2012-2013



5

(Data for October not collated)



113. A number of observations can be made about this evidence from NSP. Dr Hoehne accepted, in cross examination, that an increase in incidents is not the same thing as an increase in casualties. Looking first at the graph depicting hand grenade attacks, it will be seen that the data for each month is classified as either “Successful attacks (inflict casualties on target)” or “Unsuccessful attacks (no casualties on target)”. Since we are concerned to assess risks to civilians from indiscriminate violence, what is most relevant is the casualty rate and not simply the number of attacks attempted. Presumably, unsuccessful grenade attacks that cause no casualties, although alarming because of their potential to do so, do not in themselves add to the likelihood of a civilian coming to harm as a result of indiscriminate violence, if the significant rate of those attacks being unsuccessful continues.

114. Put another way, the correct approach is not that *any* grenade attack *might* cause casualties so that it is the overall number of attempted attacks that is of importance. This is because, as can be seen from the chart, in each month the proportion of attacks that were unsuccessful and caused no casualties is consistently a substantial one. This is significant. It can be seen that in each month of 2013 only a small proportion of grenade attacks actually caused any casualties at all. A further difficulty is that this evidence makes no attempt to estimate the numbers of casualties caused by successful grenade attacks or to

quantify any level of seriousness of injuries, nor to separate casualties between injuries and fatalities.

115. We have no evidence to explain why most grenade attacks launched by Al Shabaab are so unsuccessful. We do not know if the low success rate, in terms of causing injuries, is because the grenades themselves are of low quality so that more often than not they simply do not explode or whether they do reliably explode but are cast in a way that when they do no one is close enough to be injured by the blast. It was Dr Mullen's view that Al Shabaab does not target civilians *per se*. The aim of the asymmetrical approach was to demonstrate that the Somali security forces could not guarantee security on the streets of Mogadishu. We recognise the dangers of speculating in the absence of evidence or considered expert opinion and simply record that it would be surprising if an experienced guerrilla terrorist group such as Al Shabaab would have such a low success rate if intent on maximising civilian casualties from grenade attacks in Mogadishu.
116. The chart depicting IED-related incidents plainly demonstrates that the number of such recorded incidents increased during 2013 as compared with 2012. That is perhaps unsurprising in the light of the expert evidence related to the change in tactics involving a cessation of "confrontational warfare" following the withdrawal of Al Shabaab from Mogadishu. But this chart tells us nothing at all about casualty figures. Nor does it tell us anything about how the numbers of civilians injured or killed by IEDs in 2013 compared with the numbers injured or killed during the more conventional fighting and shelling that occurred before Al Shabaab was driven from the city.
117. While giving oral evidence, Dr Hoehne was referred to paragraph 15 of Danish 3 concerning IED statistics:

"For many years, data on IEDs has lacked proper categorisation and a systematic approach to information gathering, leading to poor quality statistics. Since 2012, IED data categorised and processed has improved leading to a higher number of reported incidents."

Dr Hoehne accepted that an improvement in information-gathering had led to a higher number of reported incidents, but offered no view as to how this should inform a reliable reading of the chart. Since he was aware of the concern about the earlier figures and the improvement in reporting more recent incidents, it is perhaps surprising that he did not mention that when introducing the chart in his report, the reader being invited instead to rely upon it for what it indicated.

118. The third chart, depicting assassination attempts, does not in itself assist us very much either. By their very nature, assassination attempts are specifically targeted attacks on individuals who have been identified as enemies who should be killed. This is not a risk facing civilians simply by virtue of being present in the city, especially where the method of assassination deployed is not of a nature to cause significant collateral damage, for example where the victim is shot. Given the planned and targeted nature of such attempts, it is unsurprising that the target is killed in nearly all cases. But it is far from clear what can be drawn from the fact that something in the region of 20 targeted individuals were on average assassinated each month in a city the size of Mogadishu during the first 9 months of 2013, especially because, as we shall see below, there is evidence of Al Shabaab operatives acting as “hired guns” to resolve private disputes between individuals.
119. The fourth chart, showing “Armed Clashes – By attacker / Initiator” also offers little to inform our assessment of the risk to civilians.
120. Thus, this data collected and reproduced by NSP and relied upon by Dr Hoehne is not, in our view, a particularly helpful piece of evidence in an assessment to the risk today to civilians in Mogadishu from being injured or killed by indiscriminate violence. According to this evidence, in September 2013 we can see that in a city whose population is 2 ½ million according to Dr Mullen or 1 ½ million according to Dr Hoehne, there were 6 grenade attacks causing an unknown number of casualties, 10 IED attacks that were *not* categorised as “unsuccessful” but, again, we know nothing, from this evidence, of the level or severity of injuries or the numbers killed as a result, 15 successfully executed assassination attempts and a very few armed clashes in unknown locations.
121. Dr Hoehne’s evidence is that:

“Somali news reports from December 2012 and January 2013 show that government and army officials in Mogadishu were the main targets of assassinations and bomb attacks and occasional shoot outs. But since around May 2013 many civilians are again falling victim to Al Shabaab attacks. Particularly damaging in this regard were larger scale (suicide) bombings that are on the increase in Mogadishu over the past months. The details on the worst incidents are (set out below).”

Despite the fact that hard evidence concerning the actual level of civilian casualties is elusive, we do not lose sight of the fact that a significant number of civilians are getting caught up in the attacks being carried out by Al Shabaab. Drawing on a report by the Secretary General of the UN dated 31 May 2013, Dr Hoehne noted that Al Shabaab continued to

launch asymmetrical attacks on soft targets that “often resulted in civilian casualties”. Targeted killings and attacks were routinely reported. IED incidents rose in 2013 in comparison to 2012. He set out a number of examples in his report:

On 24 January 2013 a device hit a convoy carrying two UN personnel, who were unharmed;

On 29 January there were suicide bombings aimed at the prime minister in Villa Somalia and on 18 March on the head of National Security Intelligence Agency for Benadir, which killed 10 people, showing “Al Shabaab’s continued intent and capability to attack government and soft targets”.

On 14 April more than 30 people died in a complex attack by Al Shabaab on a regional court house. The attack, involving multiple gunmen and bombs, “was the deadliest to date in Mogadishu in 2013”. On the same day, a vehicle likely to be that of a suicide bomber hit a Turkish aid agency convoy. On 25 April a Deputy State Attorney was murdered in Mogadishu.

On 5 May a suicide vehicle targeting a Qatari delegation convoy killed over 10 people.

On 19 June 2013 an attack on the United Nations Development Program compound in Mogadishu by armed men and suicide bombers killed at least 14 people.

122. Referring back to the NSP charts we have considered above, Dr Hoehne said, after a discussion of the above incidents:

“The intensification of Al Shabaab attacks led to many civilian casualties in Mogadishu in recent months,”

quoting, in support, the most recent report available at the time by the UN Secretary General on the situation in Somalia, dated 3 September 2013:

“There was a surge in violent attacks in the capital. In May and June, hand grenade attacks in Mogadishu doubled compared to the start of the year. *There were three times as many bombings in June as in January.* Targeted killings occurred almost daily. There were at least four mortar attacks, including two against Villa Somalia on 20 May and 17 June. On 12 July, an improvised explosive device attack against an AMISOM convoy on the airport road in Mogadishu resulted in more than 17 civilian

casualties. On 27 July, a complex attack by Al-Shabaab against a facility adjacent to the Turkish Embassy resulted in the death of one Turkish security officer and one civilian, and injured at least eight others. (emphasis added)."

It might be noted that this is broadly in line with the information recorded by NSP, discussed above, although no specific account is taken, when referring to the number of bombings being three times higher in June as compared with January, that most of the hand grenade attacks were unsuccessful and caused no casualties. The same cannot be said, though, of IED attacks, although, as we have seen, the NSP data does not disclose numbers of casualties.

123. At paragraph 22 of his report, Dr Hoehne sets out an extract from an e-mail from a colleague who has been based in Nairobi for the last three years and who has been a regular visitor to Mogadishu since January 2013, the emphasis shown in this extract being added by Dr Hoehne:

"Al Shabaab are staging increasingly complex attacks in Mogadishu involving a combination of car/truck bombs, suicide bombers, and gunmen [...] there are no truly secure districts in Mogadishu. This is particularly the case now. There are now as many, if not more, assassinations and grenade attacks in the city as there were when the city was held by Shabaab. All trends -- grenades, IEDs, running street battles, assassinations, etc -- indicate that security is deteriorating. Some thought that this is just down to the "Ramadan offensive", but the statistics suggest that this is an ongoing trend from about March this year and that there is no reason to believe it will subside now that Ramadan is over."

124. A further indication of the difficulty of capturing reliable data concerning the level of attacks and, the casualties arising from them, is provided by claims made by Al Shabaab about the extent of its operations within Mogadishu. On 4 December 2013 it published a list of 18 attacks carried out in the city on 4 September for which it claimed responsibility. Dr Hoehne was invited to comment, in this context, upon an observation in Danish 3 at paragraph 28:

"In a press communiqué dated 18 April 2013, the so called Press Office of Harakat Al- Shabaab Al- Mujahideen claimed responsibility for the killing of "127 Somali intelligence agents, officials and spies in Mogadishu" ..."

This seemed unlikely to be correct because, the report continued:

“However, the high casualty figure appears to be propaganda, since, according to UN statistics, only 22 individuals were assassinated by Al-Shabaab between January and March 2013”

Asked whether propaganda of this sort is a tactic used by Al Shabaab, Dr Hoehne readily agreed but pointed out that, according to the NSP chart, rather more than 22 individuals were subjected to successful assassination attempts between January and March 2013.

125. It is clear that the violent attacks launched on city targets by Al Shabaab have continued beyond the period covered by the NSP data. Dr Hoehne reproduces in his report a news item from a Somali website:

11 October 2013 Close to 10 blasts target Somali forces in Mogadishu

Explosions have been targeted at government forces in Mogadishu’s Hamar Jajab, Hamarweyne and Waberi districts. Other explosions occurred in Dabka junction, Taalada Sayidka at Maka al Mukarama Road, Hamarweyne police station, police academy. A witness told Shabeelle (the privately owned website publishing the news report) two hand grenades were hurled at an army base in Waberi but casualties remain unknown. Another blast was heard at military base at Maka al Mukarama Road near the headquarters of the ministry of Interior and National Security...”

This is a further clear indication of the targeting strategy of Al Shabaab. Dr Hoehne was invited to comment upon the following observations found in Danish 3:

“The use of IEDs as part of Al Shabaab’s tactics aim at fixing AMISOM forces on all their fronts as they expand the area and scope of their military operations. This has both a physical and psychological effect. Al-Shabaab attacks AMISOM at its vulnerable points while projecting the image that Al Shabaab has a more pervasive presence in Somalia than it does”

His response was:

“That’s an interpretation of what Al Shabaab thinks. I disagree with that presumption.”

We confess to being puzzled by that response. Dr Hoehne did not explain (and to be fair he was not pressed on the point) why he felt that Al-Shabaab would *not* wish to overstate its pervasive presence. Indeed, that would seem to chime with its ambition to generate a feeling within

the civilian population that the security forces could not deliver security and safety to the citizens Mogadishu.

Civilian casualties

126. The difficulty in identifying satisfactory evidence concerning the true scale of civilian casualties arising from what has been referred to as “weapons-related injuries” is echoed in the evidence given by Dr Hoehne. In saying that, we accept that he is doing the best he can on the data that is actually available but, ultimately, it is clear that there has to be a good degree of estimation undertaken in arriving at any indication of numbers. At paragraph 31 of his report he said:

“Scores of civilians have been killed between 2012 and January 2013 by gunmen, through indiscriminate use of force by armed groups, or in bomb attacks. The dramatic situation of civilians in Mogadishu has been reported by Midnimo.com, a Somali website, which reported on 23 September 2012 that “Mogadishu's security situation has deteriorated and more than 30 people were killed in the capital in the last three days only.”

This source of information must be seen for what it is. First of all, it is common ground and agreed between the witnesses that the position changed significantly after January 2013, and particularly a few months later when Al Shabaab completed their withdrawal from Mogadishu so that what was happening in Mogadishu during this period is unlikely to be a helpful indicator of the present position. This much is recognised at paragraph 33 of the report, where Dr Hoehne reproduces an extract from the report of the Independent Expert on the situation in Somalia, Shamsul Bari, dated 16 August 2013, noting that then the major concern was civilians getting caught up in the cross fire, something that ceased to be a regular risk following the departure of Al Shabaab from the last districts of Mogadishu where it was clinging on to territorial control.

127. This part of Dr Hoehne’s evidence is relevant for another reason, the need to be clear about who is a civilian for the purposes of such reports or statistics relating to casualties that are available. In cross examination, he accepted that the 30 people killed referred to above included military personnel, police and a Member of Parliament. Given that he reproduced this information immediately under a heading in his report “Civilian Costs”, the need to be vigilant in interpreting data about civilian casualties is plain.
128. At paragraphs 33 and 34 of his report, which we reproduce in full below, Dr Hoehne sets out a stark view of continuing risk for civilians in

Mogadishu of becoming a casualty of the violence still to be encountered in Mogadishu:

“The Report of the Independent Expert on the situation of human rights in Somalia, Shamsul Bari, dated 16 August 2013, indicated the continuing massive human rights problems in much of Somalia. In paragraph 40 of his report he stressed that

“[...] Before the withdrawal of Al Shabaab from Mogadishu in August 2011, the major concern was civilians caught in crossfire; the new environment [in the reporting period until August 2013] has resulted in displacement due to military operations, increased incidence of sexual violence against women as well of sexual exploitation and abuse, conflict related-detention, targeted assassinations, unlawful killings and the use of improvised explosive devices.

He added in paragraph 42 that “[...] available reports indicate that civilian casualties have continued, resulting mostly from aerial attacks, as well as naval and ground engagements by pro-Government forces, including international forces”. The independent expert also found in paragraph 44 that “Al Shabaab increased the use of victim-activated (pressure plate) improvised explosive devices. Moreover, it continued to perpetrate suicide attacks, beheadings and summary and extrajudicial killings [...].”

In his most recent report on Somalia dated 3 September 2013, the UN Secretary General mentioned in paragraph 39 that “Civilian casualties and extrajudicial killings were frequently reported in conflict areas, with civilians caught in the crossfire between the parties”. The head of a Mogadishu-based research institution, whom I asked for his assessment of the security situation in Mogadishu, with particular focus on the situation of a returnee to a city from abroad (without privileged access to security, like government officials or well established businessmen) wrote me in a mail dated 2 November 2013:

[...] I can tell you that the notion that security has improved for ordinary Somalis that European countries can now deport to Somalia is deeply worrying. Even if they are Hawiye, the nature of the threats they face are not clan warfare and can't be protected by other clans; people face serious threats from al-Shabaab. And individuals returned from the Diaspora are particularly

in jeopardy as they become target both for al-Shabaab and Somali security forces who suspect that they might be rejected from Europe due to their extremist views. In short, this is no country for returned Diaspora. The threats are grave and the price people pay could be ultimate. Even if people have and can afford bodyguards, like me, my colleagues and I face great dangers because of the work we are doing.
Mail dated 2 November 2013.”

129. There are, though, a number of real difficulties with this part of Dr Hoehne’s evidence. First, although the risk to civilians in Mogadishu of being caught up in cross fire appears to be accepted to be largely a concern of the past, the risks that are said to have replaced that, such as aerial attacks, naval bombardments and ground engagements by government forces are not issues for those living within Mogadishu even if they are real concerns for civilians living outside the capital. Second, the evidence indicates that ongoing risk of extrajudicial killings and beheadings by Al Shabaab does not any longer subsist within Mogadishu, where there is no attempt to retain territorial control and so that must relate to the position outside Mogadishu also. Mogadishu is no longer a “conflict area” where civilians risk being caught up in cross fire. Third, this assessment of risk is by someone working for an organisation of a type that plainly falls within a category viewed as a legitimate target by Al-Shabaab, as being associated with the international community working within Somalia, and so perceived risks to such an organisation are not the same as those facing someone properly described as an ordinary civilian.
130. There is a further difficulty with this aspect of Dr Hoehne’s evidence of the views being expressed by informed observers. While he has set out negative comment drawn from the report of the Independent Expert, he has left out of account what is said in that report that might be thought to be a balancing view, or perhaps even to point the other way. In the concluding sections of the report, which might be thought to be of significance because here the author brings together all that has been set out and expresses some conclusions on the material assembled in the report as a whole, we find this:

“Some reflections on the situation in Somalia
After more than 20 tortuous years of armed hostilities, which still continue in some areas, Somalia has reached a turning point. While there is still a long way to go to return to normalcy, there are visible signs of change all around. The palpable improvements in the security situation in Mogadishu and in an increasing number of areas in the country is reflected in the

return of an impressive number of people from the diaspora, including businessmen lured by the promises that have been made. Both international and United Nations flights to and from Mogadishu are full. Business activities and construction of buildings are on the rise. Though serious concerns remain about the security situation as a result, for example, of clan infighting in Kismayo and Jubaland, there are clear signs of hope in the air.”

And further, as recommendations being made:

“For the international community

Since there is a more committed and popular Government in Mogadishu now, it would be prudent for the international community to provide it with the support it genuinely needs to re-establish Somalia as a normal, cohesive and stable State. The opportunity to break the back of the insurgents is clearly in sight. This can best be achieved if popular backing for the Government and its efforts is enhanced through, among other things, specific support to the Government’s human rights road map. States and other donors may wish to select specific areas likely to be articulated in the road map for priority support and implementation. Somalia should not be allowed to slip back to lawlessness and chaos.”

Security / protection needs for returnees

131. At the section of his report commencing at paragraph 35, Dr Hoehne sets out an account of the experiences of a returnee to Mogadishu, to whom we shall refer as “Mr A”. This is based upon an hour long interview by telephone. He does so because this is offered as evidence of what will be required of a returnee in order to secure his personal safety, and the fact that Dr Hoehne makes other references to the experiences of Mr A elsewhere in his evidence suggests that he places considerable reliance upon this.
132. Mr A is a Somali citizen who returned to Somalia for a two month long period between June and July 2013 after an absence of almost 30 years. Mr A said:

“In Mogadishu, you have to have a guard. They consider you as a foreigner [coming from abroad and by clan not belonging to the local majority group called Hawiye]. The situation is a little better than three years ago [when Al Shabaab was fully in control]. But still, Al Shabaab is around. They plant bombs,

some people get killed. I know myself two Somali women from the diaspora in the UK who visited Mogadishu for summer holidays and got killed in bomb blasts.”

In his oral evidence Dr Hoehne said that he had no evidence to support or confirm this account of two unidentified women travelling to Somalia from the United Kingdom being killed.

133. Mr A explained that, having been encouraged by some relatives to make the visit and been warned by others not to, he pre-arranged for security in advance, speaking of a cost of \$US15,000 for “overnight and guard” for the two month visit. He said that AMISOM provides security only “at the highest level” and that at night militias as well as Al Shabaab would “operate in town”. He said also that “non- Hawiye” would have difficulties in arranging protection.

134. However, more information emerged as Dr Hoehne was pressed for further details from which it is clear that Mr A is not representative of those returning to Mogadishu today. The purpose of Mr A’s visit was to follow up a legal dispute concerning land and property in Afgoye. During his stay he went frequently to Mogadishu to conduct court proceedings about this property dispute. Dr Hoehne said that he assumed that Mr A was a man of some wealth. It followed that he was in dispute with someone else about land or property of sufficient value to justify the journey to and stay in Somalia to resolve the dispute. In cross examination Dr Hoehne said of the \$US15,000 spent on security and accommodation for the trip:

“I do not think everyone would have to pay that. It was a land dispute.”

135. This point is reinforced by what Dr Hoehne wrote in response to the respondent’s written questions on his report:

“... There are reports of Shabaab operatives acting as “guns for hire” by individuals bearing a grudge against people..... Land disputes are also on the rise.... Following the departure of Al-Shabaab from the city many of the Sharia court systems are not operating effectively. So people are taking the law into their own hands.”

136. This evidence does not provide us with much assistance in making an assessment of the security needs of an “unexceptional” returnee to Mogadishu. Mr A does not make clear the extent to which he is simply repeating what he has been told by others and what, if anything, is

based upon his own experiences or observations during this two month long visit to Somalia.

137. When we refer to an “ordinary civilian” or an “unexceptional returnee” we mean someone not associated with the security forces; any aspect of government or official administration or any NGO or international organisation.
138. In fact, Dr Hoehne provided very little evidence directly concerning the circumstances facing an “unexceptional” or “ordinary” returnee from the diaspora. Yet his assessment of the position of the appellant MOJ, on whose behalf the report was commissioned, is based firmly upon the circumstances of Mr A, with whom he has very little indeed in common:

“... it is my opinion that upon return to Mogadishu MOJ, who lacks orientation in Mogadishu due to his absence from Somalia for over ten years and who belongs to a clan (Gadabursi) that has no strong presence in Mogadishu and who personally lacks an active and powerful and rich support network (as one diaspora Somali who recently travelled to Mogadishu stated he needed (Mr A) about 15,000 USD for 2 months protection.... will most probably be seriously disoriented and vulnerable in the complex environment of conflict and violence that in this form – involving Al Shabaab attacks – did not exist in the early 2000s when he and his family left Somalia. Without basic orientation and effective protection in Mogadishu, MOJ would be at a very high risk of getting caught in cross fire or being otherwise hurt through bomb attacks or explosives along the way.”

139. In his oral evidence Dr Hoehne added that what arose was the question of how someone who had not lived in Somalia for nine years would protect themselves. Such a person, he said, would need very strong support from relatives or guards or both. This, he said, “would cover elite diaspora members”. An ordinary person without “financial and personal capacity” would be at high risk of getting caught up with the wrong group of people.
140. What, though, is not altogether easy to identify is precisely what such a person would need protection against and how bodyguards would provide such protection. One can see how Mr A, seeking to dispossess another person of land or property, might need guards to protect him from an attack intended to see off his legal challenge. The evidence does not suggest attacks are specifically targeted at civilians or at more specific sub-groups of civilians who have returned from the diaspora. A person unfortunate enough to be in the immediate vicinity of a suicide bomb attack, for example, would presumably be just as vulnerable

whether or not he was accompanied by an expensive armed guard. What can be drawn from Dr Hoehne's evidence though is that a returnee may well be disadvantaged in not being "street wise". He might not know when it was best to take an alternative route or which areas of the city were best to be avoided for the time being.

141. In his written response to questions posed by the respondent arising from his report, Dr Hoehne reinforced this point:

".. returning diaspora tend to be transported by the organisations they are working for or with the assistance of wealthy relatives. It is commonly said that those that have remained in the city are able to spot "returnees" by the way they walk or "carry themselves" meaning even women in full burqa can often be identified as "outsiders".

142. In his oral evidence Dr Hoehne said that there was "probably" an enhanced risk from Al Shabaab for someone seen as having arrived from the West. He referred to a warning issued by an Al Shabaab commander on 29 December 2013 that they would consider diaspora returnees as "polluting religion". He said that the view of Al Shabaab was that "if you are not for us you are against us and will be treated as an enemy", including those who pollute religion. This is because such returnees were suspected of bringing back western views, expressing support for the government and having "pro-western views", having been exposed to "an infidel environment".

143. He developed this point further in his oral evidence:

"You are considered to be westernised. It depends very much on your individual behaviour. People who know what has been expected of them on return do not run around inappropriately dressed. It is self-protection. You can do things to avoid problems. But, diaspora returnees are identified by the way they walk etc. The way they dress. Local people can identify diaspora members. Some things are out of your hands. You need to be up to date with language. There has been considerable dialectical change. Somalia and dialects of Somalia. All know a form of Somali in southern version vocabulary -- too many English words. You would not find the right words immediately."

144. This may be thought to be significant and important evidence because it represents an acceptance that the level of risk may be reduced by appropriate behaviour. "You can do things to avoid problems". But Dr Hoehne emphasised that a returnee would be recognisable as such because of language, dress and behaviour.

145. On the other hand, Dr Hoehne was referred to a news report from allafrica.com dated 9 January 2014. This is a lengthy extract which we reproduce in full because it gives full details of the Al Shabaab warnings and because it discloses a contrary view expressed by some who have chosen to return:

"Mogadishu – Somalis who have returned to their homeland from abroad have shrugged off al-Shabaab's recent threats that it would target them because they "have been taught garbage and sins, and have lost [their] religion and are being used [to spread evil]."

Al-Shabaab commander Ali Mohamed Hussein, known as Ali Jesto, made the announcement December 29th, saying the returnees "will be killed and fought against in the same manner" that al-Shabaab fights against the Somali government.

"They are working for the infidels, and since they are working for the infidels, they are the same as the infidels they are working for as far as we are concerned," he said.

Hussein also warned Somalis to stay away from government buildings, public venues frequented by government officials, and from foreign aid agencies and their workers as they all would be targeted in the group's attacks. Days later, al-Shabaab claimed responsibility for a New Year's Day twin bombing at the Jazeera Hotel in Mogadishu that killed at least 10 people and injured many more.

Returnees unshaken by al-Shabaab threats:

Khadija Ali, a 38-year-old mother who returned from England in 2013 to visit her sick mother in Mogadishu, told Sabahi she does not think much of the threats, and says the terrorism brought about by al-Shabaab cannot chase returnees away.

"I am advising every diaspora returnee to persevere through any threat that comes from the terrorist groups so that they are defeated," she said. "We should not be demoralised. What they want is for us to become demoralised and flee our country, and we will never accept that."

"Al-Shabaab will end up fleeing the country if we persevere," Ali said.

Ahmed Salad Kulmiye, a 60-year-old who returned to Somalia in 2013 from England to collaborate with local youth-based organisations in capacity building projects, said al-Shabaab's threats against the diaspora will not change their commitment to work in their country.

"They want to isolate the government from the people, but I do not think that is possible," Kulmiye said, commenting on the warning the militants issued against citizens who seek services at government buildings.

Kulmiye challenged al-Shabaab's claims that returning Somalis are engaging in sinful acts and said those statements were excuses for the group to justify their unlawful actions.

"There are no [night] clubs to dance or do other bad things [in Somalia], and I also have not seen any places to drink alcohol," he said, adding that Somalis will turn a deaf ear to the militants' threats.

Rowda Abdi, a 55-year-old returnee from England who opened an electrical appliances store in Mogadishu's Hamar Weyne district, told Sabahi the country's progress should not be hampered by the threats from al-Shabaab or the explosions that take place in Mogadishu."

In response to this, Dr Hoehne said that although returnees from the west would raise considerable levels of suspicion, that did not mean that all will be treated as enemies of Al Shabaab. But he qualified that response by saying that he agreed with what was said by the Tribunal in AMM to the effect that the only returnees who would not be treated as an enemy are those who sought to join Al Shabaab.

146. Responding to questions from Mr Toal, Dr Hoehne was first asked to look at a number of pieces of documentary evidence that we must discuss briefly in order to put this exchange into its context. First, an IRIN news report from OCHA dated 18 May 2012:

"SOMALIA: Mogadishu on the up

MOGADISHU, 18 May 2012 (IRIN) - It is Friday morning in Mogadishu and Lido beach presents a scene reminiscent of seaside towns around the world. At the top of the beach, women sit with their wares, selling water and ice-lollies from cool-boxes. The middle-beach is dominated by young men playing football using driftwood as goalposts. At the water's edge, boys and girls, the latter heedless of their long flowing garments, hurl

themselves into the waves or bob on the surface like apples.

"We're on holiday", says Ibrahim, a Londoner in his twenties who was born in northern Somalia. Ibrahim is travelling in a group of 20, all from the UK. "We came here for the beaches", he said. On the road behind him, blue lettering advertises the Indian Ocean Star, a new beach-front restaurant and bar.

Bashir Osman has facilitated journalist visits for years and now plans to capitalize on the swelling ranks of visitors like Ibrahim who are choosing, for both business and personal reasons, to come to bullet-ridden Mogadishu. Osman has purchased 500-metres of beachfront land a few kilometres south of the international airport compound, where he hopes to open a restaurant and eventually a hotel. His infectious fondness for Mogadishu belies a strong philanthropic streak.

People are returning and reconstruction is under way. According to the UN Refugee Agency (UNHCR), 3,800 people returned to Mogadishu in March alone. From afar the city glints with shiny new tin roofs dotted among dust-covered ruins and camps. Private operators are offering electricity in the old town for US\$30 a month. Fishermen are enjoying a healthy demand for shark-fins from Dubai and the Middle East, with a shark fetching as much as \$500. Building materials lie in piles on street corners, where camel's milk and cappuccino vendors ply their wares.

International NGO and diplomatic missions are also coming back - according to a UN source, Britain has already identified the plot for its permanent diplomatic base on the airport compound - and property prices have spiked. According to Osman, a 100-square metre plot near K4 in the city centre sold recently for \$2million.

"The key is security", said Abdullahi Godah Barre, minister for planning and international cooperation, of the city's renovation. While African Union troops have largely taken Mogadishu and continue to push beyond the city limits to secure outlying areas where Al-Shabab operatives remain obdurately in place, the Somali capital is still in counter-terrorism mode, and kidnap and ransom, improvised explosive devices, and suicide bombers remain an everyday threat."

Having set the scene with that somewhat optimistic outlook, Mr Toal drew attention to reports of attacks carried out on facilities thought to be

frequented by diaspora returnees. The first is a report of a suicide bomb attack on a restaurant near Mogadishu's Lido beach resort in February 2013 in which 2 people were killed:

"Mogadishu – Twin explosions have rocked a restaurant near the Lido resort beach in Mogadishu, Friday killing two people including the suicide bomber and wounding seven others.

According to witnesses, the first attack was by a suicide bomber wearing a vest packed with explosives that blew up inside the restaurant but only killing the perpetrator.

The second explosion was a car packed full of explosives which killed one person and wounded seven others and destroyed the perimeter walls.

Ahmed Hassan, who was at the restaurant, says that the situation turned quickly to chaos after huge explosion with smoke and dust filling the whole restaurant.

The attack is the second in the area in less than three weeks.

The restaurants along the Lido beach are usually crowded on Muslim weekends with families enjoying the beach, playing football or swimming."

Three things might be noted about this report. First, it is an example of a "complex" attack involving a second, follow up, explosion. Second, this article does not suggest that this is a restaurant particularly frequented by diaspora returnees. Third, despite the considerable resources said to be invested in the attack by Al Shabaab and the "huge explosion", fortunately the number of fatalities was limited to two, one of whom was the original suicide bomber as is confirmed by other reports of the incident, with seven wounded.

Next, Mr Toal drew attention to a report from Aljazeera of a car bomb attack on another Lido restaurant in February 2013, this one targeted at a restaurant said to be frequented by "officials", leaving two dead and two injured. In contrast, he then referred Dr Hoehne to a very positive and optimistic report from The New York Times from April 2012 headed "A Taste of Hope in Somalia's battered Capital" which spoke of people travelling to Mogadishu for holidays, the holding of events such as a televised talent show called "Somali Idol":

"But people here are sensing the moment and seizing it. More than 300,000 residents have come back to the city in the last six months..... The economic boom, fuelled by an infusion of tens of

millions of dollars, much of it from Somalis flocking home from overseas, is spawning thousands of jobs that are beginning to absorb young militiamen eager to get out of the killing business...”

The date of that report must be noted and considered in the light of the evidence we have set out above. Next, once again illustrating the other side of the coin, Mr Toal referred to a report of a suicide bomb attack upon the National Theatre of Mogadishu, said to have resulted in the killing of ten people including several officials of the Transitional Federal Government. It is impossible to ascertain whether the reason for targeting the theatre was because it was known that officials of the TFG were to be present or whether that was coincidental. All we know is that that was the only category of the casualties the report chose to identify.

147. Next, Mr Toal referred Dr Hoehne to a report concerning the establishment in Mogadishu of a chain of restaurants known as the Village Restaurants by a Somali citizen who returned in 2008 to establish that business. These restaurants have been the subject of bomb attacks as is described by the Voice of America news report of 3 November 2012 identified by Mr Toal:

“Two suicide bombers in Somalia appear to have targeted a second restaurant owned by a British-Somali businessman.

Witnesses say that four people, including the two alleged bombers were killed on Saturday in twin explosions near the Village Restaurant in Mogadishu. A guard who stopped the bombers from entering the building was killed in the attack, along with a civilian. A total of 10 people were wounded.

The restaurant is popular with government officials, journalists and politicians.

In September, two suicide bombers attacked another co-owned Village Restaurant in the capital, killing 15 people. At least three journalists were among those killed, including the Somali National Television director.

The African Union peacekeeping force in Somalia (AMISOM) said it suspected al-Shabab militants were behind the September attack.

The al-Qaida-linked group controlled parts of the capital until last year when it was driven out by Somali and AMISOM forces.

However, the militant group has continued to launch attacks in the region.”

Once again, it might be noted that this report discloses one civilian fatality and that the restaurant is one “popular with government officials, journalists and politicians” each of which groups are seen by Al Shabaab to be a legitimate target.

148. The question posed by Mr Toal to Dr Hoehne on the basis of this material was “What do those attacks tell us about diaspora involvement in economic development?” to which the response was:

“Al Shabaab may well get economic returnees who try to make a difference. Al Shabaab said they potentially see returnees as opponents. All those documents show that Al Shabaab has a clear strategy of targeting diaspora returnees who try to make a difference. These attacks all carry high risk of killing targeted at returnees who identify themselves as visible by opening restaurants -- encouraging women to swim with men which makes much anger for Al Shabaab.”

It is, however, really quite difficult to see how that answer can be drawn from the material addressed. It seems clear that the targeting disclosed by the attacks identified is not aimed at diaspora returnees, nor those involved in economic regeneration, but (i) civilians engaging in activities that might be disapproved of by Al Shabab, such as mixed gender swimming at the beach; and (ii) places frequented by government officials, politicians and journalists. Notably absent from those news reports is any suggestion that diaspora returnees were, as a group, being targeted.

149. It should be recorded, though, that Dr Hoehne has been consistent in his view that diaspora returnees are in fact targeted. He reproduces written comments from a colleague who has visited Mogadishu, who said, about major changes regarding security for civilians over the past 12 months:

“Popular hang outs for the Somali diaspora are one of the main targets in Mogadishu at the moment. There have been a number of attacks on restaurants. I was in Mogadishu when the last attack occurred on the Maka Al-Mukarama Hotel.... The Village chain of restaurants have been attacked three times now!”

However, at page 239 of the “Other background materials” section of the appellants’ documentary evidence bundle is a report from Aljazeera about this attack on the Maka Al-Mukarama Hotel which includes this:

“Al-Shabab claimed responsibility for the blast.

"The target of the attack was apostate security forces and officials. The attack was successful," the group's spokesman for military operations, Sheikh Abulaziz Abu Muscab, told Al Jazeera.

...

Al-Shabab have said that they will keep up their campaign against the new government..."

150. In cross examination it was put to Dr Hoehne that the connection between the various attacks is that these were places frequented by Somali officials and government officials, and that they were targeted because of that and not because these were businesses run by diaspora returnees. He replied, simply, by saying:

“It’s possible.”

Risk from Undisciplined soldiers

151. At paragraph 26 of his report, Dr Hoehne said that there was an additional risk for ordinary civilians from undisciplined soldiers. In support of that he quoted from a news report of looting by soldiers of shops in a district of Mogadishu. The report described how soldiers took cash and emptied the entire contents of eight shops, which had no security guards to protect them. The report said that this was not the first time such had happened, as the same had happened just a few days earlier. Developing the point in a written response to questions raised in respect of his report, Dr Hoehne wrote about a YouTube clip depicting statements by the head of the Somali military court dated 17 October 2013:

“... it features statements by the head of the Somali military court and the minister of defence that clearly indicate that looting and abuses of civilians by Somali soldiers is a serious problem.”

However, in cross-examination Dr Hoehne accepted that neither had in fact used the term “serious problem”. Dr Hoehne justified his choice of vocabulary on the basis that:

“They saw the need to set up the court. How I interpreted this was that there must have been sufficient cases so they had to act.”

We do not accept this evidence of Dr Hoehne. His own interpretation of this does not appear, on its face, to be justified. His justification for his assertion that it was statements by the head of the court and the minister that clearly indicated that there was serious concern appears, on the basis of what he has said subsequently, not to be correct. He now says that it was the fact of the setting up of the court that indicated that there must have been serious concern entertained about looting by soldiers, rather than any statement that was made on the You Tube clip referred to. That is not what he said originally.

Significance of Clan Membership

152. Dr Hoehne did not address in his report the significance of clan membership, or indeed, the position of IDPs in Mogadishu today, in the detail into which Dr Mullen descended. That is not a criticism, but said by way of explanation of why there is not a detailed analysis of that topic at this point of the determination. At paragraph 52 of his report he said:

“Moreover, clan protection does not function automatically. In the face of ideological confrontations the “clan front” tends to get porous and sometimes crumbles. This means that if confronted with Al Shabab, for instance, clan support often does not really help or even materialise, since the ideology of the group in many ways opposes clan belonging and divisions. It emphasises the unity of all (true) Muslims. Clans support and protection is also sometimes dependent on the “value” a clan members has for the community. If a person is, for instance, very poor, a drug addict, a notorious criminal or a prostitute, relatives will not or only unwillingly offer support and protection.”

That evidence is consistent with the view offered by Dr Mullen of the declining significance of clan membership in Mogadishu and the analysis that clan membership is now more relevant to the issue of social support rather than protection. In his written response to questions raised on his report Dr Hoehne added:

“Clan identity in Mogadishu and the surroundings has been cemented in the past 20 -- 30 years. It is the most important social construct in the city and is therefore one of the most important factors to consider when arranging security.”

And in his oral evidence Dr Hoehne said:

There are no “clan militias” as such. When a militia is required a person will assemble a group drawn from his own clan to address a particular purpose.

Thus, when a person looks to his or her clan when security is required, that person is more likely to be looking to relatives, who would of course be fellow clan members, rather than to a clan militia as that term has previously been understood. Dr Hoehne explained, in response to an enquiry as to whether one would have to pay for “family protection”:

“It depends upon your profile. You may be able to have just good friends or relations to protect you. If you are high profile or involved in a high value legal case you may want additional security.”

That seems to us to be important evidence and a conclusion that flows clearly from the evidence we have discussed above. A person whose profile is such that he or she may be personally targeted may well need visible security to deter such targeted attacks or to defend against them. But in respect of a person who is unlikely to attract personally targeted attacks, any risk arising from indiscriminate violence is unlikely to be reduced or avoided by retaining hired bodyguards, save perhaps to the extent that such person may be able to provide local knowledge of areas to be avoided. Such information and advice would also be available from family and friends familiar with the area.

153. In his written response to questions arising from his report, Dr Hoehne said:

“Most clans and sub-clans have their own neighbourhoods in Mogadishu. Bigger clans have their own districts with District Commissioners representing that clan. Mogadishu is heavily dominated by the Hawiye clan. Non-Hawiye clans – such as the Gadabursi – will often be confined to smaller neighbourhoods where they can rely on the support of their fellow clansmen.”

IDPs and IDP camps

154. Dr Hoehne was asked in oral evidence how many people in Mogadishu are living in IDP camps. His response was 369,000.
155. Once again, we can detect in that answer a propensity to present information in the least positive manner possible. It seems to be clear that 369,000 is the number of people living in Mogadishu whose place of residence has changed in response to past concerns about security in their home area and not the number of people actually living in

Mogadishu in IDP camps. There is a vitally important distinction to be made in that respect which was identified by Dr Hoehne himself when answering questions from Mr Gill. He said that people who moved their place of residence within Mogadishu are still regarded as part of the IDP population, whether or not they need to resort to living in one of the IDP camps. Asked if there might come a time when such people ceased to be regarded as IDPs he said:

“I think they remain IDPs. If they stay for years and marry a local girl and sell their other property it is possible, but my thinking is that they are IDPs.”

To confirm that his answer had not been misunderstood, Dr Hoehne confirmed that “a good proportion of IDPs” would have resettled within Mogadishu and an IDP could be someone who had moved from one district of Mogadishu to another.

Who benefits from the “economic boom” in Mogadishu?

156. As we have mentioned above, although Dr Mullen’s evidence was that the population of Mogadishu stood at about 2 ½ million, Dr Hoehne was adamant that was an overestimate and that no more than 1 ½ million people are living in Mogadishu today, including IDPs, the total of which has been estimated at 369,000.
157. This difference of opinion may be thought significant. That there can be such a wide difference of opinion about something as fundamental and basic as the population of the city is a powerful indication of the fact that well-informed observers who are well qualified to express a view and who have given careful consideration to the question can arrive at conclusions which cannot both be correct. Indeed, both may be significantly incorrect. Yet the preferred number is confidently stated by both as if it were a fact being asserted. No qualification is made by either expert witness to the effect that this is a best estimate and that there may be a wide margin of error due to the absence of reliable data. This has to be borne in mind when considering the evidence generally, where witnesses speak about the number of incidents involving violence, the numbers of dead and injured that are generated by such attacks and any other assessment made in the absence of reliable statistical information.
158. With that in mind, we consider next what Dr Hoehne has to say about the “economic boom” or “peace dividend” and who benefits from it. In his oral evidence, having been asked who benefits from such economic development he said:

“A tiny proportion. 89% are poor. The remaining 20% will be a bit better than being poor. A little better than “barely surviving”. Possibly 1% or 2% of the population benefit from the last two years economic development.”

Leaving aside the problematic arithmetic inherent in that answer, it can be seen, at least, where the figure of 89% is taken from. Dr Hoehne was referred to the Somalia Human Development report for 2012 at page 580 of the appellant’s bundle from which he drew attention to this comment:

“In south central Somalia 89 percent of people are poor across several dimensions, compared to 75 percent in Puntland and 72 percent in Somaliland.”

But what needs to be added to that comment is the context from which it is taken. The sentence that precedes it is as follows:

“The divide between urban and rural populations is significant - 61 percent and 94 percent respectively.”

Thus, the figure of 89% does not relate to Mogadishu, but to South Central Somalia generally, and leaves out of account the urban/rural differentiation emphasised by the author of the report. This illustrates a characteristic that is apparent from Dr Hoehne’s evidence generally that he consistently presents the least positive interpretation of the source material he draws upon.

159. Pressed further to explain who does benefit from the economic development in Mogadishu, Dr Hoehne said:

“A very tiny fraction of the elite. The vast majority of people are struggling to survive...”

We do not accept that to be a correct view. The evidence is of substantial inward investment in construction projects and by entrepreneurs returning to Mogadishu to invest in business activity. In particular we heard much evidence about hotels and restaurants and a resurgence of the hospitality industry. It does not, perhaps, need much in the way of direct evidence to conclude that jobs such as working as building labourers, waiters or drivers are unlikely to be filled by the tiny minority that represents “the elite”. Indeed, Dr Hoehne suggested that SSM, on whose behalf he was being asked questions:

“could probably get a job as a waiter...”

although he said that there would probably be much competition.

160. Interestingly, Dr Hoehne himself recognised that his approach to the evidence may not be the only one properly open. Having been asked in oral evidence whether or not there had been “durable change” in Mogadishu on the basis that the “economic boom” may have brought with it a degree of durability, he said:

“I do not think so. What is a definition of durable? The government was formed in second half of 2012. There were large financial pledges in 2013 and substantial development construction started in 2012 and early 2013. All this could be undone within weeks if Al Shabaab mounted -- if they established a larger force -- managed to recruit more fighters. If they get more support from Al Qaeda -- more finance.”

He paused, reflected upon what he had said, and added:

“Maybe that is a speculative answer by me.”

Mary Harper

161. Mary Harper is a professional journalist, currently Africa Editor for the BBC World Service News, who is well-placed to speak of conditions in Mogadishu today. She has been a frequent visitor to many African countries and has made a recent visit to Mogadishu. We have some photographs taken during her visit which provide a helpful illustration to illuminate the broad range of documentary material we have before us.
162. As well as drawing upon her own extensive personal experience of reporting of and from Somalia over the last 20 years, her last visit to Mogadishu being in August 2013, she has spoken with Mogadishu-based journalists and others who make regular visits to the city as well as other professionals who have good recent knowledge of the current country conditions. The broad range of those with whom she consults is impressive:

“I speak on an almost daily basis to contacts in South Central Somalia, including members of central and regional governments, think tanks, non-governmental organisations, the security forces and other armed groups, including the Islamist group, Al-Shabaab.”

She has produced three reports, one commissioned on behalf of each of the appellants. Unsurprisingly, there is a degree of overlap in those reports which we will not need to revisit.

163. The general conclusion reached by Ms Harper in her written evidence can be identified in the following extract from her report:

“When the tribunal looked at the situation in Mogadishu for the last Somali Country Guidance Case (November 2011), it found that “there remains a real risk of Article 15(c) harm for the majority of those returning to that city after a significant period of time abroad” unless that person is “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”. For the reasons outlined in this report, it is my opinion that there continue to be significant risks for returnees who lack the resources and connections to ensure that they have an adequate degree of protection.”

Al Shabaab – a change of tactics

164. Echoing the evidence reviewed above, Ms Harper spoke also of the significance of the change of tactics adopted by Al Shabaab in its campaign. In her written evidence she said:

“By withdrawing from most towns and cities, Al Shabaab no longer has to concentrate its resources on conventional battles and holding frontlines. This change of tactics has helped the group cope with the loss of some of its key sources of revenue, especially Mogadishu’s Bakara market...”

...

“The security situation in Mogadishu has changed significantly since Al Shabaab’s abrupt withdrawal from the city in August 2011. There are no longer running battles involving heavy weaponry between Al Shabaab and government troops, backed by African Union forces and Western security advisors. But the city remains dangerous, with regular acts of violence carried out by Al Shabaab, the Somali security services and other armed groups and individuals. Civilians are often caught up in the violence.

....

The violence has become more unpredictable because a conventional war is no longer being fought. Mogadishu is no longer a city of frontlines; attacks can happen almost anywhere at any time.

....

Al Shabaab has changed tactics in Mogadishu, in some ways reverting to what it does best, which is asymmetrical, insurgent style warfare. It carries out regular attacks, using suicide bombers, car bombs, grenades and improvised explosive devices. The scale, sophistication and regularity of these attacks has increased in Mogadishu in 2013.

...

According to the lawyer [...] who works for a Mogadishu-based think tank, "there are only a few areas in Mogadishu that are considered safe". Much of the rest of Mogadishu isn't really secured - those are the areas that many of us won't or can't go to. Many of these areas are controlled by Al Shabaab at night and the government forces can't really do much about it. Security here is very fragile." (interview 17 November 2013).

Risks for civilians in Mogadishu

165. Ms Harper emphasised that the very nature of the modus operandi by which Al Shabaab delivered its violent attacks to targets selected carried with it, inherently, risks for ordinary civilians who may not themselves be targeted:

"Civilians often bear the brunt of the violence, as many of the attacks occur in public places, including restaurants, hotels, roads and roundabouts. Civilian casualties have also been high in attacks on government and foreign targets, or on specific individuals..."

Providing a graphic explanation of this so called "asymmetrical" style of warfare, Ms Harper continued, having recalled that previously Al Shabaab would plant roadside bombs intended for vehicles containing government or military personnel:

"It is now ramming cars packed with explosives into public buildings, government offices and the premises of international organisations. Armed men, often wearing suicide vests, then storm the buildings, shooting and throwing grenades before blowing themselves up. An example of this type of assault occurred on 7 September 2013, when Al Shabaab attacked The Village restaurant in central Mogadishu. First, a car bomb exploded outside the premises, then a suicide bomber blew himself up in the crowd of civilians who had rushed to help. About 30 people were killed."

166. The observation that “civilians often bear the brunt” of Al Shabaab violence, asserted as if it were a fact, bears some examination because it is at the very heart of the appeals before us. That phrase appears to have been taken from the UNHCR 2014 report we first referred to above when considering Dr Mullen’s evidence. It can be seen from the footnote in that report that the source for the phrase is a Human Rights Watch document “Memo to the Hague: Somalia is Not Safe” dated 27 November 2013. That is the stated view of the author of that memo, Leslie Lefkow. However, what has not been mentioned, either by Ms Harper or in the UNHCR report is that the view that civilians were bearing the brunt of the Al Shabaab attacks in Mogadishu was put by the author of this memo to the High Court in the Hague, supported by the statistical evidence assembled, but was rejected by the court which went on to uphold the deportation order being challenged. Thus what is now relied upon has failed to survive judicial scrutiny and the data itself offered in support is not made available to us, either in the memo or the UNHCR report.
167. In her report, Ms Harper lists 15 major Al Shabaab attacks carried out in Mogadishu since August 2011. Of these, 6 were attacks on either a hotel, restaurant or theatre, the others being “official” facilities including the Turkish embassy, the presidential palace and military compounds. She added that only the more spectacular attacks receive media attention so that “many others” go unreported. She said that Al Shabaab has a particularly strong presence in outlying districts of the city, with its fighters “emerging at night and controlling some of the streets”.
168. Ms Harper said that Al Shabaab has “a substantial presence” in the city’s main commercial district, Bakara Market, reporting that:

“The Mogadishu-based Lawyer [...] said “It is a well known fact that Bakara is controlled by Al Shabaab, and that many explosions and killings happen there on a daily basis.”

However, it has to be recognised that such a view does not sit easily with the evidence given by the other two witnesses, neither of whom spoke of daily killings being perpetrated by Al Shabaab within Bakara Market. Ms Harper herself moved to qualify the view expressed by the lawyer whose assessment she draws upon by saying this:

“Although Al Shabaab does not control Bakara market in the sense of having fighters openly patrolling the area by day, it retains a powerful influence there, and in a number of other districts, not only because it continues to carry out acts of violence there, but because it still to some extent controls people’s minds, and therefore the way they behave. However, it

does not control the economy of Bakara market in the same way it did when it occupied most of Mogadishu.”

In her oral evidence, Ms Harper added this in response to a question as to how people react to Al Shabaab sympathisers:

“It is difficult to know who is an Al Shabaab sympathiser. From my own experience in 2012 walking around Bakara market surrounded by five or six security guards, people showing me around who were very familiar with the area would sometimes point out people who were Al Shabaab. I witnessed the police roughing up a young boy who was carrying plastic bags. I was angry – why are you beating him? They showed me in the bag – stuff to make an explosive device.”

We make two observations about this evidence. First, it shows that, at least on this occasion while Ms Harper was there to witness it, the police were alert to the need to do what can be done to protect the public from terrorist attacks, even identifying a child as a carrier of explosive materials and removing that risk. Second, Ms Harper has only the word of those she was paying to protect her against Al Shabaab personnel to confirm that such persons were in fact present during her visit to the market. She gives no indication of what behaviour or characteristics disclosed the Al Shabaab association. Nor did that perceived association, if correctly identified by her hired bodyguards, translate into any actual risk of harm on that occasion. Further, Ms Harper recognises that Al Shabaab no longer *controls* Bakara market and no longer extracts revenue from it.

Forced recruitment to Al Shabaab

169. In her report Ms Harper said this:

“Deportees and returnees would also be vulnerable to recruitment by Al Shabaab, either by force or voluntarily. It is very difficult to find employment in Mogadishu and elsewhere in South Central Somalia, especially for those who are stigmatised such as people with criminal records deported from the West. Such people might gravitate towards Al Shabaab because it offers an occupation and a monthly wage.”

On examination, it is difficult to see that what she describes relates to forcible recruitment at all. Ms Harper added:

“Members of the diaspora have often been used as suicide bombers by Al Shabaab, which has established special training camps for this purpose.”

The source offered to support that assertion is Ms Harper’s own book “Getting Somalia Wrong”, published in February 2012, which was not put before us as part of the evidence. It is hard to find within the evidence before us anything to support the view that diaspora returnees have “often” been used as suicide bombers, and harder still to find anything to support the assertion that those carrying out suicide missions on behalf of Al Shabaab have been forcibly recruited, against their will.

170. In her written evidence Ms Harper referred to an interview with the office cleaner of the Mogadishu office of an organisation called Anti Tribalism Movement in which he:

“explained how his brother joined Al Shabaab, how minorities such as the Jareer join Al Shabaab because it enables them to seek revenge, how Al Shabaab gets people to join by saying they have relatives in the group ...”

However, none of those routes to membership of Al Shabaab involve forced recruitment. That this informant provided Ms Harper with a list of ways Al Shabaab added to its numbers that did not include forced recruitment tends to suggest that it was not considered, at least by this informant relied upon by Ms Harper as articulating a view worthy of recording in her evidence, to be significant.

171. Further information emerged during Ms Harper’s oral evidence about forced, or at least reluctant, recruitment into Al Shabaab. She said:

“It depends how you define forced recruitment. Al Shabaab does not now go into schools and public places and forcibly recruit. But members of the security forces and others have described ways in which Al Shabaab recruits informants or people who can carry out activities for them in Mogadishu. For example, Al Shabaab recruits from the security forces. They go to a house or the place where they stay and say in front of their family to the person: we will not hurt you or your family if you provide information. Assistance through intimidation. How would Al Shabaab do what it does without getting good information?”

When pressed, she added that this was not in fact restricted to members of the security forces as “some other people in Mogadishu are being

asked". Asked to explain further, she said that "young men" were approached in a variety of ways:

"... If a member of a minority clan they are told - Al Shabaab does not discriminate in terms of clan - everyone is equal in the eyes of Allah - so one way to elevate social status or even to get revenge for violence to the family in the past when minority clans suffered- was to join Al Shabaab. Also, people are offered financial rewards for doing particular things for Al Shabaab."

That does not sound much like forcible recruitment. This evidence suggests that security forces are the main target of forced recruitment attempts. We do not accept that this evidence provides support for the assertion that returnees to Mogadishu face a real risk of being subjected to forced recruitment to Al Shabaab.

Clans and Militias

172. In her written evidence Ms Harper said:

"According to the Home Office Operational Guidance Note of September 2013 "There are about 10,000 militiamen in Mogadishu who are not formally integrated into government forces". Armed groups and individuals conduct targeted and random killings, robberies and seizures of property."

This does, however, need to be considered carefully. We do not understand Ms Harper's evidence to be that up to 10,000 armed militia are moving around Mogadishu killing, robbing and seizing property, although it is not hard to accept that some criminal elements do act in such a way. She explained in her oral evidence that it was necessary to distinguish between bodyguards, who would also be armed, and those armed individuals who were associated with a militia. But she attempted no numerical division between such categories. Her evidence that militias were clan-based groups that could be "activated" when needed by powerful business figures or politicians does not sit comfortably with the evidence of Dr Mullen and Dr Hoehne who spoke of militias being "assembled" when the need for specific protection arose.

173. Ms Harper's evidence does not persuade us that there are any significant clan based militias in place in Mogadishu today such as to be drawn upon by clan members seeking protection or offensive action against others perceived for one reason or another to be enemies. On the other hand, we have no difficulty in accepting that, in the absence of an effective police force, there are large numbers of people who have access to arms, and there are employment opportunities for such persons

acting as guards for both businesses such as hotels and restaurants as well as from wealthy or business individuals who see the need to put in place their own private security arrangements.

174. Ms Harper did, however, recognise that the emphasis upon the clan in issues of protection has significantly reduced. The security arrangements of some hotels were publicised on the basis that they were drawn up on a mixed clan basis and she confirmed in oral evidence that she simply did not know how many of the 10,000 militia men of which she had spoken were “clan based”. Significantly, when giving that answer, she said that in this context “militiamen” did include “bodyguards”. This, in our judgement, is important. It may be misleading to speak of such groups of armed men as “militiamen” or as members of a militia because their purpose in existing at all is very different. This was made clear by Ms Harper, in responding to a question from Mr Toal who asked to what extent do militias have the role of promoting security for a clan:

“That is not their role. In the current context that is not what they do...”

When pressed for her opinion as to how many of the 10,000 militiamen may be “clan militia” she said:

“I really do not know who these people would include. Some might be Al Shabaab members with access to arms. Militiamen includes bodyguards.”

175. While we accept that Ms Harper’s evidence was given in good faith, she doing her best to assist the Tribunal with what could be drawn from her knowledge of Mogadishu, we do not feel able to place much reliance upon this aspect of her evidence. This is reinforced by what she said, as an afterthought, in response to a question about the help a returnee might expect to receive from his clan members on return:

““None at present. If you arrive in Mogadishu and do not know anyone at all, you might start asking for fellow clan members in the hope that they might do more for you than others. But you could not expect anything from them.

I stress this is hypothetical.”

Illustrating, again, that Ms Harper was speaking of what she thought was likely to happen rather than what she knew to have occurred.

176. In her written evidence Ms Harper had suggested that there remains a danger that clan-based violence could return to Mogadishu but that concern appears to be speculative and not supported by any broad range of views to that effect expressed by commentators. She said in the “overview” section of her report:

“Clanism has made a vigorous return and today is the most powerful driver of political calculations and group behaviour”.

But that assertion, unattributed to any contributing expert, has to be regarded as a generous interpretation of the content that follows in the sense that it is hard to find either raw data or attributed expert opinion of which that can be said to be an accurate summary. Correctly understood, in our view, this is an indication that clan membership is relevant today in Mogadishu not to issues of protection but of social support more associated with the concept of an extended family than a clan as a whole.

177. Given that Ms Harper is a highly experienced and distinguished journalist, we do feel able to place significant weight upon her response to a question posed to her by the President of the Upper Tribunal in her oral evidence:

“Is there any evidence of armed conflict between clans in Mogadishu?”

To which she replied:

“Not in Mogadishu. You hear exchanges of gunfire and you are told: sub-clan; sub-clan. But documented examples are elusive. In Mogadishu, apart from incidents that are quite minor, I have not seen evidence of inter-clan violence.”

Further support, incidentally, for this view of the decline to the point of elimination of inter-clan violence in Mogadishu today is found in The Safety and Security Baseline Report of 2011, (respondent’s bundle page 1081):

“A majority of respondents said that disputes arising from clan based conflicts “never or almost never occur”.”

Risks to civilians from ill-disciplined security forces

178. Ms Harper did not deal with this topic in the same detail as did Dr Hoehne, but nor was she asked to. In her written report she did say:

“The security forces are frequently accused of abusing civilians”:
(pages 34-38 COIR Aug 2013”)

But it should be noted, which her report did not, that the following sentence is found in the same section of that source material:

“Abuses by undisciplined elements of the Somali National Security Forces against civilians were also reported during the period, although these are said to have decreased in recent times.”

Civilian casualty figures.

179. Ms Harper began her examination of the evidence available to her concerning the levels of civilian casualties by observing that:

“...it is impossible to obtain accurate casualty figures for Mogadishu...”

And, with that *caveat* in mind, set out the information that is available from the World Health Organisation:

January - December 2010: 5279 casualties from weapons related casualties were treated at the three major hospitals in Mogadishu

January - December 2011: 9689 casualties from weapons related casualties were treated at the three major hospitals in Mogadishu

January - December 2012: 6687 casualties from weapons related casualties were treated in four hospitals in Mogadishu

January - October 2013: 3889 casualties from weapons related casualties were treated in four hospitals in Mogadishu

Recognising that the figures for 2013 are incomplete, she said:

“If extrapolated for the whole year, the casualty figures for 2013 would be 4667, which is less than the previous year but still high. It is important to stress that these figures are incomplete and do not give a reliable picture of the situation in Mogadishu”.

The need for caution in approaching the statistical information that is available was reinforced in her oral evidence:

“We can’t know how many people killed or injured are not taken to hospital - there are few ambulances; nature of injury-

not worth it; long queues at hospital; the need to pay. I don't know what proportion of those injured in Mogadishu appear in these statistics.

...

"All figures coming out of Somalia about people injured and killed are unreliable and incomplete."

180. What can be made of these figures? They probably say not very much about overall figures of casualties but do allow an attempt to identify trends. It can be seen that even though data is being collected from four hospitals in 2013 as opposed to three in 2011, there has been a steady reduction on the numbers reported since 2011, a reduction of more than a half. The figure calculated by Ms Harper for the whole year up to December 2013 represents a very small proportion of the population of Mogadishu. We heard evidence that there may be something in the region of 12 hospitals in Mogadishu, although not all have the capacity to treat weapons-related injuries. But, even if each one of those hospitals treated such patients at the same rate as the four that have provided data, that would mean that well over 99% of the population, taking it to be Dr Hoehne's more conservative estimate of 1.5 million, would not have indicated any need for treatment for weapons-related injuries by seeking treatment at any hospital.

IDPs and IDP camps

181. Having made the point that, even if a person facing return to Mogadishu after a period of absence once had property in the city, it would by now in all likelihood have been seized or occupied by others, Ms Harper concluded that:

"A person who is returned or deported to Somalia, especially one with no known family, would in all likelihood end up living in one of the 500 camps for the internally displaced in Mogadishu. Some squat in damaged buildings, but this is becoming more difficult as the Somali government and others start to re-claim property they see as rightfully theirs. A person with limited family without political, social and financial resources would be in a similar position."

There is some difficulty with the starting point taken for this view. It is not difficult to accept that a person would end up in an IDP camp only if there was no other alternative. But it is not immediately clear why it should be assumed that a person returned or deported to Somalia would necessarily be without resources or access to them. After all, the evidence before us indicates that the journey from Somalia to Europe, typically,

would cost between \$15,000 and \$25,000, which sum the person concerned had been able to raise, or which was raised on his behalf. In support, Ms Harper reproduces this extract from a report by Heritage Institute for Public Studies published in November 2013, this report also being authored by the lawyer [whose identity is not to be disclosed] upon whose work Ms Harper draws repeatedly:

“Economic recovery is slow and barely reaching the most vulnerable communities in Somalia. The cost of living is soaring. Infrastructure is in shambles. Land disputes are common and often violent. The Somali government and private landlords are now forcefully evicting IDPS in Mogadishu, many of whom recently arrived and have nowhere else to go.”

182. In addition, Ms Harper, as a recent visitor to Mogadishu, has herself seen the scale of the make-shift living arrangements to which large numbers of people have had to resort. Having said that, for the reasons given above about the definition of an IDP, we approach with some caution her written evidence that more than 360,000 IDPs are living in such IDP camps today, that being the total number of persons estimated to fall within the classification of an IDP. Despite that, there can be no doubt that large numbers of people are living in such wholly unsatisfactory conditions today. In her oral evidence Ms Harper described what she saw during her most recent visit. Having spoken of what she referred to as “the rich parts” of Mogadishu, where wealthy and powerful people live in compounds behind huge metal gates with guards who let you in, she described conditions elsewhere in the city:

“Bulk of the city? Even by the standards of African cities of countries affected by conflict, Mogadishu, of cities I have visited, is on another level.

...

In 2012 what struck me is that almost every patch of spare ground had “igloos” where displaced people live. Made of sticks, cloth, plastic, metal. Not tents. Dwellings. Crammed into patches of spare ground, closely together. Inside there is just sand or cardboard or plastic on the ground.

...

Off the main roads the road disappears into sand and it is easy to get lost and many panic when into a dead end. It’s like being in a video game about a city devastated by war. Except for the glamorous parts and Bakara Market that are rebuilt.”

That evidence chimes with other views expressed before us that there is a wide disparity of conditions in which people are living in Mogadishu

today, although Ms Harper addressed only the two ends of that spectrum: those living in conditions of expensive privilege and those at or close to levels of destitution. It is plain from the evidence generally that there are, unsurprisingly, levels of living conditions to be encountered that fall between those two extremes.

183. In cross examination Ms Harper was referred to a document issued by the British High Commission on 4 February 2014 which disclosed information received that the Saudi Arabian authorities are returning to Mogadishu Somalis without permission to be present in Saudi Arabia. The total number of removals in January 2014, using charter flights, "was over 12,000". A Mogadishu based official from the International Organisation for Migration confirmed that figure, adding that it was expected that over 30,000 Somalis would be returned in the following three months.
184. We consider this evidence to be of significance. The IOM is well-placed to speak authoritatively in confirmation of what actually occurs in the context of migration, especially involuntary returns. Given that very recent news reports were produced during the hearing, some relating to events that had occurred in Mogadishu only the previous day, if the influx of 12,000 involuntary returnees in January alone generated experiences of serious harm or persecutory ill-treatment, then it is surprising that no such reports were put forward.
185. Ms Harper said in her oral evidence that she had spoken with a Mogadishu-based journalist whose information, taken from a conversation with an official at Mogadishu airport, was that the numbers of persons returned from Saudi Arabia in January 2014 was 8,000, not 12,000. It may be that not much turns upon the difference between those figures. However, we are inclined to accept the information provided by the IOM, who have a professional interest in monitoring and recording returns. We do not know anything of the remit of the unidentified official to whom the journalist spoke.
186. Ms Harper was asked if she was aware of any evidence of these returnees coming to harm. She declined to answer that question directly, saying:

"From information I obtained from a journalist in Mogadishu those only left Somalia 1-3 years ago and they had families in Mogadishu and a lot were doing all they could to get back to Saudi."

This, in our judgement, is a significant answer that illuminates our evaluation of Ms Harper's evidence. As she confirmed in answer to a

question from the President, the journalist could not possibly know that information to be correct or reliable. Yet it discloses an assumption about the characteristics of a large group of people which informs a general conclusion that is most likely to be factually incorrect, even if true in respect of part of the group. This is another example of an assumption driving a conclusion to what was thought likely in any event, such as the earlier evidence that all returnees and deportees would be people with no access to resources. That is particularly striking in view of the evidence we have of the very significant sums of money sent in the form of remittances each year by members of the diaspora to relatives living in Somalia.

Mogadishu today

187. Although Ms Harper, in common with both Dr Mullen and Dr Hoehne, spoke of the need to assemble personal protection in the form of bodyguards to reduce risk when moving around the city, there is room for another view. After all, someone unfortunate enough to be in the vicinity of a suicide bomb attack is unlikely to be assisted as to the outcome by being in the presence of bodyguards, unless that be because of advice to leave the area swiftly to avoid the risk of follow-up attacks. In cross-examination Ms Harper was invited to comment upon documentary evidence that suggested that “ordinary citizens” in fact are able to move around the city unaccompanied by guards.
188. Ms Harper was taken first to a news report in the third volume of the respondent’s bundle, the topic being the experience of an ordinary civilian citizen of Mogadishu travelling around the city on public transport without being armed or being accompanied by any guard and experiencing no difficulties. The minibus was packed with passengers and rival bus operators argued with each other in trying to attract customers. Next she was referred to the previous page in the same bundle, that being about a blog created by a man who was born and raised in the United Kingdom who had settled in Mogadishu. His blog is designed to assist those “who are heading back or first time to Somalia to provide with a head start, an opportunity he never had”. Ms Harper responded:

“It does not mean they are coming back for good – many leave after one or two years. I do not know of any members of the diaspora who came back to live in Mogadishu. They may come for holidays or to have their children circumcised if they are girls.”

Once again, we are satisfied that view is based upon what Ms Harper expects to be the case rather than any real statistically based evidence of

what has actually happened. Another example of this is provided by this extract from paragraph 4.4.2 of her report prepared for the appellant SSM:

“A returnee from Europe or the US would be presumed to have money or access to money, and so would therefore be at risk of being robbed, or abducted or subjected to threats of violence for the purpose of extortion.”

However, Ms Harper offers nothing to support that assertion which appears to be based upon what she thinks is likely to happen rather than being demonstrated to have happened in such a regular way as to be a likely experience for this category of persons living in Mogadishu.

189. We do not accept Ms Harper’s evidence in this regard. Although there certainly have been examples of buses or other public transport vehicles getting caught up in attacks by Al Shabaab with consequent casualties among passengers who are innocent civilians, the evidence does not support the view that public transport is identified generally as a target for Al Shabaab, or that there is any real risk of civilians coming to harm while using public transport in Mogadishu. Of course, a mini bus operated as a commercial bus service is no more immune from being damaged in an explosion than any other vehicle, but we are unable to conclude that an enhanced risk of coming to harm while using such a facility is established by the evidence, even though we were referred to one report of people being shot while travelling on a minibus.
190. Ms Harper herself wrote an article in June 2012 about “a young man with good family connections and significant resources who set up a dry cleaning business in Mogadishu”:

“Mohamed Mahamoud Sheik decided to start it when he returned home recently to Mogadishu after years abroad.

He told the BBC the city's security had improved in the last 10 months, since Islamist militants were pushed out by African Union and government forces.

...

The Islamist al-Shabab militia, which is fighting the UN-backed interim government, still controls much of the south of the country, but since it was forced from Mogadishu, the city is coming back to life.

People are going to the beach, opening restaurants, hotels and other businesses.

...

"Because the city is more peaceful now, everybody is running to find a place to open a business. Getting a building is really hard in Mogadishu these days because there is so much competition for space."

Although most al-Shabab fighters have been driven out of Mogadishu, the city is by no means safe. Suicide and other attacks are common.

Government officials have provided Mr Sheik with one guard at night and two during the day"

In her evidence Ms Harper urged a restrained assessment of this example of a successful return to Mogadishu:

"Such reports may give the court the impression that conditions are safe for all Somalis to return. I would caution against this interpretation since the conditions for these returnees and a potential removal or deportee are very different. The situation in Mogadishu... is by no means safe, especially for those without significant resources, both in terms of financial means, and in terms of having wealthy and powerful relatives and other contacts."

Plainly, this enterprising young man must have had access to resources to invest in a start up business. We are, however, told nothing at all about his "wealthy and powerful relatives and other contacts" or how they facilitated what may otherwise have been impossible. We were referred to nothing to suggest, incidentally, that this person does not remain in Mogadishu or that his business does not continue to trade successfully.

191. Considering specifically the position of a returnee to Mogadishu today after a lengthy period of absence, Ms Harper said in her written evidence that while diaspora returnees come back with enough money to live in safe accommodation and to move around in a protected manner, many are on reconnaissance missions to assess the economic and security situation. The position would be different for someone returning with scant financial resources, little or no family support and no means of leaving if he wants to.

“Upon arrival in Mogadishu ... those removals or deportees with no or limited contacts and meagre financial resources would be in an especially weak position. Such a person would be vulnerable to abuse or attack by criminals, clan militias, government troops, African Union soldiers and Al Shabaab.”

192. That appears to be an overstatement of the risks facing returnees. There is little evidence that returnees are specifically targeted by criminals, even if inevitably some do become victims of crime; we have heard that there is no longer a concept of clan militias, as opposed to ad hoc groups of people from the same clan putting together arrangements for personal security when that is required. There is no evidence of systematic or routine targeting of returnees by government troops, even if there is some evidence or individual groups of soldiers acting in an ill-disciplined way, such as by looting unprotected shops.
193. In her written evidence Ms Harper spoke of the risks facing returnees on account of having spent time in Europe:

“Somalis deported from the United Kingdom face possible violence from Al Shabaab which considers as a spy anyone returning from a Western Country. The group considers returnees from the West to be in a state of apostasy, and therefore subject to punishment. It executes some of those it suspects of spying”.

But, when invited to do so in cross examination, Ms Harper was unable to identify any returnee who had been subjected to such treatment. She accepted that she did not know of a single case of a diaspora returnee to Mogadishu being targeted by Al Shabaab as a suspected spy. Further, she agreed that Al Shabaab regularly makes claims of responsibility for all manner of attacks but was unable to point to any such claim referring to returnees from the diaspora as being a target or reason motivating an attack.

194. This reinforces our view that the evidence simply does not support the asserted risk of a returnee to Mogadishu from the west being targeted as a spy or apostate.
195. In emphasising the need for family or other support for a returnee to Mogadishu, Ms Harper looks to Danish 3 for support:

“According to the Norwegian Landinfo and Danish Immigration Service’s report of 2013 “It would be extremely difficult to return to Mogadishu if you have no one to rely on

return to Mogadishu if you have no one to rely on when you come back”.

That, however, does not accurately convey the essence of what is being said in the section of the report from which those words are taken. This was not the view expressed by the authors of the report but a comment made by “a Diaspora organisation” which, as can be seen from the whole extract of this section of the report, is not in line with the message being delivered. It is important to consider the phrase lifted by Ms Harper from the report in its proper context:

“Diaspora returning from abroad

According to UNHCR-Somalia, Mogadishu, many people from the diaspora have returned to Mogadishu also, because they see business opportunities. In general, there is no discrimination for the sole reason of belonging to the returning Diaspora.

Regarding returns from the Diaspora, an international agency, Nairobi, explained that ordinary people returning to Mogadishu and other locations in S/C Somalia are citing improvements in the security situation as some of the reasons for returns. Others have also been shocked by what they see when they come back, especially those who have been abroad for many years.

An international agency, Nairobi, explained that Mogadishu is now a “buzz”, people are going around minding their own business and there is an increasing freedom of movement for everyone.

Elman Peace and Human Rights Centre, Mogadishu, explained that there is an increasing number of Somalis returning to Mogadishu from abroad as compared to October 2012. However, the 14 April [2013] attack may result in a slight decrease for the time being as many will give it a second thought before going back to Mogadishu.

A representative of a Diaspora organisation in Mogadishu explained that those who are returning to Mogadishu and other locations in S/C Somalia are mostly resourceful people who see opportunities, have business to do and/or seek political influence and positions. It would be extremely difficult to return to Mogadishu if you have no one to rely on when you come back.

The representative stated that an increasing number of Somalis are returning. Safety and security are issues to consider before you return as there are frictions between those who stayed behind and those who are now returning from their refuge abroad. The Diaspora is being perceived as competitors as they may take up jobs from the locals and their increasing presence in Mogadishu has resulted in price increases in goods as well as on properties.

...

The representative of a Diaspora organisation in Mogadishu explained that the first three months in Mogadishu are the hardest for a returned member of the Diaspora. However, most people from the Diaspora are staying despite the difficulties they may face during the first few months. On the other hand, a number of returnees are going back to their country of asylum because they could not find a job in Mogadishu. Males as well as females are returning to Mogadishu."

It will be noted that the second sentence of the final paragraph of this extract appears to contradict Ms Harper's view that most returnees leave after a relatively short period.

196. Similarly, in her oral evidence Ms Harper was asked if she agreed with Dr Hoehne's stated view that people can meet basic needs by operating a small business to which she replied:

"I only saw one person who had set up a tailoring business. I did not see other economic activity."

This helps to illustrate that Ms Harper is limiting her assessment to a significant degree to what she has seen herself. It is also difficult to reconcile that statement with the article she wrote about the young man who started a new dry cleaning business, to which we have referred above. Plainly, the evidence as a whole points at very significant economic activity in Mogadishu and, even if on one view this is large-scale construction rather than personal enterprise, the former can be completed only with the assistance of some form of workforce.

197. Ms Harper has provided evidence concerning enhanced risk arising from being unfamiliar with Mogadishu because of an extended absence:

"Civilians returning to Mogadishu after a significant period of absence would be at increased risk of serious harm because they would not know how to navigate their way around the city, which has been in a state of conflict for 23 years. This is partly because the conflict has dramatically altered the physical

geography of the city, but also because the nature of clan, politics and risk has changed, and continues to change, often at a rapid rate. An individual who has been absent for a significant period of time would not be familiar with the current workings of clan and politics, and would not know how to assess risk. Such a person would also not know how to behave in such a way as to possibly reduce their risk of harm.”

Again, this appears to be based upon the witness’s expectation of what she thinks will happen rather than on evidence of examples of manifestation of this perceived enhanced risk. In any event, this extract suggests that a person can in fact act in a way that reduces exposure to risk. The question, therefore, to be addressed is how such a person should act to reduce exposure to risk. Ms Harper provides an indication of the answer:

“A person with no recent experience of Mogadishu would not be aware that it is not a good idea to speak about Al Shabaab in public, and that it is best to avoid government buildings, and restaurants, hotels and other places frequented by government workers, security officials, members of the diaspora and foreigners. As one former politician and powerful business man said “I survive in Mogadishu because I don’t go to government buildings, I don’t talk about Al Shabaab and I don’t write about Al Shabaab.” A person who has been away from Mogadishu for a long time would not know that it is considered unsafe to make plans in advance to meet someone at a certain time in a certain place ... They would be unaware that one should avoid moving around in a predictable way. There are lots of unspoken rules which are only learned from spending time in the city or being looked after by someone in the know.”

It is not easy to accept that a person who has sought to resist removal by asserting that Mogadishu is a dangerous place where he would be at risk on return because of the activity of Al Shabaab would not appreciate it would be a good idea to avoid speaking about the organisation openly in public and avoid the places where known targets are likely to frequent and not to let everyone know where they were going to be and when. On the contrary, a person who had argued his appeal on such a basis would be very much aware of the up to date situation concerning such issues. Ms Harper was asked in her oral evidence what behaviour should be avoided to avoid risk of harm that would not be obvious and said:

“It would be unwise to speak of AS or the government. Best to avoid being close to AMISOM or soldiers as they are at risk of attack. Avoid being near certain hotels and restaurants. Avoid

giving “attitude” or speaking in a rude way to soldiers. If a woman, should dress in a particular way, covered up. If a man should not be so casual in dress. Should not listen to certain types of music. So many subtle forms of behaviour that could invite aggression ...”

Once again, we find it impossible to accept that a person returning to Mogadishu today after a period of absence would be sufficiently ill-informed as to not instinctively appreciate that these are examples of behaviour to be avoided, whether anyone locally “in the know” informed them of that or not.

198. Ms Harper spoke also about the characteristics that would disclose the fact of being a recent returnee:

“Somalis who have returned from the diaspora tell me they are recognised as returnees for many different reasons. They say their dress is different, with men wearing Western-style shirts, shoes and trousers instead of the traditional Somali sarong and flip flops....”

But, as we have already pointed out, this is impossible to reconcile with the photographs taken during Ms Harper’s recent visit to Mogadishu which include a view of a crowded Bakara market in which the general style of dress adopted by men is of what might be described as western style clothing. That does not mean, of course, that such a depiction is typical of another day at Bakara market, but in the absence of any reason to suppose otherwise, we are satisfied that this concern has been overstated and is yet another example of a witness speaking of what they believe ought to be the case rather than what it is in fact.

199. Ms Harper is on stronger ground when identifying language as an indicator of absence from Somalia which would be difficult to hide. We have no difficulty in accepting her evidence that Somalis are “particular about how language is spoken” so that differences in accent and vocabulary will be immediately apparent in a conversation with a returnee who has been away for a significant time. On the other hand, we have evidence before us that a very broad range of accents is to be encountered in Mogadishu today: see Andrew Harding’s report cited by Dr Mullen (paragraph 97 above).

200. Dealing next with access to the support of any family who may still be present in Mogadishu, Ms Harper said in oral evidence:

“If the family unit is there in Mogadishu, if that person was involved with criminal activities in the UK they may reject them.

Some families live in igloos or smashed up buildings. The immediate family would I believe receive that person.”

This response appears to be to the effect that a returnee will be able to look to family members for support upon return, if they remain in Mogadishu, but there may be two reasons why that would not represent much help. First, if the family had nothing left and lived in an IDP camp they would have no material support to offer. Second, there is a risk that a family who was able to provide support would refuse to do so if aware of past criminal offending by the returning family member. Ms Harper made clear that she disagreed with the evidence given by Dr Hoehne to the effect that an “ordinary” conviction in the United Kingdom would have little or no significance in Somalia, although offences involving drugs might be different. However, when invited to give any example of a returnee who upon return was shunned by relatives on this account she was unable to do so. Therefore, this is yet another example of an opinion being offered that is simply unsupported by any actual evidence of it occurring, being based instead upon what the witness believes would be the case.

201. This aspect of Ms Harper’s oral evidence did, however, identify something of potential significance. When asked how relatives in Mogadishu would be aware of convictions acquired in the United Kingdom, she explained that Somalis are “extraordinary gossips and communicators” who know each other’s business. This of course must mean also that if a person in the United Kingdom has relatives remaining in Mogadishu he is likely to be able to communicate with them, even if they have moved within the city to a new area. It is established by the evidence before the Tribunal that there is a fully effective mobile phone network available to residents of Mogadishu and that a significant number of residents have phones available to use, whether for individual use or for use by a family. In giving oral evidence, though, MAA said that his family could not afford a mobile phone and he did not know whether or not a phone was possessed by his wife’s family.

Submissions of the parties

202. The Tribunal has the benefit of extensive and detailed written submissions and responses to submissions from each of the parties, which we now consider in turn. As will have been apparent from what has been said above, we had these submissions in mind when discussing the expert evidence and so these have informed our assessment of that evidence. However, it is helpful to consider the submissions as an independent matter because documentary evidence relied upon by the parties is identified, not all of which has been put to the expert witnesses

for comment. We discuss the submissions in the order in which the parties participated in the hearing.

Submissions on behalf of the Respondent

203. Mr Rawat submits that any examination of the current security situation in Mogadishu must take as its starting point the conditions in the city as described in AMM and then consider the changes that have taken place over time and up to the present. In AMM the tribunal found that there would remain an Article 15(c) risk for most people facing a return to Mogadishu until it could be seen that there had been durable change. That durable change could not be detected at that time because:

- a. The withdrawal of Al Shabaab was recent and there remained some chance of their re-entry into the capital (paragraph 345);
- b. In the event that Al Shabaab did re-enter Mogadishu, there was the possibility that AMISOM would not adhere to a “no retaliation” policy but would resort to shelling with a consequent risk to civilians (*ibid*);
- c. It was too early to say to what extent Al Shabaab would resort to asymmetrical warfare (paragraph 346);
- d. The then humanitarian situation in Mogadishu compounded the threat from the “significant” levels of fighting occurring in some districts of the capital (paragraph 347);
- e. An effect of the humanitarian situation was to increase the risk from other factors such as IEDs, criminality and in discriminatory attacks from Al Shabaab personnel (*ibid*);
- f. There was a material risk from rogue elements of the TFG, albeit it was “far smaller” than the risk from Al Shabaab (paragraph 349).

204. The respondent’s position is that there is now “cogent and persuasive evidence” that conditions in Mogadishu have substantially improved since October 2011 when AMM was published. It is submitted that this is established by a number of indicators:

- a. Freedom of movement;
- b. The available statistical evidence relating to civilian casualties, showing a significant decrease in weapons-related injuries;
- c. The absence of conventional fighting in Mogadishu;
- d. The reduction in general criminality or abuse by government forces;
- e. The improvement in humanitarian conditions in Mogadishu;
- f. The increase in numbers of people returning to Mogadishu from the west or elsewhere in South Central Somalia;
- g. The improvement in conditions in the Afgoye corridor;

h. The position of IDP's in Mogadishu.

205. Some of those indicators are self-explanatory, given what we have said above about the evidence received, but we need to say a little more about others in order to reflect fairly the nature of the submission made.
206. Improved freedom of movement is said to reflect not only a material change in the scale and nature of the fighting but a perception of improved security. It also facilitates avoidance of areas where risk is perceived to be enhanced.
207. There has been no conventional fighting in Mogadishu since the withdrawal of Al Shabaab. Although Al Shabaab continues to launch attacks in the city, there is said to be no evidence of concerted use of IEDs against civilians and no targeting of civilians generally. The number of "complex attacks" is said to equate to "about one every 6-8 weeks". Those complex attacks are directed at clearly identifiable "high profile targets".
208. As for the humanitarian conditions in Mogadishu, the famine declaration was lifted by the UN in February 2012 and the respondent points to information recorded on the reliefweb site to support the assertion that "there has been what can only be described as a massive increase in wage rates and relative purchasing power". There has been an 85% increase in food imports to Mogadishu in the 12 months ending in April 2012 and wage rates for "common jobs", such as labouring, have improved since 2011.
209. In the respondent's submission, the evidence establishes that since AMM, "huge numbers of returnees have returned to Somalia and Mogadishu", that being indicative of a reduction in levels of violence and improved security. Further, the respondent asserts that there is no reliable evidence that returnees are being subjected to "mistreatment", by either Al Shabaab or by government forces or officials. In addition, there has been a highly visible "economic boom" in Mogadishu, said to be led by the diaspora. The source specifically cited in support is a report from the New York Times, published in April 2012. Having acknowledged that Mogadishu still has "a long way to go", the report continued:

"But people here are sensing the moment and seizing it. More than 300,000 residents have come back to the city in the past six months, local aid groups say, and many are cheerfully carting away chunks of rubble and resurrecting their bullet riddled homes. The economic boom, fuelled by an infusion of tens of millions of dollars, much of it from Somalis flocking from

overseas, is spawning thousands of jobs that are beginning to absorb young militiamen eager to get out of the killing business.

Given Mogadishu's importance to the country, it all adds up to a huge opportunity. And though Somalia has self-destructed numerous times before, Augustine Mahiga, the head of the United Nations political office for Somalia, along with so many others here insisted that this time really is different. Somalia, they contend, is finally turning around..."

210. In closing submissions, the respondent has raised concerns about the evidence offered by each of the expert witnesses. Dr Mullen had accepted in cross examination that he has on one occasion relied upon a source that he should not have regarded to be a reliable one and on a number of occasions, according to the respondent, his assertions failed to stand up to close examination. We have discussed those areas of his evidence above.
211. Dr Hoehne, the respondent submits, displayed a consistent rigidity in giving evidence in that he declined to depart from any view expressed in evidence, even when material to which he was referred suggested that such view should, at least, be refined. An example was his maintained insistence that only 1% to 2% of the population of Mogadishu had benefited from the "economic boom" seen in the city. The respondent submits that, given the inward investment that has been received into Mogadishu, said to be tens of millions of dollars, it is impossible to see how the benefits could be restricted to such a tiny minority. The respondent refers to evidence from the Department for International Development in Somalia report - Autumn Update 2013 in which it is asserted that 56,900 jobs have been created since May 2011 and a further 45,000 new private sector jobs will be created.
212. Mary Harper accepted that the role of being an expert witness was new to her and the respondent raises the following concerns about the evidence she has provided:
 - a. As a journalist, Ms Harper was reluctant to disclose her sources so that the reliability of those sources cannot be assessed;
 - b. As it was unclear whether her sources were aware of the use to be made of their information, there was a risk of exaggeration or fabrication;
 - c. Her evidence is said to be overly impressionistic and not based upon objective evidence;
 - d. Where it had been possible to identify sources there had been error, for example information attributed to Al Shabaab in one respect was in fact obtained from an office cleaner;

- e. There was an absence of rigour disclosed on occasion by her evidence, for example in conflating figures relating to injuries and fatalities.
213. The respondent submits that the overwhelming consensus amongst NGOs/INGOs/UN and other bodies is that there have been dramatic and significant improvements in the security situation in Mogadishu following 2011 and the demise of a frontline in the city. Thus the concern expressed by the Tribunal in AMM that the then recent withdrawal of Al Shabaab “cannot yet be said to be durable” was no longer justified.
214. The respondent points to a shift in the position of UNHCR as a stark illustration of the improvement in security conditions in Mogadishu. Having intervened in the AMM appeal, the view of UNHCR was then that all civilians were at risk of indiscriminate violence, by reason only of their presence there. However, recent statements by UNHCR demonstrate that its view, based on sources rather than direct assessment, has changed from one of there being a blanket risk to “all civilians” to the need for a more individualised risk assessment. The following is the conclusion reached in a report published on 25 September 2013 “UNHCR guidance on the application of the internal flight or relocation alternative, particularly in respect of Mogadishu, Somalia”:

“Conclusion

27. In light of the overall situation in **South Central Somalia (outside Mogadishu)**, UNHCR considers that, on the whole, an IFA or IRA would not be relevant or reasonable given, in particular, the existence of widespread violence and prevalent human rights violations, the physical risks and legal or physical barriers encountered in reaching other areas, as well as the serious difficulties faced in accessing basic services and ensuring economic survival in a situation of displacement.

28. With regard to **Mogadishu**, the personal circumstances of an individual need to be carefully assessed. UNHCR considers an IFA/IRA as reasonable only where the individual can expect to benefit from meaningful nuclear and/or extended family support and clan protection mechanisms in the area of prospective relocation. When assessing the reasonableness of an IFA/IRA in Mogadishu in an individual case, it should be kept in mind that the traditional extended family and community structures of Somali society no longer constitute as strong a protection and coping mechanism in Mogadishu as they did in the past. Additionally, whether the members of the traditional networks are able to genuinely offer support to the applicant in

practice also needs to be evaluated, especially given the fragile and complex situation in Mogadishu at present.

29. For the following categories of Somalis, UNHCR would consider that an IFA/IRA will not be reasonably available in the absence of meaningful nuclear and/or extended family support and functioning clan protection: unaccompanied children or adolescents at risk of forced recruitment and other grave violations; young males at risk of being considered Al Shabaab sympathizers and therefore facing harassment from government security forces; elderly people; people with physical or mental disabilities; single women and female single heads of households with no male protection and especially originating from minority clans. In any other exceptional cases, in which the application of an IFA/IRA in Mogadishu is considered even in the absence of meaningful family or clan support to the individual, the person would need to have access to infrastructure and livelihood opportunities and to other meaningful protection and support mechanisms, taking into account the state institutions' limited ability to provide security and meaningful protection."

215. The respondent places considerable reliance upon this amended view of UNHCR.

216. In setting out closing submissions, the respondent considers important the Tribunal's assessment of the evidence relating to weapons-related casualties. The respondent emphasises that a report of the UN Secretary General to the Security Council dated 31 May 2013 recorded a decrease of 33% (over the period 16/01/2013 - 15/05/2013) in "civilian" casualties treated in referral hospitals in Mogadishu by comparison with the same period in 2012. Although that statistic is accurately reproduced, it does need to be seen in its context and so we reproduce that extract from the report:

"Civilians still bear the brunt of continued fighting in Somalia. While the number of civilian casualties treated in referral hospitals in Mogadishu decreased by 33%, compared with the same period in 2012, as many as 1,500 weapon-related injuries were treated in those hospitals during the reporting period."

Once again, this illustrates the care with which statistical evidence must be approached. Over this 5 month period there were 1,500 such injuries treated in the hospitals concerned but not all of those were necessarily civilians. It is clear that non-civilian injuries are treated at these hospitals also.

217. The respondent submits that even if comprehensive and reliable statistical evidence pertaining to weapons-related casualties is absent, the evidence does enable there to be an assessment of trends. Thus, evidence provided by the ICRC shows a reduction of “war-wounded” treated by hospitals from 84% to 33%. Similarly, data collected from four hospitals in Mogadishu supported by WHO shows a substantial reduction in civilian casualties from 9,510 in 2011 to 4,412 in 2013.

218. Further, it is the respondent’s position that the evidence simply does not support the view that civilians are deliberately targeted by Al Shabaab:

“... having regard to the available figures and the change in tactics of both sides since AMM (which crucially includes the demise of large scale shelling), the SSHD submits that there is no evidence that ordinary civilians are being deliberately targeted by suicide attacks. None of the three experts cited documentary evidence to the contrary. For example, Dr Mullen’s examples, given in evidence in chief, focussed on attacks on politicians, police officers, international aid workers, etc., i.e. individuals who can legitimately be described as having a profile higher than that of the ordinary civilian. Dr Mullen’s use of “indiscriminate” must therefore be put in context; he appears to be speaking of directed attacks by AS which, in some cases, resulted in collateral injury to ordinary civilians.”

219. The respondent does not accept that any escalation in the number of attacks launched by Al Shabaab in Mogadishu in 2013 equates with an increased adverse effect upon civilians. While there may have been an increase in “security incidents” in the city there has also been what the respondent describes as a significant decrease in grenade attacks.

220. Addressing changes in the structure, approach and ideology of Al Shabaab, the respondent identifies as significant that there has been a substantial reduction in the numbers of foreign fighters available to the group. According to the UKBA “Somalia: Report of Fact Finding Mission” of October 2010, in that year the number of foreign fighters was reported as 2,000 whereas, according to the July 2013 UN Security Council Committee Somalia Monitoring Report, there are currently 300 foreign fighters in the whole of Somalia.

221. In respect of the humanitarian position in Mogadishu, the respondent points out that whereas at the time of AMM in August 2011 Mogadishu had been declared a famine zone with four million people being categorised as being in “emergency need”, no part of Mogadishu is now classified as such. Estimates from the Food Security and Nutrition

Analysis Unit of Somalia (FSNAU) for the period April – June 2013 show that of the entire population of Banadir, including Mogadishu, 15,000 people were “in crisis” or “stressed”. That is a small part of the population of Mogadishu and Banadir, within which the city is situated.

222. The respondent challenges the oral evidence of Dr Hoehne that unemployment levels in Mogadishu stood at 89%. That figure was taken from a UNDP report from 2012 but the focus of that was upon youth development and makes no reference to unemployment rates in Mogadishu and Dr Hoehne conceded that he did not know when that survey had been conducted.
223. According to the respondent, a striking feature of developments in Mogadishu since AMM is the evidence that “huge numbers” of people have returned to Mogadishu, that being said to be indicative of a considerable reduction in levels of violence and improvements in security. Some local NGO sources have said that there were 300,000 returning residents to Mogadishu in the six months between November 2011 and April 2012 alone. By August 2012 it had been estimated that more than 500,000 people had moved back to the capital including the vast majority who had fled since 2007.
224. The respondent refers also to consistently high levels of air traffic into Mogadishu. A UN News Centre Report of January 2013 noted that there were five commercial flights, each carrying over 100 passengers from Kenya, arriving at Mogadishu every day. Danish 3 mentions that flights from Istanbul to Mogadishu are fully booked for three to four months in advance.
225. Nor does the respondent accept that those who have been away from Somalia for a significant period of time would experience difficulty in resettling upon return. In support of that submission, the respondent refers to a number of examples to be drawn from the documentary evidence before the Tribunal. It is not necessary to identify those individuals to whom, therefore, we refer as follows:
 - a. F.O. – returning after 15 years as a taxi driver in England and describing Mogadishu as “a place of leisure” (RB3 page 2881);
 - b. F.A. -returning after 13 years in London (*ibid*);
 - c. M.M.S.A. – returning after “many years” abroad to open a dry cleaning business in Mogadishu (RB1 page 261);
 - d. A.J.M.- returning after two decades in the United Kingdom to establish a new business, the Village chain of restaurants to which reference has already been made (RB1 page 265);
 - e. A.A. – A female Somali citizen returning after living in the United States of America for about 5 years to open a furniture

store business in Mogadishu which now employs five people. (RB1page 351);

- f. F.A. who lived in Norway for 8 years before she returned to Mogadishu to open an electronics store (*ibid*);
- g. M.A. who returned to Mogadishu after 10 years living in Kenya and opened a beauty parlour where she now provides employment to 6 women (*ibid*);
- h. Y.A. who returned to Mogadishu after living in Kenya for 14 years to renovate and rent out property (RB1 page 433);
- i. L.M. who, after 25 years living in Canada and the United States of America returned to Mogadishu to re-launch a hotel business with relatives. He has also opened a coffee bar (RB1 page 467);
- j. H.B. who returned after living for many years in the United Kingdom, 9 of which she spent working as a taxi driver, and who now, unusually for a Somali woman, works as a bus driver in Mogadishu (RB3 page 2941);
- k. F.H. who, having left Somalia aged just 2 years old had returned in her mid twenties to take up a job as a ministerial aid (AB5 page 1375).

A few examples such as these is not a real basis upon which to make assertions as to the position for returnees generally, especially as the people identified mostly returned to take up business opportunities. Also, it cannot be assumed that no difficulties had been experienced by these returnees, as is perhaps illustrated by the inclusion of the proprietor of the Village Restaurant chain which, as we have noted, has attracted attacks. The point being made, though, is that this is a selection of people who were able to return and, apparently remain and re-establish themselves after a period of absence.

- 226. The respondent submits that, significantly, there is no evidence of any mistreatment of returnees by either the authorities, including the SNA, or by Al Shabaab in the sense of deliberate targeting. Given that at least 70% of returnees from the diaspora during 2012 were said to be from the United States of America, if such persons were seen as apostates by Al Shabaab, or as potential suicide bombers by the authorities, one would expect to have seen reports of that but there are none.
- 227. The respondent does not accept that resettlement is viable only for returnees with access to significant financial resources such as may be required to open a new business. In support of that an example is identified in the account mentioned above of the Somali woman returning to Mogadishu to work as a bus driver and to the blog in which a returnee from the United Kingdom described travelling around Mogadishu on a bus, that being evidence we have discussed above.

228. The respondent further submits that the use of the term “IDP” in the Somali context is problematic. This is because the term is used to cover a wide range of people and circumstances: the refugee returnee, the IDP returnee, the urban poor, economic migrants and pastoralists who moved to urban centres having lost their livestock. And, as Dr Hoehne confirmed in his oral evidence, a person who had relocated from one district of Mogadishu to another and remained settled in that district would still be regarded as an IDP. Thus, there may well be IDPs in Mogadishu who are far wealthier than “settled” inhabitants of the area. This point was recognised in a 2011 report from the Observatory of Conflict and Violence Prevention:

“Hamar Weyne is the old part of town, but today most of its original fair-skinned inhabitants have left to safer areas, and it is largely inhabited by wealthy IDPs.”

229. It is the respondent’s position also that the number of IDPs may be overstated. In support, reference is made to comment by the UN Monitoring Group in July 2013:

“Diversion of funds by gatekeepers is endemic. For example, the Monitoring Group has obtained evidence showing the existence of “ghost camps” that are operated by gatekeepers and supported by international assistance. One such camp in the Karaan District of Mogadishu was supposedly home to 3200 families and supported since 2011 by UN agencies. In April 2012, UN officials visited the camp and found in addition to the gatekeeper only a few women present with 20 to 30 shelters occupied by watchmen...”

230. The respondent’s analysis of the numerical data available concerning IDPs leads to the submission that there has in fact been a significant reduction in the number of IDP camps and those that remain are “transcending into fixed settlements”. Thus, the respondent’s position is that it would be incorrect to assume that all those classified as IDPs were vulnerable, poor or even destitute, even though some may be.

231. In that regard, the respondent submits that the historical context is significant. The “Danish Refugee Council Report on Profiling of IDPs Mogadishu” dated 18 May 2007 records that the overwhelming majority of IDPs in Mogadishu (77.5%) had left their home areas as long ago as 1991-1992 at the start of the civil war. But only 8% have been displaced more than once, suggesting that most IDPs in Mogadishu might properly now be regarded as long-standing residents.

232. The number of IDPs in Mogadishu is the subject of some disagreement. We have seen above, in discussing the oral evidence, that there has been reference to, and broadly acceptance of an estimate of 369,000 by the expert witnesses. The respondent points out that UNHCR has been reported as giving a figure of 184,000 and others have offered figures in between those two estimates. Our view of the evidence available in this regard is that it is insufficiently reliable, whichever source is taken, to provide an accurate figure of persons living in circumstances such as to properly characterise them as IDPs. That is compounded by the difficulty we have discussed above concerning the problematic application of the term IDP to some whose living circumstances disclose no indication that they fall below what is to be regarded as an acceptable level. Having said that, it is clear from the evidence that a significant number of people continue to live in IDP camps in Mogadishu in wholly inadequate conditions.
233. To inform an assessment of conditions within an IDP camp, the respondent refers to a Fact Sheet produced in September 2013 under the auspices of USAID. This report is based upon randomly collected data (every 6th house in an area of the camp selected) as an illustration of what was to be expected. Most had been displaced because of a lack of livelihood options and it is notable that the “incidence of female-headed households” was put at 33%. 20% of those questioned were engaged in casual labour, 31% were in receipt of financial assistance from relatives and 19% reported an income from “selling property”. Most shelters were buuls, described by Ms Harper as more substantial structures than the considerably less satisfactory tents or transitional shelters in which many in IDP camps have to make do with. 75% reported that they did not fear for their physical safety within the camps.
234. In contrast to the views expressed by each of the expert witnesses, the respondent, drawing upon the documentary evidence, does not accept that living conditions within Mogadishu’s IDP camps necessarily fall below acceptable standards. Most of the camps have adequate hygiene levels and water supplies and access to humanitarian aid. The general improvement in access to food for those living in Mogadishu is equally applicable to those living in the camps. The respondent submits that in the light of all the evidence there has been material and durable change since 2011 so that returnees to Mogadishu and those continuing to reside there no longer face the risk of famine or pervasive disease.
235. Further, the evidence indicates that there has been a significant reduction in living costs as well as improved employment opportunities since May 2011. By any view this must open opportunities for people who would otherwise be left with no alternative but to live in inadequate conditions within an IDP camp to seek to improve their living circumstances.

According to the Report of the Secretary General of the UN Security Council dated 3 September 2013, the “poverty line” is put at \$2 per day. An ORB/BBC survey in November 2010 had recorded that 84% of respondents had a household income of about \$50. The FSNAU report referred to above noted that over the period July 2011 to April 2012 there had been a steady increase in wages for casual labour as well as a reduction in the number of “ordinary residents” who relied upon it as an income source.

236. The respondent maintains that the evidence indicates that some will resort to “petty trading” as a means of providing income. Those living in IDP camps are not disqualified on that account from seeking to establish a livelihood in this way. In AMM the Tribunal recorded the view of Tony Burns that someone with money and short-term support could have a viable means of survival, although he cautioned about other risks associated with visible possession of financial resources at that time. Returnees with some experience of work while away from Somalia or some other skill or qualification acquired would be in a better position than many Somali IDPs in seeking employment opportunities. Unlike those who have remained in Somalia, few of whom will have received any form of secondary education, those who have spent time in the west may, by comparison have benefited from education such as to enhance their employment prospects upon return.
237. The respondent submits that the “economic boom” that has come to Mogadishu is of particular relevance. The “huge” influx of diaspora people has prevented a re-emergence of the old “warlord” phenomenon and Mogadishu has become a tourist destination, the evidence speaking of the creation and opening of small businesses such as nightclubs, arcades, cafés and the installation of solar-powered street lighting. A notable return of women to Mogadishu in the last 2 years is said also to be indicative of real improvements in security and access to a means of livelihood.
238. Although it is the respondent’s position that a returnee from the United Kingdom may be better-placed to establish a livelihood than a long-term resident, reliance is placed also upon the significance of remittances. The United Kingdom is described as one of the highest receivers of Somali nationals, a total being estimated in 2010 of 110,326 individuals (“Keeping the Lifeline Open - remittances and markets in Somalia” (Oxfam), 2013 (RB1694). Drawn from the same source is an estimate that more than £16 million was sent in 2009 from the United Kingdom by way of remittances to Somalia.
239. Finally, in terms of general submissions, the respondent points to financial support provided to returnees by the Home Office in terms of

reintegration support. Voluntary returnees can benefit from a package of a grant of up to £1,500 which might be used to start a small business as well as support from local caseworkers. Although the Tribunal in AMM were not persuaded that would make a significant difference, that was because of the conditions as they were then found to be. Now that the complete withdrawal of Al Shabaab has been maintained and there is no longer any conventional fighting, the position is, the respondent submits, very different.

Submissions on behalf of MOJ

240. In addition to his oral submissions, Mr Gill has submitted composite written submissions, a substantial document that includes the initial skeleton argument, a summary of propositions and detailed submissions upon the various issues that arise in these appeals. In addition, he has submitted a written response to the closing written submissions made by the respondent. As these written submissions extend to nearly 200 pages, we do not attempt to summarise here all that is advanced but seek to do justice to Mr Gill's submissions in setting out the summary that follows.
241. Mr Gill submits that the present country situation in Somalia is such that some groups of Somali citizens will still be able to establish a claim to be recognised as refugees, or to be entitled to the protection of Article 3 of the ECHR or Article 15(c) of the Qualification Directive. MOJ, he submits, is entitled to refugee status because he would be targeted by Al Shabaab for two reasons recognised by the Convention, those being an imputed political opinion and an imputed religious belief. Alternatively, there would be an infringement of Article 3 of the ECHR because of a risk that he would be subjected to inhuman and degrading treatment as a member of the "marginalised urban poor or IDP population in Mogadishu".
242. Mr Gill further submits that MOJ is eligible for protection under Article 15(c) because of the sliding scale approach adopted by the Court of Appeal in QD (Iraq) v SSHD [2009] EWCA Civ 620 as well as protection against ill-treatment such as to infringe Article 3 in that context and protection under Article 8 of the ECHR in the sense that his return to Mogadishu would infringe his right to respect for his physical and moral integrity.
243. We will summarise first his submissions relating to the evidence we have before us and in respect of the general country situation and then consider the specific issues affecting MOJ as an individual appellant.

244. Mr Gill takes as a starting-point the categories of those thought to be at risk as are identified in the 2014 UNHCR report that we have made reference to already. He emphasises that this list is non-exhaustive. Rather than setting out the re-articulation of that list found in his written submissions, we reproduce the list as it appears in the report:

“Potential Risk Profiles:

1. Individuals associated with, or (perceived as) supportive of the SFG and the international community, including the AMISOM forces;
2. Individuals (perceived as) contravening Islamic *Sharia* and decrees imposed by Al-Shabaab, including converts from Islam, other “apostates” and moderate Islamic scholars who have criticized Al-Shabaab extremism;
3. Individuals (perceived as) opposing the SFG and related interests and individuals (suspected of) supporting armed anti-Government groups;
4. Individuals in certain professions such as journalists, members of the judiciary, humanitarian workers and human rights activists, teachers and staff of educational facilities, business people and other people (perceived to be) of means;
5. Individuals (at risk of being) forcibly recruited;
6. Members of minority groups such as members of the Christian religious minority and members of minority clans;
7. Individuals belonging to a clan engaged in a blood feud;
8. Women and girls;
9. Children;
10. Victims and persons at risk of trafficking;
11. Sexual and/or gender non-conforming persons (lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals);
12. Persons with a mental disability or suffering from mental illness.”

It has to be recognised, though, that the evidence before us plainly indicates that there is no clan-based persecution in Mogadishu today at a level to engage issues of international protection. Notably absent from that list is any reference to returnees from the West. However, Mr Gill invites the Tribunal to add such a category of persons at risk in Mogadishu, on the basis that Al Shabaab has made threats:

“[they] have been taught garbage and sins, and have lost [their] religion and are being used to [spread evil];

and because Commander Hussein of Al Shabaab is reported to have said that returnees “will be killed and fought against in the same manner that Al Shabaab fights against the Somali Government.”

245. We are unable to accept that submission. In our judgement, it is simply inconceivable that UNHCR would have omitted returnees from the West from this recently assembled list of categories of persons who may be at risk today in Mogadishu if there had been any reason to include such a group.

246. Mr Gill refers in his submissions to evidence before the Tribunal describing periodic round-ups in Mogadishu by the police, searching for Al Shabaab supporters, in support of an assertion that this represents an obstacle to safe return. Although the vast majority are released the same day, Mr Gill points to reports of youngsters being detained for weeks or even months. However, when the source for this information (a news report of 22 January 2013 from Sabah Washington DC) is examined, the picture that emerges is of the police acting in what would appear to be an entirely appropriate way. Having reported that 3,259 people had been arrested during an operation the report contained the following:

“[The Benadir National Security Agency Commander] said 3,000 people were released after police investigations determined they were innocent. “We will continue with the investigations we are conducting in the city until we secure the city” he said.”

...

“The operations also led to the confiscation of landmines, bombs and ammunition for heavy weapons such as bazookas, AK47s and other automatic machineguns...”

One person caught up in this operation was quoted as saying:

“We were about 20 people and they took us to the headquarters of the Criminal Investigation Department (CID)... They did not harm us. They asked us questions like where we lived and what

our occupations were. We were detained for about five hours in the CID jail, and finally they released 16 of us.”

“Benadir Deputy Governor for security Affairs... said security forces have made a concerted effort to protect Mogadishu. “The city of Mogadishu is the heart of the country. If it becomes peaceful, all the regions of the country will be peaceful... Security in Mogadishu has been improving day by day since Al-Shabaab was expelled from the city in August 2011. Security forces are ready to eliminate the remnants.”

247. Mr Gill submits that freedom of movement within Mogadishu is hampered by the fact that there are unauthorized checkpoints run by police or associated militia or set up by Al Shabaab members disguised as soldiers. But, this must be seen in the context of the source from which this information is drawn, the Danish 2 report, which includes this:

“Freedom of movement in Mogadishu has improved considerably since February 2012 according to Kilian Kleinschmidt, OCHA. There are no longer visible checkpoints in the city centre of Mogadishu. However, there are a lot of invisible checkpoints, but even these do not affect the freedom of movement for UN agencies. Today there are only checkpoints in the outlying areas of Mogadishu...

...

Ayaki Ito, UNHCR, confirms that the number of checkpoints in Mogadishu has been reduced considerably [since February 2012]. However, it is common to see a person from the local militia at important street corners for him to check if someone unknown is passing by. These are the so-called invisible check checkpoints.

A representative of an international organisation explains that there are checkpoints in Mogadishu and one cannot exclude the possibility that al-Shabaab disguised as soldiers are manning them...

An international NGO working in S/C Somalia (B) explained that there are still checkpoints in Mogadishu, but these are mainly in place to tax the trucks going into the city...

...

An international NGO working in S/C Somalia (D) stated that today people are moving more freely around Mogadishu than

during the previous five to six years. People are now going to the Bakara market...

...

There are far less checkpoints in Mogadishu than in February 2012, and the existing ones tend to be government checkpoints according to Tony Burns. SAACID-Australia...

People are moving freely around in Mogadishu today, and they feel safer today than for the past twenty years according to an international NGO working in S/C Somalia (A)."

In the light of this material we reject Mr Gill's submission in that regard.

248. Attention is drawn to a report by the UN Human Settlements Program in December 2013 that describes Mogadishu as "the capital of displacement". Mr Gill is correct to say that report speaks of the majority of Mogadishu's population consisting of displaced, homeless and urban poor people. This, however, must be seen in the context of the evidence before the Tribunal concerning the problematic definition of IDPs in the Somali context, this report apparently including reference to 400,000 people who left Mogadishu years ago but who have since returned. Although the now familiar figure of 369,000 IDPs is re-stated, this report in fact suggests a different figure:

"...The UNHCR estimates that 184,400 IDPs are in settlements in Mogadishu as of July 2012. The majority of the IDPs surveyed (55%) arrived in the city between 6 and 12 months prior to the April survey, which coincides with the peak of the famine crisis that hit southern Somalia between June and October 2011.

...

...the large majority of IDPs originating from the nearby famine stricken regions. However, the proportion of people displaced inside the city seems to have decreased (20% to 12%), which can be attributed to the improved security situation in Mogadishu."

249. The fact remains, though, that this report speaks of 90% of IDPs living in makeshift accommodation in "specifically designated settlements" although the description of the methodology does not indicate the ways in which IDPs were identified or whether it was precisely because such persons were to be located in those settlements.
250. Significantly, those who are described as IDPs are said to be exposed to a wide range of human rights violations. In support of that submission, Mr Gill refers to a HRW report of March 2013 ("Hostages of the

Gatekeepers”) which focuses in the following extract not on IDPs as such but upon IDPs who are living in one of Mogadishu’s IDP camps or settlements:

“This report is based on more than a year’s research, including 70 interviews with newly arrived persons displaced from South Central Somalia by the 2011 2012 famine and fighting in some of the main IDP camps and settlements in Mogadishu. It examines the situation of displaced people in Mogadishu from the height of the famine in July 2011 through November 2012 and it describes the abuses faced by these people who are often silenced by those bent on exploiting their vulnerability.

Throughout this period members of displaced communities in Mogadishu faced serious human rights abuses including rape, beatings, ethnic discrimination, restricted access to food and shelter, restrictions on movement, and reprisals when they dared to protest their mistreatment. The most serious abuses were committed by the various militias and security forces, often affiliated with the government, operating within or near camps and settlements for the displaced. Frequently these militias were linked or controlled by managers, or “gatekeepers” as they are known, of the IDP camp.”

251. Mr Gill submits that the Danish 2 report points out that clan dynamics in combination with other factors are an important element when considering risk for the IDP population but, again, it is necessary to put that into its context. In that report it is noted that:

“UNHCR-Somalia, Mogadishu, confirmed that someone in Mogadishu will not be at risk today solely because he/she is of a different clan, although clan dynamics in combination with other factors are an important element when considering risk, including for the IDP population. It is obvious that one is safer when he or she is residing in an area dominated by his or her own clan or if one has good relations with a dominating clan.”

252. Addressing access to a livelihood, Mr Gill refers to the Danish 3 report:

“Regarding access to livelihood in Mogadishu, UNHCR-Somalia explained that the presence of nuclear family is a requirement for livelihood support, as the clan will not help with livelihood.”

Mr Gill draws a sharp distinction between two types of returnees; the business people and investors seeking economic and business opportunities and those returnees with neither family or clan

connections nor access to economic resources. The latter group, he submits are at risk of:

- a. being marginalised and forced into joining gangs, becoming alcohol and drug-dependent, unemployment, hopelessness and facing social stigma
- b. being targeted because of their clothes, their foreign manner and their apparent affluence
- c. being suspected of returning in order to join Al Shabaab
- d. being compelled to join Al Shabaab, clan-based militia or the national forces
- e. ending up in an IDP camp

253. Addressing next facilities for treating those with mental health difficulties, Mr Gill points out that although it has been reported that as many as one in three Somalis are affected by some form of mental illness, largely due to prolonged exposure to conflict and instability, there are only five health centres in the country that provide mental health care services and there are real difficulties with the availability of medication for psychiatric disorders (COI Report August 2013). However, the extract reproduced in his written submissions omits the second half of the paragraph, taken from the WHO report quoted in the COI:

“To address this issue, WHO-Somalia in collaboration with the local health authorities provided medicines to mental health care services and expanded the charge free initiative. This initiative that addresses the rights of the mentally ill by advocating for charge free hospitals, chain free homes and charge free environment is well-established in Mogadishu and Hargeisa and will start in Bossaso in 2011.”

254. On the basis of this evidence, Mr Gill submits that a returnee with mental health problems would not be able to access appropriate treatment and as there have been examples of such persons being chained up or imprisoned instead of treated appropriately by health professionals, there is a real risk of infringement of rights protected by Article 3 or 8 of the ECHR.

255. The next topic addressed in Mr Gill’s written submissions is the question of the impact upon the Article 15(c) risk, found to be present for most residents of Mogadishu by the Tribunal in AMM, of the withdrawal from Mogadishu of Al Shabaab. In submitting that such a risk from indiscriminate violence remains a significant one, he identifies the following factors:

- a. Grenade attacks being carried out on a nightly basis with youngsters being paid to throw hand grenades;
- b. Targeted assassinations being carried out by Al Shabaab;
- c. Increased use by Al Shabaab of victim-activated pressure plate IEDs, with the number of civilian casualties from suicide attacks rising sharply;
- d. An increase in the number of UIED attacks, compared with 2012, creating a risk of “collateral damage” for civilians;
- e. Increasingly complex asymmetrical attacks being carried out by Al Shabaab, designed to cause the maximum number of casualties and general disorder;
- f. Continued presence of Al Shabaab in the Bakara market area;
- g. Al Shabaab infiltration of police, intelligence and military forces;
- h. Ability of Al Shabaab to move around Mogadishu, anonymously;
- i. Al Shabaab’s warning to civilians to stay away from government buildings, public venues frequented by government officials and foreign aid agencies and their workers, as they would all be targeted in attacks;
- j. The latent ability of Al Shabaab to carry out well-equipped multi-fronted offensives against the government once international forces withdraw;
- k. Resumption of nightly mortar attacks on Mogadishu and engagement by Al Shabaab with the Somali National Army in daylight gunfire exchanges with the SNA ;
- l. An increased targeting of civilians by Al Shabaab, according to ACLED.

256. Most of these issues have already been discussed, in our assessment of the expert evidence carried out above. However, in sum, the conclusion Mr Gill invites the Tribunal to draw is one that he expresses as follows:

“The position is, therefore, that whilst AS has shifted its tactics away from conventional warfare, its use of symmetrical warfare has evolved and become more sophisticated over time. The consequence of this has been an increase in the number and complexity of asymmetrical attacks with a corresponding increase in the number of civilian casualties in proportion to the overall number of casualties...”

That assessment is said to be supported by the statistics provided by ACLED which we have considered above. The assertion that an increase in the number of attacks following withdrawal of Al Shabaab from Mogadishu corresponds directly with an increase in civilian casualties is, of course, at the very heart of the dispute between the parties that it falls to us to resolve.

257. Mr Gill argues that this evidence supports the assertion that there has been an increase in the targeting of civilians and an increase in the number of fatalities attributed to Al Shabaab. The source quoted the ACLED report dated January 2014. This report is not limited to a consideration of the situation in Mogadishu. Whilst the report does say that “the proportion of Al Shabaab activity that has targeted non-combatants populations has increased steadily since 2011...” it can be seen from the paragraph that follows that this is not specifically a reference to what is happening in Mogadishu:

“...In areas which were soon-to-be seized from the group by Federal Government forces, attacks on civilians accused of spying appear to have increased.... Similarly, in many areas which were recently seized from the group remained vulnerable to indiscriminate attacks on civilian populations such as bombings in marketplaces”

Further, this is to be read in the context of what was said earlier in the same report, prefacing what was to follow:

“... the intensity of conflict appears to have reduced somewhat, with reported fatalities dropping slightly over the course of the year. While event levels reached a historic peak in 2013, reported fatalities have remained relatively low and stable over the course of the year...”

258. Very recently, there have been reports of Al Shabaab having launched attacks on Mogadishu which Mr Gill submits should be categorised as a recommencement of this form of attack. It is plain from those reports that the target of the attacks are the presidential palace, an AMISOM base and government buildings although some civilian homes are said to have been struck. Casualty levels have not been confirmed.

259. With regard to the approach of the Tribunal to the statistical information available concerning casualty figures generally, Mr Gill urges caution on the basis that figures are not reliable and UNHCR warns against using such information to discern trends. He points also to the disparity that can be detected between statistical information from different sources. He submits that although there may well have been “some limited improvement” in the socio-political and economic sphere after the Al Shabaab withdrawal from Mogadishu in August 2011, the question is whether the improvements have been sufficient. He submits that given the shortcomings in the data or statistical evidence and the recent news of renewed conventional warfare by Al Shabaab, there remains a general

and non-specific Article 15(c) risk of harm for all civilians, including returnees to Mogadishu.

260. Recognising that the large numbers of people choosing to return to Mogadishu invites a conclusion that this is illustrative of an overall perception of safety, Mr Gill submits there are difficulties with that view. This is because a number of reports have referred to these returnees as being “the elite”, persons with access to resources and having clear economic or political ambitions. They may be going to Mogadishu on a temporary basis, retaining the option of returning to western or middle eastern countries where they retain citizenship. This category of persons is not representative as other returnees may not be able to pay for secure accommodation and protection such as the \$15,000 paid in the example given by Dr Mullen. We do not need to repeat what we say above about that.
261. Mr Gill summarises in his written submissions the oral expert evidence concerning the inability of the security forces to provide protection to individual citizens and the absence of protection available from a returnee’s own clan.
262. An interesting issue that arose during the oral evidence was whether and if so to what extent a returnee should be expected to take steps to minimise the risk that may be encountered from Al Shabaab in Mogadishu today. In his closing submissions Mr Gill says that applying the principles of HJ (Iran) [2010] UKSC 31, “ordinary citizens” should not be required to change the way they are inclined to act for fear of the clandestine Al Shabaab presence. For example, a citizen should not be expected to avoid Bakara market simply because there is a greater chance of getting caught up in a grenade attack there than elsewhere in Mogadishu. Nor should an “ordinary citizen” be expected to avoid government buildings or other locations known to be identified by Al Shabaab as legitimate targets. His submission is that this would constitute such a disruption to daily life to amount to an infringement of rights protected by Article 8 of the ECHR.

Submissions on behalf of MAA

263. Ms Panagiotopoulou takes as her starting point the concern expressed by the Tribunal in AMM that the improvements detected in the country situation may not have been shown to be durable, and reinforces the importance of that concern by drawing upon what was said in EM and others (returnees) Zimbabwe CG [2011] UTUT 98 (IAC):

“where a previous assessment has resulted in a conclusion that the population generally or certain sections of it may be at risk,

any assessment that the material circumstances have changed would need to demonstrate that such changes are well-established evidentially and durable.”

264. Developing that point, reference is made to the Country of Origin Information report, covering the security situation between 2012 and up to June 2013, mention of which is said to be “conspicuously absent” from the respondent’s written arguments:

“Somalia’s long-running armed conflict continues to leave civilians dead, wounded, and displaced in large numbers. Although the Islamist armed group al-Shabaab lost ground in 2012, abandoning control of key towns such as Beletweyne, Baidoa, and the strategic port city of Kismayo, it continues to carry out attacks and targeted killings, including in the capital, Mogadishu....Civilians continue to be killed and wounded by crossfire, particularly during infighting between TFG forces over control of roadblocks, and by improvised explosive devices and grenade attacks primarily by al-Shabaab fighters. Al-Shabaab carried out several high-profile suicide attacks in Mogadishu including one on September 20 that killed at least 18 people, including three journalists.’

The UN Security Council’s Report of the Secretary General, published on 31 May 2013 and covering events of 16 January 2013 to 15 May 2013, (UNSC Report May 2013) stated that the security situation remained fragile during the reporting period. Despite some improvements in Mogadishu, Al-Shabaab continued to launch asymmetrical attacks on soft targets using terrorist tactics that often resulted in civilian casualties. Targeted killings and attacks were routinely reported. The number of incidents involving improvised explosive devices rose in 2013 in comparison with 2012.”

In fact, in the interests of accuracy, it should be noted that this is an extract from a HRW report published on 31 January 2013, and the report is not dealing only with the situation in Mogadishu, although of course reference is made to the city.

265. Reliance is placed also upon an extract from advice published by the Foreign and Commonwealth Office, advising against all travel to Somalia and urging any British nationals present to leave. However, this is primarily intended to reflect the position of British citizens and not Somali nationals whose position in their own country of nationality is inherently different than that of a foreigner present in the country.

266. Ms Panagiotopoulou points to consistent reports by the UN Secretary General speaking of the fragility and unpredictable nature of the security situation in Somalia. She reproduces a short extract from the report of 1 May 2012:

“Al Shabaab terrorists attacks remained constant”

but should have completed the sentence to put it into its intended context:

“In the Mogadishu area, Al-Shabaab terrorist attacks remained constant, though many were prevented or failed as pressure mounted from reinforced Government and AMISOM forces.”

Similarly, she reproduces part of another extract:

“While Somali forces and AMISOM continue to make territorial gains, asymmetrical insurgent attacks pose a substantial threatI remain deeply concerned about grave violations of international humanitarian and human rights law.”

But that sentence, which relates not just to Mogadishu but to Somalia generally, should be read to its conclusion to understand its focus:

“I remain deeply concerned about grave violations of international humanitarian and human rights law, especially against women and children. I urge all parties to ensure that the protection of civilians is integrated into all military operations.

... I am encouraged by the Transitional Federal Government’s continued commitment to prevent the recruitment and use of children by its armed forces...”

267. Other extracts from the Secretary General’s reports include reference to arbitrary arrests and detentions remaining a major concern. But this is a reference to the “sweep” operations, carried out by police in Mogadishu, designed to identify Al Shabaab supporters and those in possession of explosive material, which for most people, as we have seen, involved being detained only a few hours while questioning takes place and no ill-treatment is experienced. Given the objectives of that operation and the benefit to the civilian population where it succeeds, that does appear to be a proportionate disruption of personal freedom.

268. Ms Panagiotopoulou quotes from a report dated 31 May 2013 in which the Secretary General noted that the number of incidents involving improvised explosive devices rose in 2013 in comparison with 2012 but

omitted from her extract the single example that was given in this regard, in the words that followed on from the extract quoted:

“... On 24 January, for example, a device hit a convoy carrying two United Nations personnel, who were unharmed.”

It seems curious that the author of this report should select a single example of such an attack in which no one was injured if, typically, such attacks generally claimed victims in terms of injuries or fatalities. It might be observed also that this was apparently a targeted attack against non-civilians.

269. Continuing her analysis of the Secretary General’s reports, Ms Panagiotopoulou emphasises the view that had been expressed that in view of the increased number of security incidents, compared with 2012:

“The political, security and development gains made so far in Somalia are still reversible...”

and:

“The mission concluded that the political progress made over the past year and the military gains against Al Shabaab that have been achieved in recent years are at serious risk of being reversed. The findings of the joint mission indicate that AS has deliberately shifted tactics since May 2013 from convention to asymmetrical warfare, in recovered areas, including the Somali capital. They target particularly the Government, State institutions and the international presence working in Somalia, including the UN.... In addition to causing the death of many innocent civilians, including women and children, the deterioration in the security situation threatens to undermine the fragile Somali political process...”

270. Reference is made next to the most recent report from the Secretary General on 2 December 2012:

“The security situation in Mogadishu remained relatively unstable during the reporting period...”

But, again, we feel it is necessary to complete the citation in order to convey the meaning apparently intended by the author of the report. He continued, in the next sentence:

“The African Union Mission in Somalia (AMISOM) and the Somali national security forces continued to thwart Al-Shabaab attacks almost daily in and around Mogadishu.”

271. Finally, in this regard, Ms Panagiotopoulou reproduced this from the same and most recent report:

“An increase in criminal activities was observed during the reporting period, including the establishment of illegal check points, robberies and extortion of drivers and owners of public transportation vehicles. In addition, abuses against civilians by undisciplined elements of the Somali national security forces were reported, mainly on the outskirts of Mogadishu and Kismayo.”

It might be observed, though, that the evidence indicates that checkpoints are not a continuing phenomena generally now encountered within Mogadishu and this is not a comment limited to difficulties within the capital city.

272. Next, Ms Panagiotopoulou addressed in her written submissions UNHCR’s January 2014 report, which has been considered in detail in the context of our discussion of the evidence. The point being made is that there is said to be no apparent improvement in the security situation in 2014 and security incidents continue to be reported.
273. According to the Danish 2 report, Ms Panagiotopoulou submits, Al Shabaab remains in control of some parts of Mogadishu at night. However, in our view this is not a conclusion of the Danish 2 report but a recitation of the view expressed by others:

“According to an international NGO working in S/C Somalia (D) there are areas of Mogadishu which are more or less controlled by al-Shabaab, but only during night-time. Al-Shabaab is not visible at daytime.. This is especially the case in Deynile district...”

And to put that into its proper context, we need to add the concluding sentence of that paragraph, which seems to us to be a powerful indicator of the general position as the writer of the report is attempting to describe it:

“However, people in general find that other areas of Mogadishu are safer than ever since the civil war began in 1991.”

274. Ms Panagiotopoulou takes from the third and final Danish report the following assertions: armed attacks by Al Shabaab have continued in Mogadishu, notwithstanding their withdrawal from the city, and they have infiltrated the police, the intelligence and the military; targets tended to be SNAF, police and government institutions, but such attacks can sometimes result in the killing of civilians; although Al Shabaab does not want to send a message that it deliberately kills civilians, indiscriminate use of weapons did cause civilian casualties.
275. Further, she submits there has been an increase in the use of pressure-plate IEDs and civilian casualties from suicide attacks rose sharply. However, we do observe that there may be a contextual difficulty with the source of this information, which suggests that the focus is not on Mogadishu itself:

“Al-Shabaab continues to cause significant harm to civilians through its indiscriminate use of weapons. According to available data for 2012, Al-Shabaab increased the use of victim-activated pressure-plate improvised explosive devices, while the reported number of civilian casualties resulting from suicide attacks in Somalia also rose sharply. In addition, Al-Shabaab persistently practices targeted assassinations of civilians accused of spying or as a punishment for their apparent allegiances, and systematic intimidation of local communities through restrictions on movement, imposition of taxation and strict application of sharia law.”

Since this is a reference to attacks in Somalia, rather than in Mogadishu, and since the evidence discussed above does not suggest that there are public executions for spying or punishments carried out in Mogadishu by Al-Shabaab or the imposition of taxation or control of communities in Mogadishu by the application of sharia law by Al-Shabaab, it seems likely that this is not intended to be a commentary, specifically, of the situation within Mogadishu.

276. On the other hand, Ms Panagiotopoulou does reproduce in her written submissions some material dealing specifically with events within Mogadishu. The Monitoring Group report of 2012, at page 376 :

“... According to UN Mine Action Service (UNMAS) data, 28 IEDs detonated in Mogadishu during the course of 2011, resulting in 116 deaths out of 378 casualties. Between 1 January and 24 September 2012 the number of IEDs detonated in Mogadishu increased to 32, resulting in 62 deaths out of 235 casualties.”

277. Ms Panagiotopoulou advances submissions in respect of the ACLED evidence that echoes the points we have already discussed. She adds that regard should be had to the observation in the Danish 2 report that “anyone who works actively for normalisation of livelihoods in Mogadishu could be at risk of being threatened or killed by AS”. However we observe that the use of the word “could” indicates a degree of speculation rather than evidence-based observation, especially as that comment, taken from the Danish report is followed soon after with a list of categories of people who *are* considered to be at risk.
278. Rogue elements of the TFG operating in Mogadishu also, in Ms Panagiotopoulou’s submission, represent a risk to civilians, especially in terms of robbery. In support, she cites the same extract from the Secretary General’s report, discussed above, that appeared to be concerned with areas “mainly on the outskirts of Mogadishu and Kismayo”. Ms Panagiotopoulou submits that it is clear from the evidence that very little, if any, protection is available to civilians from the police in Mogadishu.
279. Ms Panagiotopoulou deals briefly with the issue of the significance of clans in Mogadishu today, limiting her written submissions to note that UNHCR said in 2014:
- “The traditional extended family and community structures of Somali society no longer constitute as strong a protection and coping mechanisms they did in the past, particularly in locations such as Mogadishu... In Mogadishu in particular the nuclear family has reportedly become the main protection mechanism.”
280. As for the statistical evidence available, in common with counsel for the other parties in this appeal, Ms Panagiotopoulou recognises in her submissions that the data available is imperfect and incomplete in a number of respects, but points out that the UNHCR January 2014 report suggested that the level of fatalities for civilians and combatants combined were higher in 2012 and early 2013 than they had been in 2011 but, we observe, the significant information, which is the division of those figures between civilians and combatants, is elusive.
281. Addressing next the humanitarian situation in Mogadishu, Ms Panagiotopoulou asserts that “acute malnutrition” remains with 870,000 people being “food insecure” and a further 2.3 million people being classified as “stressed”. There are an estimated 369,000 people in IDP settlements as at September 2013. IDPs and “poor people” do not enjoy the same levels of security as others do and IDPs often have to pay for their security and face problems from the “gatekeepers” of the IDP camps.

282. Ms Panagiotopoulou further submits that an Article 15(c) risk persists in Mogadishu “for the general population of Mogadishu”, such that the conclusions of the Tribunal in AMM should not be departed from. She argues that the position is unaffected by the view expressed in KAB v Sweden because that case was concerned with Article 3 of the ECHR rather than Article 15(c).

283. MAA’s profile, it is said, would be that of someone returning from the West after 2 years away from Somalia and so, according to the evidence of Dr Hoehne, would be at risk because “as a general matter diaspora returnees are being suspected of being in the anti AS camp.” He would be seen as someone “who had been taught garbage and sin” and who has lost his religion. He is at risk of being perceived as someone who was “used to spread evil”. As the expert witness Mary Harper had said in the written report commissioned on behalf of MOJ, drawing upon the determination of the Tribunal in AMM:

“Al-Shabaab believes returnees from the West to be in a state of apostasy, and therefore subject to punishment,”

284. Indeed, this particular risk was recognised, Ms Panagiotopoulou, points out, by the Tribunal in giving the last country guidance at paragraph 464:

“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...”

In this respect also, reliance is placed also upon the evidence provided by Mary Harper who, at paragraph 4.5 of her report reproduced a comment by the Al Shabaab commander Ali Mohamed Hussein who said of diaspora returnees:

... They are working for the infidels and since they are working for the infidels, they are the same as the infidels they are working for as far as we are concerned.. They will be killed and fought against in the same manner.”

285. Ms Panagiotopoulou submits, again based upon reference to Danish 2, that MAA would be at risk also from violent and armed elements in Mogadishu who would perceive him to be wealthy and so would demand money from him. However, that section of the report, not set

out in the written submissions, needs to be read in context and no reason is offered why it is that MAA would be perceived as wealthy:

“When asked if there are reports of returnees from abroad being harassed or kidnapped for ransom on arrival in Mogadishu a local NGO(C) in Mogadishu stated that people see those returning [from] abroad as a peace sign and no one abducts them,

...

An international NGO (B) stated that in general terms there is no negative attitude towards returnees in Mogadishu... Kidnappings used to happen in the past but these days it's threats in order to get money. These threats would not be made in areas controlled by the TFG but local militias might demand so called protection money from a returnee. Especially returning persons perceived to be wealthy would be at risk of receiving threats and they would often need to buy protection from armed groups.”

286. Ms Panagiotopoulou submits that MAA no longer has family links to “his home area” and he has not spoken to his wife or parents since leaving Somalia 2 years ago. He is unaware of their whereabouts and it is a real possibility that they may have moved.
287. Dealing with MMA’s personal characteristics, it is submitted that he does not fall within one of the AMM categories excluded from protection. He is uneducated and has never worked. The only source of income in Somalia was that provided by his mother selling sweets. Even if the Tribunal were to find as a fact that he still has family living in Mogadishu, he is at real risk of attracting adverse attention from Al-Shabaab “as being perceived as a spy coming from the West”. Unemployment rates in Somalia are estimated at 54% and 67% for those between 14-29 years. Therefore, it is unlikely that he would find employment on return. He faces a real possibility of having to live in an IDP camp where he would be exposed to conditions that would infringe Article 3 of the ECHR.
288. Thus, Ms Panagiotopoulou urges the Tribunal to find that MMA has a well-founded fear of persecution for a reason recognised by the 1951 Convention, that being his perceived political opinion as a returnee from the West; a real risk of being forced to live in circumstances that cross the threshold tolerated by Article 3 of the ECHR and that he faces a real risk of harm due to indiscriminate violence such as to bring about an infringements of Article 15(c).

Submissions on behalf of SSM

289. Mr Toal's written closing submissions commence with an observation that the Tribunal should be cautious not to be misled by positive news reports that, in the light of the evidence as a whole, should be dismissed as "misleading hyperbole". Thus an observation in a report about Somali citizens returning home to "accelerate progress" that "the sound of bullets that was once so common in the Somali capital of Mogadishu has been replaced by the sound of construction" should be seen, in the words of Mary Harper, as merely "symptomatic of the international media giving undue prominence to stories of diaspora returnees who are thriving in Mogadishu, simply because they like a good story and provide a new angle to a country usually associated with war..."
290. Mr Toal submits the evidence indicates that returnees are themselves often targets for violence, as is evidenced by a bombing attack on a theatre being carried out the day after singers gave a concert there, the first for two decades. Similarly, despite reports of development at the Lido beach presenting "a scene reminiscent of seaside towns around the world", a beachfront restaurant was the target of a bombing attack. One chain of restaurants opened by a diaspora returnee, the Village Restaurants, has attracted three bombing attacks, leaving many dead and injured. The methodology that has become established of detonating a second explosion after the initial one was, he says, calculated to cause casualties among rescuers and spectators.
291. In Mr Toal's submission, despite the "reported accomplishments" of the international community and diaspora returnees, there has not been durable change for the better such as to satisfy the test identified by the Tribunal in AMM.
292. Further, Mr Toal submits that the respondent has misunderstood what the Tribunal were saying in AMM about the need for durable change. He says that the requirement for durability related to the fact of Al Shabaab's withdrawal and not to the level of risk then found to exist. He submits that the finding as to a general Article 15(c) risk did not depend upon that want of durability. It was based upon what Mr Toal describes as "its assessment of the qualitative and quantitative features of risk arising from the situation that existed at the time of the Tribunal's determination of the appeal". Put another way, if we understand the argument correctly, the Tribunal did not find that the circumstances generally as they were then found to be, if maintained for a period sufficient as to constitute a durable maintenance of the *status quo*, would mean that there was no Article 15(c) risk. What was required was a further reduction in the level of risk.

293. That this is the correct interpretation, according to Mr Toal, is reinforced by the fact that although the preponderance of conventional, confrontational, fighting was in one area of the city, Bakara Market, and much of the city was not in a main conflict zone, residents in all areas of the city were considered to be at an Article 15(c) risk.
294. Thus, after the withdrawal of Al Shabaab, all residents faced an Article 15(c) risk for the following reasons:
- a. some conventional fighting may have continued;
 - b. the continued use of asymmetrical fighting methods;
 - c. the humanitarian crisis that might have forced returnees to live in areas where conventional fighting continued;
 - d. because of the humanitarian crises there was enhanced risk from IEDs, opportunist criminals and Al Shabaab elements;
 - e. a risk from rogue elements of the TFG.

Therefore Mr Toal argues that it would not be sufficient for the respondent to demonstrate that nothing has changed since AMM. Indeed, the Tribunal reached the conclusions that it did notwithstanding that it had in mind then the following matters:

- a. an improving economy with more commercial activity;
 - b. the ability of humanitarian organisations to operate;
 - c. a busy airport, with 1,000 people arriving each month for various purposes including work and holidays;
 - d. widespread reconstruction projects;
 - e. evidence of voluntary returns from the diaspora.
295. Mr Toal argues that the improvements in conditions required to justify a departure from the present country guidance cannot be found in the end of conventional fighting alone as that had been substantially reduced by the time of AMM and was “increasingly confined to certain areas”. Despite that, the 15(c) risk was found to exist in all areas.
296. Although accepting that Al Shabaab has been weakened by loss of territory, loss of revenue and internal divisions within its leadership, Mr Toal argues that the organisation remains a potent threat for a number of reasons, which can be summarised as follows.
297. Mr Toal submits that Al Shabaab still controls most of southern and central Somalia, having a core military force of about 5,000, with its operational readiness and chain of command intact. It has arms caches hidden all over central Somalia and continues to have substantial support from some major clans. Despite a diminution in its revenue, Al Shabaab still receives funding from abroad and “taxation” from the

charcoal trade, though to a lesser extent than before. Although there has been internal conflict within the leadership of the group this has not affected the “broad sense of unity” or its ability to engage in asymmetrical warfare.

298. In Mr Toal’s submission, the evidence demonstrates a sustained and increasing engagement by Al Shabaab in asymmetrical warfare as well as an incapacity of the government and AMISOM forces to eliminate the threat posed to civilians by Al Shabaab. In support of that assertion he points to a number of issues.
299. First, the number of grenade attacks rose during 2012, numbering 50 per week. The source for that information is given as Danish 1 although we note that the section he refers to begins by saying:

“Regarding the security situation on Mogadishu Kilian Kleinschmidt, OCHA, Mogadishu, stated that a dramatic improvement has taken place since February 2012. Today there are less gunfire and no artillery. These are simple indicators which demonstrate a process from war to tremendous improvements in security. However, there are still many security challenges as there are incidents, including grenade attacks every night...”

It will be observed from this that Kilian Kleinschmidt’s assessment of a dramatic improvement in the security situation was expressed in the context of there being that number of grenade attacks. It will be recalled also that there is evidence before the Tribunal that there was a relatively high rate of grenade attacks being ineffective.

300. Next, Mr Toal refers to the 2012 report of the Monitoring Group on Somalia to demonstrate that civilian casualties caused by suicide bombings increased during 2012. That is correct. The actual information found there is that there were four such attacks in 2011 causing 11 casualties but in 2012, although the number of such attacks was the same - four - they were more successfully carried out so that there were 125 casualties, 34 being fatal.
301. Mr Toal refers next to evidence from the same source that targeted assassinations of civilians continued to form part of Al Shabaab’s *modus operandi*, the group executing civilians perceived to be supportive of the Somali government or AMISOM, often on suspicion of spying. However, when one looks at the source evidence, there are some difficulties with the conclusion one is invited to draw. First, it may well be that this is discussing to some extent what occurred outside Mogadishu. It is said that such killings are sometimes in the form of

public executions, including beheadings, since one of the expert witnesses confirmed that such public executions and beheadings of suspected spies were not carried out by Al Shabaab in Mogadishu after the group had withdrawn from the city. It should be noted also that this section of the report makes clear that it is politicians or local public figures supportive of the Somali government that are targeted for assassination by Al Shabaab so that the reference to “civilians” being targeted might be misunderstood. It would not appear that such persons were being identified for assassination because they are civilians, or because Al Shabaab wishes to kill civilians. They are being targeted because of their profile, or behaviour or perceived behaviour.

302. Addressing the regular reports made by the UN Secretary General, Mr Toal places reliance upon a number of statements in those reports. First, that dated 1 May 2012:

“terrorist attacks remained constant ... asymmetrical insurgent attacks pose a substantial threat”.

Although, to understand what the author sought to communicate, we feel it is necessary to set out the whole of the first sentence from which the phrase is taken:

“In the Mogadishu area, Al-Shabaab terrorist attacks remained constant, though many were prevented or failed as pressure mounted from reinforced Government and AMISOM forces.”

303. The Secretary General has referred to attacks by Al Shabaab as having “occurred frequently”, those attacks being of an asymmetrical nature and being launched against “soft targets” in a way that often resulted in civilian casualties. Targeted killings and attacks were routinely reported and the number of incidents involving IEDs rose in 2013 compared with 2012.

304. It is notable that this reproduces faithfully the words used by the Secretary General in this paragraph of his report in which he is speaking of the security situation of south central Somalia generally, save that the phrase:

“Despite some improvements in Mogadishu...”

has been omitted by Mr Toal. That might be thought a significant omission because those words were plainly inserted to qualify that which followed.

305. On the other hand, as Mr Toal points out, the Secretary General has written in his report of 3 September 2013 of a surge of violent attacks in the capital, warning that Al Shabaab “remains capable of carrying out intensified attacks against civilians and international partners”. That expression of concern follows on from a paragraph particularising attacks against journalists, human rights abuses against women and children, sexual violence, and “innocent civilians caught in the crossfire between parties and is considering the position both within and outside the capital (Al-Shabaab continues to undermine security throughout the country, including in Mogadishu”).
306. Finally, the Secretary General expressed concern in a letter written in October 2013 that military gains against Al Shabaab achieved in recent years are at serious risk of being reversed.
307. It is Mr Toal’s submission that the risk to civilians from “rogue elements” of the TFG identified by the Tribunal in AMM is one that still persists. This is because the security forces are composed of loosely assembled units and militias with no coherent command structure which are sometimes available for “side employment”. A proliferation of armed guards working in the private sector may provide security for their employers but cause civilian deaths when they shoot to defend themselves and their employers. The evidence for that asserted risk is a comment by an unidentified former editor of a Somali news agency whose view was recorded in the October 2012 Danish report.
308. Mr Toal submits that the risk from rogue elements of the security forces is reinforced by the fact that as they are paid irregularly or not at all, they resort to extortion at check points and robbery of civilians. Although the evidence indicated that the number of checkpoints to be encountered in Mogadishu had reduced, he says that more recent evidence suggests that they have now returned.
309. There are two sources for that assertion. First, a brief RefWorld report of 14 June 2013 records that there had been 60 illegal roadblocks in Mogadishu the previous year that had been dismantled of which “some” were back in place. Second, the UN Secretary General referred to this, in the context of an increase in criminal activity in the reporting period of 16 August to 15 November 2013 and the extortion of drivers and owners of public transportation vehicles.
310. Mr Toal next sets out in his written submissions a lengthy list of incidents involving civilian casualties being caused by “rogue elements within government forces”. When the sources from which these are taken are examined, little information other than the asserted fact of that

can be found. To a large extent the victims are not identified, although that is not reason to doubt that the incident occurred.

311. Addressing next the statistical evidence concerning weapons-related injuries, Mr Toal submits that the only potentially reliable source of such statistics are the numbers said to be treated for such injuries at the Mogadishu hospitals. In 2012 the number treated at WHO supported hospitals in Mogadishu was 6,687 and in 2013 it was 4,412. Mr Toal includes an annex to his submissions that is an attempt to compile a comprehensive list of all deaths and injuries that occurred as a result of the violent incidents in Mogadishu in 2012 and 2013 that are reported in the documentary material submitted by all parties to this appeal. The result is that 144 people are said to have been killed and 197 injured in such incidents in 2012 and 183 injured and 234 killed during 2013. He points out that this represents only a very small proportion of that total number of people treated, from which he invites the conclusion that most such incidents go unreported, as was the evidence of Mary Harper, in particular.
312. The difficulty with that reasoning is that the evidence of the numbers treated for weapons-related injuries is in itself a form of reporting. Mr Toal submits that those figures are also plainly unreliable in the sense that there is no systematic or established process of recording the information. The only real information available is from the WHO-supported hospitals in Mogadishu, but there are other hospitals in respect of which no information at all is available about the numbers of people treated or the classification of the treatment. Apart from those problems, it must be recognised that some with weapons-related injuries would not seek medical treatment from any hospital.
313. In his written submissions Mr Toal carries out a detailed analysis of the data available in respect of the numbers treated for weapons-related injuries in hospitals in Mogadishu and concludes that it is simply not possible to establish from that evidence the total number of people treated in any given year. We agree.
314. However, we find it much harder to accept Mr Toal's assertion that it follows that the Tribunal will have very real difficulty in making its assessment of whether the "real risk" threshold is satisfied. He submits that in the absence of reliable casualty figures the Tribunal cannot embark upon the type of analysis conducted in AK (Afghanistan) arriving at a tolerably accurate figure for casualty levels. But the risk assessment is to be made in the light of the evidence as a whole and not simply as a function of arithmetical calculation.

315. Although it is the respondent's case that the end of conventional fighting in Mogadishu is something that lessens the Article 15(c) risk for civilians, Mr Toal submits that the asymmetrical warfare that has replaced it also causes significant civilian casualties. Also, although recognising that it is the respondent's case that Al Shabaab does not deliberately target civilians, Mr Toal submits that in launching large-scale attacks on locations frequented by civilians it is inevitable that there will be civilian casualties.
316. In support of that argument, Mr Toal points to attacks at the Jazeera Palace Hotel on 1 January 2014, the attack on Hotel Makkah Al-Mukararmah on 8 November 2013, the attack on the Village restaurant on 7 September 2013 and the attack on the Benadir High Court building on 14 April 2013.
317. The inference to be drawn from these submissions is that these are examples of attacks upon "civilian targets". However, when the evidence is examined more closely, a different picture is seen to emerge.
318. The Jazeera Palace Hotel is described as a hotel that is "popular with government officials and foreigners" (AB4 page 63). It has previously been targeted for a bomb attack as a place where politicians met. Another report quoted an Al Shabaab source as saying that its bombers had targeted intelligence officers who were meeting at the hotel at the time. The second bomb was said to have been exploded not in the immediate aftermath of the first bomb but after "emergency personnel" arrived at the scene. Thus, those targeted were not "ordinary civilians" but those falling within classes of persons plainly discernible as legitimate targets by Al Shabaab.
319. Four of the six people killed in the bomb attack on the Hotel Makkah Al-Mukaramah were policemen and a senior Somali diplomat was also included in the 6 fatalities. Al Shabaab are reported to have said:

"the target of the attack was apostate security forces and officials"

From which it appears that the venue was chosen on the basis of who was likely to be encountered, at this hotel which, as was the case with the Jazeera Hotel, is described in the news reports as being one of Mogadishu's most expensive hotels. A BBC News report dated 8 November 2013 confirms that the hotel "is popular with members of parliament and other officials".

320. The attack on the Village restaurant, which is located not far from Somalia's Parliament, was, like the Jazeera Hotel, the second occasion it

had been targeted. According to a news report from Aljazeera dated 11 September 2013, Al Shabaab said after the attack:

“We attacked this particular place because it is a base for government”

Although that was denied by the owner who sought only to operate a restaurant business, a BBC News report dated 7 September 2013 said:

“The group said it had attacked the Village restaurant because it is frequented by Somali MPs.”

and that:

“The Village, about 1 km from the Presidential Palace... is popular with journalists and those in political circles.”

this being confirmed by another BBC News report, also dated 7 September 2013:

“the restaurant was popular with government workers and journalists and has been targeted before.”

A news report also dated 7 September 2013 from Reuters, added that in admitting responsibility Al Shabaab had said:

“We are behind today’s blasts”, al Shabaab’s spokesman for military operations, Sheikh Abdiasis Abu Musab, told Reuters. “Government officials, military forces, workers and their security always meet there. We had targeted it even before today and we shall continue targeting it.”

321. The Benadir High Court is, of course, a government building but one which civilians may occasionally have need to visit.

322. In his written submissions, Mr Toal recognises that:

“It is true also that Al Shabaab and other agents of serious harm target high profile individuals and they target venues that are not usually frequented by civilians...”

But he argues that the evidence does demonstrate that a significant number of civilian casualties result from such attacks. Thus, an attack on a UN compound in June 2013 resulted in 22 deaths, of whom 4 were foreign security workers, 4 were local guards and 7 were militants. The inference invited is that the remaining 7 must have been “ordinary

civilians” However, the BBC news report of this incident records that Al Shabab claimed to have killed “16 UN workers” which, if that were in fact true, would together with the number of attackers killed account for the whole total of fatalities. In any event, there is a disparity in the numbers of casualties reported. A Telegraph report said that “at least 15” people were killed of whom not 7 but 9 were attackers. It is clear, however, from the documentary evidence about this incident considered as a whole that there were civilian casualties.

323. Certainly, civilians were killed or injured in these 9 attacks identified by Mr Toal, even though each of them appears to have had a non-civilian target as well as 8 more he categorises as attacks aimed at government forces.
324. Mr Toal submits that it is not realistically possible for a civilian to reduce his or her exposure to risk by avoiding places or areas that can readily be seen to be more likely than others to attract an Al Shabaab attack. This is because the attacks take place throughout Mogadishu and are not restricted to only certain areas. Further, the locations of attacks includes venues such as a football stadium, aid distribution centres, IDP settlements and so on.
325. In his written submissions Mr Toal refers to the “very significant statistics” produced by Saferworld in its August 2012 report “Mogadishu Rising?” which includes the results of a survey of 800 Mogadishu households that disclosed that in the previous 90 days 126 had experienced violence. He invites from this the conclusion that it is evidence of an extremely high risk of violence. Those figures are recorded in the report but in assessing how reliable they are, regard must be had to what is said at the beginning of the chapter of the report containing the table disclosing the results of that survey:

“Though violence remains a daily reality, Saferworld’s Mogadishu-wide survey in July 2012 found that an overwhelming 93 per cent of respondents reported an improvement in the security situation in the past 12 months, with 4.5 per cent saying it had remained the same and only one per cent reporting a deterioration. Fifteen per cent said that security had improved in the past three months, 33 per cent noted improvement in the last six months and 22 per cent said the last nine months were improved.”

The same report recorded also, at chapter 4, that:

“An increase in African Union Mission in Somalia (AMISOM) troop levels to more than 17,000 as of July 2012, along with better coordination between AMISOM and TGF officials, has contributed

to the decline of the militant movement al-Shabaab in the Somali capital.”

And that, in response to criticism by the Council of Islamic Scholars, who branded Al Shabaab “the enemy of the Somali people”:

“Al Shabaab responded by moving much of its manpower and equipment to Puntland in north-east Somalia...”

a development that had been noted by the United Nations Somalia and Eritrea Monitoring Group also.

326. Mr Toal recognises the conclusion of the ECtHR in KAB v Sweden is of significance:

“The Court is aware that the human rights and security situation in Mogadishu is serious and fragile and in many ways unpredictable. However, in the light of the above, in particular the fact that al-Shabaab is no longer in power in the city, there is no front line fighting or shelling any longer and the number of civilian casualties has gone down, it finds that the available country information does not indicate that the situation is, at present, of such a nature as to place everyone who is present in the city at a real risk of treatment contrary to Article 3 of the Convention.”

but says that he agrees with the view of the minority in KAB v Sweden and urges the Tribunal to find that “the population of Mogadishu” faces not just an Article 15(c) risk but also a risk of treatment that would be contrary to Article 3 of the ECHR.

327. In Mr Toal’s submission, the two main qualitative distinctions to be detected between the circumstances at the time of the AMM determination and the present are the cessation of conventional warfare in Mogadishu and an improvement in the humanitarian situation such that there is no longer said to be famine. However, he submits that, on the basis of the evidence now before the Tribunal, it is impossible to say that circumstances have changed to the extent that there is no longer a risk of serious harm.

328. If the Tribunal does not accept that submission, and finds that there is no Article 15(c) risk for the population of Mogadishu generally, Mr Toal argues that SSM should succeed on the basis of his individual characteristics. This is because he would be returning to Mogadishu after a very long absence as a person with no adult experience of living in that city and will be someone easily recognisable as having come from

a Western country. He has a profile of someone being deported for having committed a criminal offence and will have no access to resources on return. As a result, according to Mr Toal, he will become an IDP facing all of the difficulties that have been disclosed by the evidence.

329. Those difficulties, faced by IDPs in Mogadishu, are said to include inadequate access to food and water, disease due to insanitary living conditions and inadequate housing. Mr Toal asserts that 90% of IDPs in Mogadishu live in makeshift shelters, that being taken from the Food Security and Nutrition Situation Trends report covering the period July 2011-April 2012. Additional problems will include exploitation by “gatekeepers” and vulnerability to forced eviction from settlements.
330. As a returnee, Mr Toal submits, SSM would be vulnerable because he may be suspected of an intention to join Al Shabaab; he may be perceived to be wealthy, on the basis of having come from Europe, and so attract demand for money or threats from militias, he will find it difficult to find employment and will face risk from Al Shabaab for no reason other than being a returnee from the West. Finally, with no recent knowledge of living in Mogadishu, he will be unable to anticipate and so minimise or avoid risk.
331. Mr Toal accepts that the evidence does not indicate a risk of forced recruitment to Al Shabaab but in the face of an inability to access a livelihood, SSM may feel driven to work for the group as the only way to access money as well as to enable him to demonstrate he is not a spy or an apostate. This would amount to Al Shabaab abusing his vulnerability so as to amount to trafficking such as to infringe Article 4 of the Convention against Trafficking.
332. Therefore, it is Mr Toal’s submission that SSM:
 - a. has a well founded fear of persecution by Al Shabaab as a returnee from the West, that being a reason recognised by the Convention so as to require that he be recognised to be a refugee;
 - b. there is an established Article 15(c) risk of serious harm generally and, because of his particular vulnerability, specifically in his case;
 - c. is likely to suffer inhuman and degrading treatment in having to live in circumstances analogous to an IDP such as to infringe Article 3 of the ECHR;
 - d. faces a real risk that he would be “trafficked” by Al Shabaab within the meaning of the Convention.

Conclusions:

333. It should be recognised that the country guidance issues addressed in this determination are not identical to those engaged with by the Tribunal in AMM. Therefore, where country guidance has been given by the Tribunal in AMM in respect of issues not addressed in this determination then the guidance provided by AMM shall continue to have effect.
334. Before setting out our conclusions we make these observations. First, we have, where appropriate and convenient, explained what we have made of the evidence when discussing it above. We emphasise, for the avoidance of any possible doubt, that although some discussion of the evidence has been set out before our summary of the closing submissions, those arguments were very much in mind when carrying out our assessment. In explaining why we reach the conclusions we do, there may be some duplication of what we have said already but, given the nature of our task that is unavoidable.
335. The second observation concerns the country reports that the parties have put before us, which are itemised in the appendix. We do not need to set out our own, separate and freestanding summary of these reports. That is because each of the expert witnesses, whose evidence we have discussed at length, have drawn heavily upon those reports where they are relevant to the issues with which we are concerned, and the parties have identified those parts relied upon in their lengthy submissions, which, again, we have considered in detail. We are satisfied that everything contained within those reports that the parties consider to be of importance has already been extracted and discussed and so taken into account by the Tribunal, whether or not we refer specifically to it in this determination, which is long enough already without a repetition of those matters in a separate synopsis.
336. Finally, we observe that, although we have had regard to all that the parties have advanced before us, we do not seek to deal with each and every strand of argument that has been advanced before us and nor can we analyse each piece of evidence to which we have been referred. We do, though, aim to make clear why we have reached the conclusion we have. Drawing upon the observations we have already made when analysing the expert evidence, we now summarise our conclusions on the main issues as follows.

Significance of clan membership in Mogadishu today

337. The evidence establishes clearly that, in Mogadishu, there is no inter-clan violence taking place and no real risk of serious discriminatory treatment being experienced on the basis of clan. We have set out above

the broad range of evidence to this effect, including comments from NGOs and others well placed to comment on the situation in Mogadishu today, including these, that were set out in Dr Mullen's report and discussed above at paragraphs 79:

"...It does not matter whether you belong to a strong or a weak clan, or an ethnic minority group... The clan has now become a social structure rather than a protective structure."

"Clan protection is no longer important as there are no clan based militias in Mogadishu. Persons returning from abroad are not at particular risk because of their clan affiliation";

"...it is a huge step forward that clan affiliation is no longer a concern. Even marginalized groups such as the IDPs and minority groups are no longer marginalized, harassed or intimidated only because of their clan affiliations. Thus, the security situation for members of small, weak clans and ethnic minority groups has increased considerably during the last year. It is not important which clan or group you belong to.";

"The representatives of an international agency, Mogadishu, agreed that the clan is no longer a main issue in Mogadishu... According to Mohamed Farah Siad, Mogadishu, clan is 'zero' today in Mogadishu; clans do not offer any protection as there are no clan militias threatening people. Clanism is only common among "primitive clans in the bush."

338. This was reinforced by the expert evidence, Ms Harper confirming that she had not seen any evidence of inter-clan violence and Dr Hoehne saying that there are no clan militias as such. If and when a need arises, a person will assemble a group drawn from his own clan to address a particular purpose. Ms Harper's evidence that militias were still to be regarded as clan-based groups that could be activated when needed by powerful business figures or politicians does not sit comfortably with the evidence of Dr Mullen and Dr Hoehne who spoke of militias being "assembled" when needed, rather than remaining intact to be "activated", or with the documentary evidence generally. Thus, we do not accept that in Mogadishu today there exist clan based militias in the sense of formal armed groups assembled to provide on going protection to clan members in a given area and exerting *de facto* control over the lives of local inhabitants.
339. That is not to say that clan membership has no significance to those living in Mogadishu. It was observed in the Danish 3 report that:

“On the other hand, whenever a person is planning to settle in Mogadishu he or she will most likely consider his or her clan affiliation before deciding where to settle down.”

And one local commentator has observed that:

“... clans are only relevant when it comes to business, marriage, respect and work, and stated that “clans should not be involved in politics”.

Which chimes with what is said in the Danish 3 report:

“The clan has now become a social structure rather than a protective structure. This could be due to lessons learned during the previous clan conflicts and the civil war. People are now relating to government structures rather than clans, especially when it comes to business.”

And a little later in the same report:

“Regarding access to livelihood in Mogadishu, UNHCR-Somalia explained that the presence of a nuclear family is a requirement for livelihood support, as clan will not help with livelihood.”

340. We find that the evidence relating to Mogadishu does indeed establish a change in the significance of clan from being a protective mechanism to one of social and economic support. That does not mean that clan membership has no relevance to protection issues at all. Support for that view is found, again in the Danish 3 report:

“UNHCR-Somalia, Mogadishu, confirmed that someone in Mogadishu will not be at risk today solely because he/she is of a different clan, although clan dynamics in combination with other factors are an important element when considering risk, including for the IDP population. It is obvious that one is safer when he or she is residing in an area dominated by his or her own clan or if one has good relations with a dominating clan.”

Where a person sees a need to make arrangements for personal security for a particular purpose he will probably look to his own clan first of all, those being persons from whom he might anticipate assistance being available more readily, especially if he does not have significant financial resources with which to pay for “commercial” security. Also, some trades are dominated by one particular clan so that access may be made

easier with clan sponsorship but there is no evidence that an individual would be barred because of an absence of it.

341. There is evidence also from a number of sources that the importance of what has been termed “the nuclear family” has become more significant than membership of a clan. This was recognised by UNHCR in the report dated 25 September 2013 which is mentioned above and to which we will return below. It is plain that the significance of clan membership has changed and, increasingly, residents of Mogadishu look to their nuclear family for support, protection and access to a livelihood. But, of course, the close relatives involved would invariably also be members of the same clan but it is the family relationship, rather than clan membership, that is of significance. It is, perhaps, entirely unsurprising that people choose to live in areas where relatives are established or that district police forces, being drawn from the area in which they operate, reflect the numerical dominance of the clan predominately present:

“UNHCR-Somalia, Mogadishu, confirmed that someone in Mogadishu will not be at risk today solely because he/she is of a different clan, although clan dynamics in combination with other factors are an important element when considering risk, including for the IDP population. It is obvious that one is safer when he or she is residing in an area dominated by his or her own clan or if one has good relations with a dominating clan.”

342. It follows from this that for a returnee to Mogadishu today, clan membership is not a potential risk factor but something which is relevant to the extent to which he will be able to receive assistance in re-establishing himself on return, especially if he has no close relatives to turn to upon arrival. There remains an aspect of protection to be derived from clan membership, which we discuss in more detail below when considering issues of sufficiency of protection. But this is more to do with having access to a support network providing the opportunity to put in hand security measures when needed rather than a situation of being able to look to an existing clan militia to provide protection. But this source of assistance must not be overstated. As explained by Ms Harper, in her oral evidence, in response to a question concerning what help a returnee might expect from his clan:

“None at present. If you arrive in Mogadishu and do not know anyone at all, you might start asking for fellow clan members in the hope that they might do more for you than others. But you could not expect anything from them.

343. We understand that to mean that while there was no guarantee that help would be available from clan members outside the close family network

of a returnee, at least there is more likelihood of such a request being accommodated than if made to those unconnected by the bond of clan membership. That is, perhaps, wholly unsurprising. However, it should be noted that in the UNHCR January 2014 report the view was expressed that a returnee might be rather more confident of receiving help from his clan, if not a minority clan member:

“Persons belonging to minority clans... remain at particular disadvantage in Mogadishu... There remains a low sense of Somali social and ethical obligation to assist individuals from weak lineages and social groups. This stands in stark contrast to the powerful and non-negotiable obligation Somalis have to assist members of their own lineage.”

The “Economic Boom”

344. The economic revival of Mogadishu can be described only as remarkable, considering what is known about conditions in the city since the civil war began in 1991. Each of the expert witnesses has addressed this in their evidence that we have considered above. It is perhaps well described by a report of the New York Times of April 2012:

“But people here are sensing the moment and seizing it. More than 300,000 residents have come back to the city in the last six months..... The economic boom, fuelled by an infusion of tens of millions of dollars, much of it from Somalis flocking home from overseas, is spawning thousands of jobs that are beginning to absorb young militiamen eager to get out of the killing business...”

An international agency referred to in Dr Mullen’s report is recorded as saying:

“Mogadishu is now a ‘buzz’, people are going around minding their own business and there is an increasing freedom of movement for everyone.”

345. It is beyond doubt that there has been huge inward investment, large-scale construction projects and vibrant business activity. Land values are said to be “rocketing” and entrepreneurial members of the diaspora with access to funding are returning in significant numbers in the confident expectation of launching successful business projects. The question to be addressed is what, if any, benefit does this deliver for so called “ordinary returnees” who are not themselves wealthy businessmen or highly skilled professionals employed by such people.

346. According to the respondent, a striking feature of developments in Mogadishu since AMM is the evidence that “huge numbers” of people have returned to Mogadishu, that is said to be indicative of a considerable reduction in levels of violence and improvements in security. Some local NGO sources have said that there were 300,000 returning residents to Mogadishu in the six months between November 2011 and April 2012 alone. By August 2012 it had been estimated that more than 500,000 people had moved back to the capital including the vast majority who had fled since 2007.

347. Dr Hoehne’s view was that very few people indeed benefit from this. He said when asked who benefited:

“A tiny proportion. 89% are poor. The remaining 20% will be a bit better than being poor. A little better than “barely surviving”. Possibly 1% or 2% of the population benefit from the last two years economic development.”

As we have observed, the arithmetic disclosed by that answer is problematic but we have more difficulty with the view expressed.

348. Pressed further to explain who does benefit from the economic development in Mogadishu, Dr Hoehne said:

“A very tiny fraction of the elite. The vast majority of people are struggling to survive...”

349. This is a view that is not altogether easy to understand and we are unable to agree with it. The evidence is of substantial inward investment in construction projects and of entrepreneurs returning to Mogadishu to invest in business activity. In particular we heard evidence about hotels and restaurants and a resurgence of the hospitality industry as well as taxi businesses, bus services, drycleaners, electronics stores and so on. The evidence speaks of construction projects and improvements in the city’s infrastructure such as the installation of some solar powered street lighting. It does not, perhaps, need much in the way of direct evidence to conclude that jobs such as working as building labourers, waiters or drivers or assistants in retail outlets are unlikely to be filled by the tiny minority that represents “the elite”. Indeed, Dr Hoehne suggested that SSM, on whose behalf he was being asked questions:

“could probably get a job as a waiter...”

although he said that there would probably be much competition.

350. The respondent submits that, given the inward investment that has been received into Mogadishu, said to be tens of millions of dollars, it is impossible to see how the benefits could be restricted to such a tiny minority. The respondent refers to evidence from the Department for International Development in Somalia report – Autumn Update 2013 in which it is asserted that 56,900 jobs have been created since May 2011 and a further 45,000 new private sector jobs will be created.
351. Further, there is evidence before the Tribunal, identified by Dr Mullen, to the effect that returnees from the West may have an advantage in seeking employment in Mogadishu over citizens who have remained in the city throughout. This is said to be because such returnees are likely to be better educated and considered more resourceful and therefore more attractive as potential employees, especially where the employer himself or herself has returned from the diaspora to invest in a new business.
352. For those reasons we do not accept Dr Hoehne’s evidence that it is only a tiny elite that derives any benefit from the “economic boom”. Inevitably, jobs have been created and the evidence discloses no reason why a returnee would face discriminatory obstacles to competing for such employment. It may be that, like other residents of Mogadishu, he would be more likely to succeed in accessing a livelihood with the support of a clan or nuclear family.

Population movements

353. It is clear from the evidence that there has been a significant reduction in population movements both within Mogadishu and from Mogadishu to other locations. As we have seen, the statistical information available demonstrates a significant reduction of movement within Mogadishu. In 2011 66,232, in 2012 28,289 and in 2013 15,723. The total given for 2013 is in fact for the first 10 months of the year and it is reasonable to calculate a “grossed up” total for the full year of 18,867, that being a reduction in the movement of persons within Mogadishu of more than 70% when compared to 2011.
354. In respect of population movement out of Mogadishu to other locations, Dr Mullen sets out a table, taken from UNHCR, that discloses an equally stark change. In 2011 43,695 people are said to have left Mogadishu and in 2013, again grossing up the 10 month figure to a 12 month figure, 6,372. Put another way there has been, since 2011, a reduction of something in the region of 85% in the numbers of people leaving Mogadishu.

Sufficiency of protection

355. It is established by the evidence, and indeed common ground between the expert witnesses, that the “ordinary” civilian resident of Mogadishu does not have the benefit of an efficient and effective police force to look to in respect of protection needs. But that is not a complete answer to the question of whether, in terms of a claim for international protection, there is available in Mogadishu a sufficiency of protection. In the Somali context, as is the case often, the position is complex.

356. The Danish 3 report records an observation by UNHCR-Somalia that:

“...it will not be any time soon that one will see a functioning, fair and efficient justice system in Mogadishu...”

and noted that the Benadir Court as well as the Benadir Supreme Court are functioning but marred by corruption. It is also expensive to take cases to court. Therefore citizens are likely to seek “traditional remedies” to resolve disputes, which can be referred to clan elders representing the parties who will negotiate a resolution, but this appears to relate to civil disputes rather than complaints of criminality.

357. When addressing the question of sufficiency of protection the response that appears superficially to be appropriate is “protection against what?” As we have explained, civilians in general are not targeted, as a group, by any actor of ill-treatment. The risk faced is being in the wrong place at the wrong time but, as we have explained, that risk can be significantly reduced, but not eliminated, by avoiding high risk areas.

358. Having said that, careful analysis of the true position does disclose an apparatus of protection being available for the benefit of civilians even if not in an orthodox way. AMISOM exists not to provide protection to individual citizens but to engage with the Al Shabaab threat and to do what can be done to neutralise it. Much the same can be said for the Somali National Army. Although the continuing attacks carried out in Mogadishu demonstrate that there is some way to go, there are indications of the security forces being successful in limiting the reach of Al Shabaab into Mogadishu and so into the lives of ordinary civilians.

359. For example, we have noted above the observation of the Secretary General of the UN that:

“The African Union Mission in Somalia (AMISOM) and the Somali national security forces continued to thwart Al-Shabaab attacks almost daily in and around Mogadishu.”

And that the police are doing what they can to remove the Al Shabab threat from the streets of Mogadishu is illustrated by the account of Ms Harper's visit to Bakara Market when a child was discovered by police to be in possession of explosives and by the evidence referred to by each of the expert witnesses of police roundups designed to identify Al Shabaab sympathisers and those in possession of explosives on the streets of Mogadishu. Those are both legitimate and proportionate responses to such a threat, most of those detained in the roundups being released within a few hours, having experienced no ill-treatment while detained and questioned.

360. Although we have found that clan membership has become more of a social support than a protection mechanism, the clan issue does still have a role to play in this regard. The evidence is that the District Police reflect the clan profile of the district in which it operates. It is entirely unsurprising that the local or district police force should be drawn from those living locally and so reflect the predominant clan in the area. Even accepting that the District police are inefficient and poorly trained and unable to deliver the protection to the community generally to be expected of a local police force, a member of the dominant clan will expect to derive a greater degree of protection from the fact of the demographics of the police than someone who is not of that clan. That will manifest itself in many ways but not least in that, as the nuclear family becomes increasingly important in terms of protection and re-establishment on return, an ability to look to relatives who may well include members of the local police force is likely to enhance protection levels, if only because of the availability of an armed relative with some training in police work and, obviously, with a close association to the police force itself.
361. Access to protection for a citizen of Mogadishu is a composite issue. There is now a functioning central government in Mogadishu, even if its authority outside the capital is more limited. At one level, all citizens benefit from steps taken by the national security services, supported by AMISOM, to deal with the threat posed by Al Shabaab. We do not suggest that such services have always performed their roles adequately or properly, but their role and presence have clearly had a deterrent effect on Al Shabab activity. Local or District Police service may be deficient but make some contribution by way of a visible presence. Those who do have specific personal protection needs, such as wealthy businessmen, politicians and those involved in litigation or land disputes can and do assemble private bodyguards. Such arrangements are not simply tolerated by the authorities but implicitly encouraged. That can be seen from the fact that the government is actively encouraging commercial and business development and hotels and restaurants openly advertise the security arrangements they have

assembled to protect patrons, on occasion making clear that security teams are drawn from a variety of clans rather than being representative of just one.

362. As was made clear by the Court of Appeal in R (Bagdanavicius) v SSHD [2003] EWCA Civ 1605, sufficiency of protection is not a guarantee of protection from Article 3 ill-treatment. At paragraph 55 of Bagdanavicius Auld LJ observed:

“Where the risk falls to be judged by the sufficiency of state protection, that sufficiency is judged, not according to whether it would eradicate the real risk of the relevant harm, but according to whether it is a reasonable provision in the circumstances; *Osman*”

363. Thus the protection afforded is to be considered in the circumstances pertaining in Mogadishu. Those include the general access to firearms and the assembling of private security arrangements where those are thought necessary, all without demur by the state. Put another way, the arrangements made available by the state for citizens to have access to protection include the freedom to assemble private, armed, security personnel if thought necessary. As we have explained, such arrangements will not be required by an “ordinary citizen” who would in most cases be unable to afford to pay for those arrangements in any event. It is important to note that there is no clear evidence of “ordinary citizens” being at risk at the hands of private security men assembled to protect whoever is paying them. That is not to exclude members of any particular class of citizens from having access to protection mechanisms because, as we have said, an “ordinary citizen” will not need to be accompanied by an armed guard in order to secure his safety in moving around or living in the city.
364. Having said that, it may well be that protection mechanisms fall short for those living in IDP camps at or close to levels of destitution, given the evidence we have discussed above of the level of abuses to which some camp inhabitants have been exposed.
365. However, where the issue arising is limited to the risk posed by Al Shabaab, in the context of the circumstances pertaining in Mogadishu, the response of the state does, in our judgement, deliver what is required in terms of a sufficiency of protection. Where, however, an individual has a basis for anticipating being a victim of other criminality, which is not something experienced generally in Mogadishu today, it may not be difficult to establish that a sufficiency of protection from the state security services is unavailable.

Al Shabaab

366. That is the backdrop against which we consider the level of risk posed by Al Shabab for civilians in Mogadishu today. Significant numbers of people have chosen to return to Mogadishu and fewer people are choosing to leave. The question we address next is the level of risk they have apparently been willing to confront by doing so.
367. As we have observed, an analysis of the reach of Al Shabaab into Mogadishu for the purpose of carrying out its violent attacks and their selection of targets is at the very heart of any assessment of risk facing those living in the city today and those facing the prospect of returning there after a period of absence.
368. It is established by the evidence that the approach taken by Al Shabaab following withdrawal from Mogadishu has changed. There has been a cessation of confrontational warfare and with it, generally, an end to the use of artillery which, when used in an urban area, was certain to cause very significant levels of civilian casualties. Instead, Al Shabaab has adopted what has been termed asymmetrical warfare, sometimes launching what are referred to as complex attacks, for example with a suicide bomb attack being followed up by a second explosion.
369. It is plain from the evidence that when planning attacks in Mogadishu, Al Shabaab selects its targets carefully. Dr Mullen spoke in oral evidence of an “international Jihadist trend” emerging, involving a seeking out of strategic targets such as the High Court and hotels expected to be frequented by military and police personnel and prominent politicians. Dr Mullen described this as:
- “... a much more sinister form of targeting geared towards peacemakers...”
370. Dr Hoehne agreed. He detects evidence of significant changes in the structure and ideology of Al Shabaab since their withdrawal from Mogadishu. He explained how, since May or June 2013 it has purged from its ranks those that stood in the way of its version of jihad, including some senior commanders. “Pragmatists” have given way to “radical purists”. Those eliminated from Al Shabaab:
- “were those standing for a less extreme course; at least they were not so much in favour of international or “global jihad” but were rather concerned about Somali (national) issues.”
371. There is ample evidence to establish precisely what the targeting strategy of Al Shabaab is and in our judgement neither civilians nor returnees are specifically targeted. For example:

“The international NGO (B), Mogadishu, stated that al-Shabaab does not kill civilians indiscriminately. On the other hand, when it is staging large scale attacks it does not mind if civilians are killed.”

“UNDSS, Mogadishu, explained that there are no recent reports of al-Shabaab having attacked or killed civilians deliberately through armed attacks....

...

Regarding IED attacks UNDSS, Mogadishu, explained that remote controlled IED attacks or roadside bombs tend to target AMISOM, SNAF and convoys and such attacks sometimes result in the killing of civilians, i.e. collateral damage.”

And in an Aljazeera news report dated 11 September 2013 a spokesman for Al Shabaab, speaking after an attack on the Parliament building in Mogadishu, is reported as saying that their attacks in Mogadishu:

“... have nothing to do with... stopping Somalis coming back to their country.”

372. Dr Mullen said in oral evidence that, generally, the targets selected have a link to government or international aid agencies. In his evidence, Dr Hoehne drew upon the report of the joint mission of the African Union and the United Nations conducted in Somalia between August and September 2013:

They target particularly the Government, State institutions and the international presence working in Somalia, including the United Nations.”

The omission of any reference to ordinary civilians or returnees from the diaspora from this list of primary targets is to be noted. Similarly, we consider significant that neither civilians nor diaspora returnees are included in the list of those at risk set out in the 2014 UNHCR report which we discussed when summarising submissions advanced by Mr Gill. There is reference to those opposing Islamic Sharia and “apostates” and there is evidence before the Tribunal from some sources that Al Shabaab is likely to regard those returning from the west as “poisoned” by exposure to an anti Islamic way of life so as to be regarded as spies or apostates. However, if that approach were thought to be taken towards returnees generally we would expect a more specific reference to have been made. For those reasons we consider the omission of such a specific reference to diaspora returnees to be significant. Further, as the evidence

simply does not establish that returnees to Mogadishu experience such targeted difficulties at the hands of Al Shabaab, we are satisfied that there is no real risk arising on that account.

373. It has been submitted on behalf of the appellants that the bombing of hotels and restaurants does demonstrate that civilians and returnees from the diaspora in particular, are targeted by Al Shabaab. In oral evidence Dr Mullen spoke of civilians being regarded by Al Shabaab as being “fair game”. But as our analysis of the attacks highlighted in those submissions illustrates, invariably the establishment has been said to have been selected because it is a venue used by government/official or NGO associated personnel. There is no reason to suppose that would not be known by others who choose to patronise those establishments. Indeed, there are a number of examples of such venues, which include the more expensive hotels and restaurants, being targeted more than once, frequently followed by publicly reported pronouncements from Al Shabaab explaining why that target had been attacked.

374. We are satisfied that the evidence does not establish that “ordinary civilians” including diaspora returnees are targeted by anyone. Specifically, we are satisfied that the evidence does not establish that “ordinary civilians” including returnees, are targeted by Al Shabaab or the authorities or criminal elements. We are satisfied that it matters not that a returnee who has been absent for some considerable time would be recognisable as such by his dress, behaviour or language. That perhaps explains the news report from May 2013 we discussed above:

“After two decades of anarchy and misery, Mogadishu is enjoying something of a renaissance. The spectacular ruins are being patched up. Hotels are being built. There are even streetlights in some places. And everywhere you hear accents: Texan, Geordie, Minnesotan, south London, Scandinavian. Somalia’s far-flung Diaspora is coming back – in big numbers – to visit, to help out, to make money, and to find out if this renaissance has any chance of lasting. The jury is still out on that one.”

375. Having said that, we accept that whenever an attack involving explosives or gunfire is carried out within an urban city area there will be a risk of civilian “collateral damage” and it is clear that civilians are killed and injured in the attacks that continue to be perpetrated in Mogadishu. We accept also that some attacks have been carried out at venues such as a football stadium and a retail shop, which appears to at least indicate some level of targeting of civilians. However, there are other reasons motivating violence in Mogadishu, the evidence suggesting that even Al Shabaab members are sometimes available as

“guns for hire” to those with the resources and motivation to hire them to settle personal disputes. In any event, such attacks are the exception, not the norm.

The level of weapons-related civilian casualties.

376. Therefore, it is necessary to carry out an assessment of the scale of the violent attacks and the extent of civilian casualties caused in order to make a judgment as to whether they are at a level such as to give rise to risk for civilians present in Mogadishu. It is clear that Al Shabaab launches regular attacks in Mogadishu, including by suicide bombers, car bombs, grenades, targeted killings and IEDs. Dr Mullen points to a UN Security body report:

“There are on average several targeted killings per week in Mogadishu, four to five weekly hand grenade attacks in Mogadishu and usually more.”

In the Danish 2 report, despite noting that:

“... there is a decrease in the number of civilian casualties in Mogadishu, relative to the last few years. This decrease is due to front-line fighting having moved out of Mogadishu. There are now fewer mass-casualty attacks and killings, in particular due to the cessation of shelling in Mogadishu...”

the report continued:

“Still civilian casualties remain a daily occurrence, principally due to assassinations, improvised explosive devices (IEDs) and suicide attacks, and reactions to these attacks by the armed forces. Recent grenade and suicide bomb attacks on theatres and cafes, such as the August 2012 attack on the Jezira Hotel, cause numerous civilian casualties.”

Despite that acknowledgement, the report went on to say this:

“According to an international NGO working in S/C Somalia the number of civilian casualties in Mogadishu has decreased considerably compared to February 2012 and today civilian casualties are at a minimum. In July 2011 two thirds of Mogadishu was under al-Shabaab control. Bombardment and shelling killed many, but this is no longer taking place. Today you have targeted attacks and sometimes by-passers get killed. It’s a question of being at the wrong place at the wrong time.”

377. Thus, it is established that there are daily attacks being carried out in Mogadishu, and that there are civilian casualties caused by those attacks. But the simple fact of that predictable frequency is not an answer in itself to the questions being addressed in these appeals. It will be recalled that in KAB v Sweden, which of course was not directly concerned with whether or not there was an Article 15(c) risk, the ECtHR accepted that civilian casualties remained a daily occurrence yet still concluded that there was no general Article 3 risk.
378. Much time and effort has been invested by each of the parties to these appeals in making what they could of the statistical information available about the numbers of people treated for weapons-related injuries in Mogadishu. Each has concluded that the data available is incomplete and insufficiently consistent in respect of its collation so as to make it impossible to arrive at any reliable total figures. We agree. Information is available from only some of the hospitals in Mogadishu; there is no reliable distinction between civilian and non-civilian casualties and, in any event, it must be recognised that not all casualties will have presented themselves at any of those hospitals. It is also problematic that the term “civilians” is sometimes used to include anyone who is not part of the military, such as politicians, NGO personnel and others falling squarely within categories identified by Al Shabaab as legitimate targets.
379. That does not mean the information is of no use at all, but we accept that caution must be exercised in making use of it.
380. Ms Harper collated the information available from the WHO supported hospitals:

January – December 2010: 5279 casualties from weapons related casualties were treated at the three major hospitals in Mogadishu

January – December 2011: 9689 casualties from weapons related casualties were treated at the three major hospitals in Mogadishu

January – December 2012: 6687 casualties from weapons related casualties were treated in four hospitals in Mogadishu

January – October 2013: 3889 casualties from weapons related casualties were treated in four hospitals in Mogadishu

Recognising that the figures for 2013 are incomplete, she said:

“If extrapolated for the whole year, the casualty figures for 2013 would be 4667, which is less than the previous year but still high. It is important to stress that these figures are

incomplete and do not give a reliable picture of the situation in Mogadishu”.

381. What can be made of these figures? Our conclusions in this regard are as stated above and it is convenient to repeat those here. The statistical information available probably says not very much about overall figures of casualties but does allow an attempt to identify trends. We note that caution has been urged in placing reliance upon “trends” but we see no reason not to have regard to that as part of the totality of the evidence before us.
382. It can be seen that even though data is being collected from four hospitals in 2013 as opposed to three in 2011, there has been a steady reduction on the numbers reported since 2011, a reduction of more than a half. The figure calculated by Ms Harper for the whole year up to December 2013 represents a very small proportion of the population of Mogadishu. We heard evidence that there may be something in the region of 12 hospitals in Mogadishu, although not all have the capacity to treat weapons-related injuries. But, even if each one of those hospitals treated such patients at the same rate as the four that have provided data, that would mean that well over 99% of the population, taking it to be Dr Hoehne’s more conservative estimate of 1.5 million, would not have indicated any need for treatment for weapons-related injuries by seeking treatment at any hospital. If Dr Mullen is correct, and the population stands at 2.5 million, then the figure seeking hospital treatment is less than 0.2%.
383. However, as we have said, that cannot be regarded as a reliable calculation, for all of the reasons we have given.
384. What is significant is that, although some Al Shabaab attacks have caused large-scale casualties, generally, the shift to targeted attacks on carefully selected targets has the propensity to cause fewer “collateral” casualties than the shelling exchanges seen during times of confrontational warfare. Therefore, a comparative analysis of the number of attacks being carried out today with the number of attacks carried out at a time when the front line was within the city is unlikely to be helpful. We have seen also that a significant number of grenade attacks have been unsuccessful.
385. Thus, what we are left with is this. Al Shabaab continues to carry out attacks in Mogadishu on a daily basis. These are not targeted at “ordinary civilians” or diaspora returnees, but they carry with them a probability of some collateral damage to civilians who find themselves in the vicinity at the time of the attack, especially in the complex attack where a second explosion follows the first. Having said that, there is

some evidence that the follow up explosion is intended to target not civilians gathering in the aftermath of the first explosion but the emergency services who respond to assist the victims of the blast. If correct, that would chime also with the clearly articulated intention to target those associated with the government. We do not, though, lose sight of the fact that civilian casualties frequently result from the attacks that continue to be carried out in Mogadishu.

386. As we have seen, large numbers of people have chosen to return to Mogadishu, notwithstanding those daily attacks. That may be thought to be a cogent indication of perception of actual risk by those actually present. It is, in our judgement, little short of fanciful to suggest that for the large numbers of people who have chosen to return, their decision to do so has not been informed by evidence of improved conditions for civilians in Mogadishu, reinforced by their experience of the city after arrival.

Avoiding or reducing risk

387. It is clear also that it is open to residents of Mogadishu to take steps to minimise their exposure to the risk of getting caught up in an Al Shabaab attack. For most people there will be no need to patronise a hotel or restaurant known to be frequented by the security forces, government officials or international aid or NGO workers. Similarly, if it is thought that the risk of being involved in a grenade attack is higher in the specific areas where the security forces or international organisations are based or in Bakara market than elsewhere, we do not accept that it is unreasonable to expect someone to avoid that area. We recognise that each of the appellants argue vigorously to the contrary, particularly in respect of Bakara Market. This is the main commercial district but there are a number of other markets in Mogadishu. We do not accept that the need to visit Bakara Market, or to dine at a restaurant known to be frequented by politicians or journalists or government officials is a matter of such core importance to engage an argument under the principles of HJ (Iran).
388. Support for that conclusion may be found in the decision of the Grand Chamber of the Court of Justice of the European Union in Case (C-71/11) Federal Republic of Germany v Y Case (C-71/11) & Z (Case 99/11). That decision was concerned with the question of whether it was not every interference with protected religious freedoms but only those that constituted a severe violation such as to adversely affect the “core area of that religious freedom”. That infringed Article 9 of the ECHR. Although noting that religious freedom is a basic human right it could not be said that any interference with that right would amount to an act of persecution. There needed to be:

“... a “severe” violation” of religious freedom having a significant effect on the person concerned for it to be possible for the acts in question to be regarded as acts of persecution.”

By analogy, it cannot be said that the need to take reasonable precautions to avoid areas of Mogadishu thought to represent a particularly high risk of getting caught up in an Al Shabaab attack not specifically targeted at civilians is something that would affect a core area of private life being enjoyed in Mogadishu because it would be hard to show that would involve a person not doing something that was of particular importance to him in order to preserve his enjoyment of it.

389. The expert evidence supports the view that it is, in fact, open to a resident of Mogadishu to take steps to reduce his personal exposure to risk. Ms Harper expressed concern that an individual who had been absent from Mogadishu for a significant time:

“... would not know how to behave in such a way as to possibly reduce their risk of harm.”

Implicit in this statement is an acceptance that it would be open to an individual who was aware of how best to behave to reduce his exposure to risk. However, when pressed to explain what sort of conduct should be avoided, Ms Harper listed types of behaviour which, it seems to us, plain common sense would demand:

“... it is not a good idea to speak about Al Shabaab in public, and it is best to avoid government buildings, and restaurants, hotels and other places frequented by government workers, security officials, members of the diaspora and foreigners...”

It was Ms Harper’s evidence that members of the diaspora are specifically targeted by Al Shabaab, although we have found as a fact that is not the case.

390. We accept that however diligent a civilian in Mogadishu is in acting sensibly to minimise his exposure to risk, that risk cannot be eliminated entirely, but that, of course, is not a requirement for lawfully enforcing a return to that city. As Dr Mullen said:

“No life solution in Mogadishu is without some degree of risk”

391. We should make clear also that we do not accept that, for the “ordinary civilian” living in Mogadishu today, personal safety can be assured only by employing personal armed bodyguards, as has been suggested. Thus

we reject, in particular, Dr Heohne's evidence that an inability to fund expensive personal security arrangements would give rise to an unacceptable exposure to risk for all and any returnees to Mogadishu.

392. We have found that civilians, including returnees from the diaspora, are not specifically targeted by either Al Shabaab, the authorities or by anyone else. It has been suggested that returnees might be considered wealthy and so are likely to become victims of robbery or extortion. But that we find speculative, there being an absence of evidence to support such a concern. We have no difficulty in accepting that persons such as Mr A, identified in Dr Hoehne's evidence, who returned to conduct litigation and resolve a land dispute, may well feel the need to hire expensive armed guards to ensure his personal safety. But as we have found that ordinary civilians, including diaspora returnees, are not specifically targeted by anyone, the risk face by such individuals is that of "being in the wrong place at the wrong time". Being accompanied by a bodyguard provides no assistance to an individual unfortunate enough to find himself in close proximity to the venue of an Al Shabaab bomb attack.
393. An "ordinary civilian" unaccompanied by bodyguards, is likely to make his way around Mogadishu using public transport. There have been examples of buses or other public transport vehicles getting caught up in attacks by Al Shabaab with consequent casualties among passengers who are innocent civilians. We have been referred to news reports of passengers being shot on such buses in what may or may not have been simple criminality. However, the evidence does not support the view that public transport is identified generally as a target for Al Shabaab, or that there is generally any real risk of coming to harm while using public transport in Mogadishu. Of course, a mini bus operated as a commercial bus service is no more immune from being damaged in an explosion than any other vehicle, but we are unable to conclude that an enhanced risk of coming to harm while using such a facility is established by the evidence.
394. Similarly, although we heard evidence concerning round-ups by police in Mogadishu, for the reasons we have already given, we are satisfied that is a proportionate response by police to the threat posed to the community by the presence in Mogadishu of Al Shabaab supporters or those in possession of explosives.

Forced recruitment to Al Shabaab

395. It is entirely clear from the evidence that there is no real risk of forced recruitment to Al Shabaab, despite the opinion to the contrary expressed by the expert witnesses. We have set out above a range of well-informed

views, given by respected observers present on the ground in Mogadishu, that contradicts that opinion, including the following, taken from the Danish 2 report:

“The local NGO (C) had no reports of forced recruits to al-Shabaab in the city of Mogadishu...”

“When asked... an international NGO working in SC Somalia (D) stated that it had not heard about this...”

“The NGO reiterated that it did not believe that al-Shabaab is able to undertake forced recruitment in Mogadishu...”

“Saferworld found it unlikely that al-Shabaab undertakes forced recruitment today”

“Regarding forced recruitment to al-Shabaab in Mogadishu an international NGO working in S/C Somalia (C) stated that al-Shabaab does not have the leverage to undertake forced recruitment today... and the NGO was confident that al-Shabaab is incapable of recruiting in Mogadishu.

396. Mr Toal advances an ingenious argument the thrust of which is that, even if there is no risk of forced recruitment, if a person has no resources, no access to a livelihood and is facing destitution, he may be driven to accept money from Al Shabaab to carry out tasks for them but, in recruiting him on this basis, Al Shabaab would be abusing his vulnerability such that it would amount to trafficking, such as to infringe Article 4 of the Convention against Trafficking. We do not exclude that argument as being sustainable in certain individual circumstances, but it is certainly not made out in relation to civilian returnees in general and whether it is applicable in the case of SSM will depend upon an assessment of his circumstances and whether he established that level of vulnerability. In any event, where it is established that a returnee would in fact find himself living in conditions of destitution, he would look to the protection of Article 3 of the ECHR.

Assessment of current level of risk

397. Therefore, the key question to be addressed is whether the violent attacks that continue to be carried out by Al Shabaab in Mogadishu against carefully selected targets are at a level that means that there is for persons facing return to Mogadishu a risk of ill-treatment contrary to Article 3 of the ECHR or a serious and individual threat to a civilian's life or person by reason of the indiscriminate nature of those attacks carried out by Al Shabaab as they continue to prosecute their campaign

against carefully selected targets in the city. As we have explained, the statistical information concerning casualty levels arising from those attacks is deficient and unreliable. Thus, our assessment must be made upon the evidence as a whole.

398. Gone are the indiscriminate bombardments and military offences causing an unacceptable number of civilian casualties spoken of by the ECtHR in *Sufi and Elmi*. This has contributed to the reduction in population movement in and from Mogadishu that we accept is now being seen, with “huge” numbers of people returning to the city. Nor can it be said that the nature of the conflict is unpredictable. Given the careful selection of targets by Al Shabaab, their frequent announcements reported in the media explaining why those targets have been selected it is entirely predictable which areas of the city, and which establishments or compounds within them, represent a greater risk for citizens moving about the city. We do not suggest, though, that the location of all such attacks can be anticipated and so avoided, simply that certain obvious areas and establishments representing clearly enhanced risk of an Al Shabaab attack can be generally avoided.

399. Drawing all of this together, and taking together all we have discussed, including:

- a. the scale of returns to Mogadishu indicating that people who know the city well are “voting with their feet”;
- b. the scale of inward investment and the “economic boom” indicating that individual entrepreneurs, as well as international agencies, consider investments to be appropriate;
- c. the reduction in civilian casualties indicated by the imperfect statistical information;
- d. the durability of the withdrawal from formal presence of Al Shabaab from the city;
- e. the continued absence, generally, of the use of artillery or shelling within the city;
- f. the transparently clear targeting strategy of Al Shabaab that does not include civilians, specifically, or diaspora returnees;
- g. the opportunity to take some reasonable steps to reduce exposure to risk;
- h. the absence of any risk of forced recruitment to Al Shabaab;

and notwithstanding our acceptance of the continued level of violent attacks that are being carried out in Mogadishu by Al Shabaab, we conclude that, absent some aspect of a person’s profile making him of particular adverse interest to Al Shabaab or to the authorities as a possible supporter of Al Shabaab, there is not a general risk for a civilian, simply by being present in the city, of serious harm as a result of

indiscriminate violence. Nor is it established that there are substantial grounds for believing that a person returning to Mogadishu would face a real risk of being subjected to treatment contrary to Article 3 of the ECHR.

400. We are reinforced in this conclusion by the evidence concerning recent large-scale returns of Somali citizens irregularly present in Saudi Arabia.
401. In cross-examination Ms Harper was referred to a document issued by the British High Commission on 4 February 2014 which disclosed information received that the Saudi Arabian authorities are returning to Mogadishu Somalis without permission to be present in Saudi Arabia. The total number of removals in January 2014, using charter flights, “was over 12,000”. A Mogadishu-based official from the International Organisation for Migration confirmed that figure, adding that it was expected that over 30,000 Somalis would be returned in the following three months.
402. Very little is known about these individuals, other than the fact of their return. Assuming that information to be correct, and we have no reason to suppose it is not, given that very recent news reports were produced during the hearing, some relating to events that had occurred in Mogadishu only the previous day, if the influx of 12,000 involuntary returnees in January alone generated experiences of serious harm or persecutory ill-treatment, then it is surprising that no such reports were put forward.
403. That being the case, having rejected the view that Mogadishu poses a “general risk” under Article 15(c) we still need to consider whether some individuals living in Mogadishu can nevertheless succeed to establish a specific Article 15(c) risk under the “sliding scale” criterion identified by the CJEU in Elgafaji and Diakite.
404. Our conclusion that there is an absence of an Article 15(c) risk is based upon a person who is an “ordinary civilian”. A person who works, for example, as a police officer, a government official, or in any capacity for the security forces or the government administrative machine will not be an “ordinary citizen” and he will experience a higher level of risk, even if not individually targeted on that account, because his daily life will bring him to the very areas of the city that are subject to an enhanced likelihood of being selected as a target for an Al Shabaab attack. But given what we have said about the opportunities to access other means of securing a livelihood, a person who works in a capacity of the type described, which brings with it an enhanced level of risk, will have done so as a matter of choice. That choice will have been informed by his overall circumstances, including his personal security arrangements that

may relate to the means of travelling around the city and to his place of residence and the level of security in which he is able to live.

405. It follows from this that there will need to be a careful assessment of a person's overall circumstances.
406. We consider, in the light of the evidence as a whole, that the position as set out by UNHCR in its report published on 25 September 2013 continues to reflect an appropriate starting point today, upon which to build in the light of our review of the up to date evidence:

“With regard to **Mogadishu**, the personal circumstances of an individual need to be carefully assessed. UNHCR considers an IFA/IRA as reasonable only where the individual can expect to benefit from meaningful nuclear and/or extended family support and clan protection mechanisms in the area of prospective relocation. When assessing the reasonableness of an IFA/IRA in Mogadishu in an individual case, it should be kept in mind that the traditional extended family and community structures of Somali society no longer constitute as strong a protection and coping mechanism in Mogadishu as they did in the past. Additionally, whether the members of the traditional networks are able to genuinely offer support to the applicant in practice also needs to be evaluated, especially given the fragile and complex situation in Mogadishu at present.

For the following categories of Somalis, UNHCR would consider that an IFA/IRA will not be reasonably available in the absence of meaningful nuclear and/or extended family support and functioning clan protection: unaccompanied children or adolescents at risk of forced recruitment and other grave violations; young males at risk of being considered Al Shabaab sympathizers and therefore facing harassment from government security forces; elderly people; people with physical or mental disabilities; single women and female single heads of households with no male protection and especially originating from minority clans. In any other exceptional cases, in which the application of an IFA/IRA in Mogadishu is considered even in the absence of meaningful family or clan support to the individual, the person would need to have access to infrastructure and livelihood opportunities and to other meaningful protection and support mechanisms, taking into account the state institutions' limited ability to provide security and meaningful protection.”

407. Distilled to its essence, and on the basis of all the evidence before us, we give the following country guidance:

- a. Generally, a person who is “an ordinary civilian” (i.e. not associated with the security forces; any aspect of government or official administration or any NGO or international organisation) on returning to Mogadishu after a period of absence will face no real risk of persecution or risk of harm such as to require protection under Article 15(c) of the Qualification Directive or Article 3 of the ECHR. In particular, he will not be at real risk simply on account of having lived in a European location for a period of time of being viewed with suspicion either by the authorities as a possible supporter of Al Shabaab or by Al Shabaab as an apostate or someone whose Islamic integrity has been compromised by living in a Western country;
- b. There has been durable change in the sense that the Al Shabaab withdrawal from Mogadishu is complete and there is no real prospect of a re-established presence within the city. That was not the case at the time of the country guidance given by the Tribunal in AMM,
- c. The level of civilian casualties, excluding non-military casualties that clearly fall within Al Shabaab target groups such as politicians, police officers, government officials and those associated with NGOs and international organisations, cannot be precisely established by the statistical evidence which is incomplete and unreliable. However, it is established by the evidence considered as a whole that there has been a reduction in the level of civilian casualties since 2011, largely due to the cessation of confrontational warfare within the city and Al Shabaab’s resort to asymmetrical warfare on carefully selected targets. The present level of casualties does not amount to a sufficient risk to ordinary civilians such as to represent an Article 15(c) risk.
- d. It is open to an “ordinary citizen” of Mogadishu to reduce further still his personal exposure to the risk of “collateral damage” in being caught up in an Al Shabaab attack that was not targeted at him by avoiding areas and establishments that are clearly identifiable as likely Al Shabaab targets, and it is not unreasonable for him to be expected to do so.
- e. There is no real risk of forced recruitment to Al Shabaab for civilian citizens of Mogadishu, including recent returnees from the West.

- f. A person returning to Mogadishu after a period of absence will look to his nuclear family, if he has one living in the city, for assistance in re-establishing himself and securing a livelihood. Although a returnee may also seek assistance from his clan members who are not close relatives, such help is only likely to be forthcoming for majority clan members, as minority clans may have little to offer.
- g. The significance of clan membership in Mogadishu has changed. Clans now provide, potentially, social support mechanisms and assistance with access to livelihoods, performing less of a protection function than previously. There are no clan militias in Mogadishu, no clan violence, and no clan based discriminatory treatment, even for minority clan members.
- h. If it is accepted that a person facing a return to Mogadishu after a period of absence has no nuclear family or close relatives in the city to assist him in re-establishing himself on return, there will need to be a careful assessment of all of the circumstances. These considerations will include, but are not limited to:
 - (i) circumstances in Mogadishu before departure;
 - (ii) length of absence from Mogadishu;
 - (iii) family or clan associations to call upon in Mogadishu;
 - (iv) access to financial resources;
 - (v) prospects of securing a livelihood, whether that be employment or self employment;
 - (vi) availability of remittances from abroad;
 - (vii) means of support during the time spent in the United Kingdom;
 - (viii) why his ability to fund the journey to the West no longer enables an appellant to secure financial support on return.

Put another way, it will be for the person facing return to Mogadishu to explain why he would not be able to access the economic opportunities that have been produced by the “economic boom”, especially as there is evidence to the effect that returnees are taking jobs at the expense of those who have never been away.

408. It will, therefore, only be those with no clan or family support who will not be in receipt of remittances from abroad and who have no real prospect of securing access to a livelihood on return who will face the

prospect of living in circumstances falling below that which is acceptable in humanitarian protection terms.

IDPs

409. One category of resident of Mogadishu whose circumstances do seem to be strikingly different are those living in IDP camps.
410. Before addressing that category of persons, we should say something about IDPs generally. As we have explained, and as has been recognised by the expert evidence of both Dr Mullen and Dr Hoehne, in the Somali context that label is problematic. A person may be settled in a reasonable standard of accommodation with access to food aid, resources provided by others such as remittances from abroad or a livelihood to provide for himself, yet retain the categorisation of an IDP because, at some point in the past, possibly many years ago, he left his home to move somewhere else. Such a person will not, in our judgment, face any enhanced level of risk as compared with any other settled citizen who is not classed as an IDP.
411. However, a person who has no option but to live in one of Mogadishu's IDP camps in a tent or makeshift shelter is in a wholly different position. Despite the positive assessment adopted by the respondent of living conditions in some IDP camps, there is ample evidence that conditions in many IDP camps are appalling, as is illustrated by this extract from the 2013 report of the Internal Displacement Monitoring Centre of the Norwegian Refugee Council:

“Humanitarian law and human rights abuses were committed by all parties. They have reportedly attacked IDP camps. Perpetrated widespread sexual and other gender-based violence, forcibly recruited internally displaced children and fought each other near civilian settlements. IDP's health situation remained critical with most outbreaks of contagious diseases coming in areas hosting displaced people. Developments such as increased security, an improving economy and urban migration led to an increase in forced evictions of IDPs in urban centres across the country such as Mogadishu.... A number of the most vulnerable victims were unable to seek refuge elsewhere because of their limited resources.”

And reinforced by Dr Mullen who said:

“The issue of the humanitarian dimension of the IDP problem is highlighted in the Amnesty Report. The situation is quite dire.

IDPs have been living in overcrowded and unsafe settlements and remain extremely vulnerable to various forms of human rights abuses, including widespread sexual violence...”

412. Given what we have seen, and described above, about the extremely harsh living conditions, and the risk of being subjected to a range of human rights abuses, such a person is likely to be found to be living at a level that falls below acceptable humanitarian standards.
413. It is necessary to say something about the numerical data or statistical evidence relating to the numbers of people living in IDP camps in Mogadishu. In our judgement it is not possible to identify any accurate figure in that regard. As we have observed, Dr Mullen draws upon information provided by UNHCR concerning the “Population of IDPs” in Mogadishu as follows:

April 2012	184,000
October 2012	184,000
February 2013	184,000
September 2013	369,000

In doing so, he recognised that this data, indicating a doubling of the number of IDPs between February 2013 and April 2013 is surprising and suggested that it was probably due to “problems in either collection or analysis of data”. He explained also that “adjustments” had been made to the figures in September 2013 after the figures had been “cross-verified by observation”. In other words the September figure was adjusted sharply upwards because visual verification checks considered that the earlier figures were understated.

414. There are further difficulties with this estimate of IDPs in Mogadishu. The figures relate to population movement and not to the counting of heads. Also, the assertion that those living in IDP camps are living at levels of destitution must somehow be reconciled with the evidence concerning “nutrition interventions” from OCHA, discussed above, that between April-June 2013 just 30,000 people were assessed as being either in “crisis” or “stressed”.
415. Thus although each of the expert witnesses have accepted that there are 369,000 people living in Mogadishu’s IDP camps, we are satisfied that this is simply not correct and is a significant overstatement of the true figure. That figure includes those whose place of residence has changed in response to earlier concerns over security but whose present living arrangements are below a level that is considered to be acceptable. Indeed, despite maintaining that the higher figure was correct, Dr Hoehne accepted in oral evidence that people who moved their place of

residence within Mogadishu are still regarded as part of the IDP population, whether or not they needed to resort to living in an IDP camp. He said:

“I think they remain IDPs. If they stay for years and marry a local girl and sell their other property it is possible, but my thinking is that they are IDPs.”

He added that “a good proportion of IDPs” could be someone who had moved from one district of Mogadishu to another.” In closing submissions, the respondent points to an observation in a report published in 2011 by the Observatory of Conflict and Violence Prevention:

“Hamar Weyne is the old part of town, but today most of its original fair-skinned inhabitants have left to safer areas, and it is largely inhabited by wealthy IDPs.”

416. The respondent points also to evidence found in the form of the report of the UN Monitoring Group published in July 2013 concerning “ghost camps” operated by “gatekeepers” who are in receipt of funding from international organisations but whose camps did not contain the numbers of IDPs claimed. In one case a camp in receipt of funding for housing 3,200 families was found to contain only a few women and 20-30 shelters containing “watchmen”. The respondent has produced an estimate of IDPs provided by UNHCR of 184,000.
417. On the other hand, unlike the other witnesses, Ms Harper has visited the city recently and has seen for herself the scale and extent of the IDP camps and the large numbers of people living in temporary shelters. We accept that evidence and that many thousands of people are reduced to living in circumstances of destitution.
418. As we have recorded above, we conclude that no reliable figure is available of the numbers of people living in conditions of destitution in IDP camps in Mogadishu today. We do, however, accept that that figure will be at least that identified in the lower figure offered by UHNCR. The question to be addressed, though, is whether returnees such as the appellants in this appeal, are likely to find on return that they have no alternative but to live in such inadequate conditions. To some extent we have consider this above in the preceding section of the determination, but there are some further points to be made.
419. Ms Harper’s evidence is that a person returning to Mogadishu after a period of absence would probably find that their home would have been seized and occupied by someone else and so would end up themselves

having to live in an IDP camp. But that does not follow at all because there is no reason to assume that any returnee who was not able to repossess his own property would have no access to support or resources in order to establish themselves somewhere else, no doubt while they take steps to recover their own property. After all, we heard evidence that the cost of the journey that brings a Somali citizen, irregularly, to Europe would be between \$15,000 and \$25,000 which the person concerned had been able to raise before departure or which was raised on his behalf.

420. While it is likely that those who do find themselves living in inadequate makeshift accommodation in an IDP camp will be experiencing adverse living conditions such as to engage the protection of Article 3 of the ECHR, we do not see that it gives rise to an enhanced Article 15(c) risk since there is an insufficient nexus with the indiscriminate violence which, in any event, we have found to be not at such a high level that all civilians face a real risk of suffering serious harm. Nor does the evidence support the claim that there is an enhanced risk of forced recruitment to Al Shabaab for those in the IDP camps or that such a person is more likely to be caught up in an Al Shabaab attack of which he or she was not the intended target.
421. Other than for those with no alternative to living in makeshift accommodation in an IDP camp, the humanitarian position in Mogadishu has continued to improve since the country guidance of AMM was published. The famine is confined to history, although food aid is still required and is still available to many who need it. The “economic boom” has generated more opportunity for employment and, as always, self-employment in the form of small-scale trading is an established Somali route to a livelihood. For many returnees, remittances will be important. The evidence before the Tribunal is that more than £16 million was sent in 2009 from the United Kingdom alone by way of remittances to Somalia. There is no reason to suppose that there has been any diminution on that level of support being sent from abroad.
422. The fact that we have rejected the view that there is a real risk of persecution or serious harm or ill treatment to civilians or returnees in Mogadishu does not mean that no Somali national can succeed in a refugee or humanitarian protection or Article 3 claim. Each case will fall to be decided on its own facts. As we have observed, there will need to be a careful assessment of all of the circumstances of a particular individual.
423. Two observations might be made about financial considerations. Financial assistance from the Home Office may be available to voluntary

returnees, in the form of a grant of up to £1,500, and may of significant assistance to a returnee. Second, if an individual was able to raise the level of funds necessary to pay for a journey to Europe arranged by an agent, it may be difficult for him to assert that he now has no access to financial resources unless he is able to explain what has changed and why, especially if he has been found not to be credible in the factual account he advanced in his appeal hearing.

Mogadishu as a destination for internal relocation.

424. The evidence indicates clearly that it is not simply those who originate from Mogadishu that may now generally return to live in the city without being subjected to an Article 15(c) risk or facing a real risk of destitution. Large numbers of Somali citizens have moved to Mogadishu where, as we have seen there is now freedom of movement and no clan based discrimination. Such a person seeking to settle in Mogadishu but who has not previously lived there would be able to do so provided he had either some form of social support network, which might be in the form of membership of a majority clan or having relatives living in the city, or having access to funds such as would be required to establish accommodation and a means of on-going support. That might be in terms of continuing remittances or securing a livelihood, based on employment or self employment.
425. On the other hand, relocation in Mogadishu for a person of a minority clan with no former links to the city, no access to funds and no other form of clan, family or social support is unlikely to be realistic as, in the absence of means to establish a home and some form of ongoing financial support there will be a real risk of having no alternative but to live in makeshift accommodation within an IDP camp where there is a real possibility of having to live in conditions that will fall below acceptable humanitarian standards.

Determination of the individual appeals

MOJ

426. The facts in relation to MOJ as agreed between the parties are as follows:
- The Appellant is a Somali national, born on 10 October 1989 (now aged 24 years).
 - The Appellant is from Mogadishu, Somalia, and is a member of the Gadarbursi clan.

- On 22 April 2004, the Appellant entered the United Kingdom having been granted entry clearance on 8 April 2004, together with his younger brother and the then fiancée of his older brother. He was granted indefinite leave to remain.
- Between 9 September 2009 and 18 November 2010, the Appellant was convicted of various offences, which resulted either in a non-custodial penalty or short periods of imprisonment.
- On 14 January 2011, the Appellant was convicted of robbery and sentenced to 2 years imprisonment.
- On 2 March 2011, the Respondent wrote to the Appellant informing him of his liability to deportation under the UK Borders Act 2007.
- On 13 February 2012 the Appellant submitted further representations.
- On 26 February 2012, the Appellant was served with a deportation order signed on 21 of February 2012.
- On 10 May 2012, the deportation decision was withdrawn in order for the Appellant's asylum claim (made on 3 April 2012) to be considered.
- On 26 June 2012, the Appellant was interviewed in relation to his asylum claim.
- On 26 July 2012 the Appellant was served with a notice under section 72 of the Nationality, Immigration and Asylum Act 2002 refusing his claim for asylum.
- On 23 January 2013, the Appellant was served with the notice of the Respondent's decision that section 32 (5) of the UK Borders Act 2007 applied to him.
- In a determination promulgated on 23 April 2013, the First-tier Tribunal (Immigration and Asylum Chamber) dismissed the Appellants appeal against that decision.
- In a determination promulgated on 22 July 2013, Upper Tribunal Judge Storey decided that the First-tier Tribunal erred in law. The learned judge stated that the adverse credibility findings made by the First-tier Tribunal stood, and

that the characteristics which apply to the Appellant for the purpose of any other hearing is that he is a native of Somalia from Mogadishu and is a member of a majority clan (the Gadarbursi).

427. The following directions were sent to the parties:

1. The Tribunal has made its findings of fact and reached its conclusions upon country guidance and, as confirmed at the conclusion of the oral hearing of these appeals, will not admit further evidence or submissions, written or oral, relating to those matters.
2. There is though one matter concerning which the Tribunal considers it necessary and appropriate to provide the parties with an opportunity of addressing, either in oral or written submissions. Section 19 of the Immigration Act 2014 inserts a new section 117 into the Nationality, Immigration and Asylum Act 2002. That provision is now in force and is applicable to this appeal. Where the Upper Tribunal remakes a decision relating to a claim that a decision under the Immigration Acts breaches rights protected by Article 8 of the ECHR or would give rise to a result that is unlawful under s6 of the Human Rights Act 1998 the Tribunal must have regard to the factors set out in s117.
3. Therefore, the hearing will be reconvened on 9 September 2014 for the purpose of receiving any submissions in that regard that the parties may wish to advance.
4. The parties are advised that:
 - a. If preferred, the Tribunal will receive written submissions concerning the matters described above, provided those have been served upon each of the other parties; and
 - b. As there are agreed facts relating to the individual appellants, the submissions raise issues of law only and that should be reflected in any submissions advanced.
 - c. Oral submission, if advanced, must not exceed 30 mins.

At the hearing on 9 September 2014 the Tribunal received submissions on behalf of MOJ, the only appellant to advance a claim under Article 8 of the ECHR, and on behalf of the respondent as to the correct approach to the new legal framework. Although articulated in different terms, we

did not detect much difference between the positions of the parties. And so do not need to set out those submissions in detail. Section 117 provides as follows, so far as is relevant for present purposes:

PART 5A ARTICLE 8 OF THE ECHR: PUBLIC INTEREST CONSIDERATIONS

117A Application of this Part

(1) This Part applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts –

- (a) breaches a person's right to respect for private and family life under Article 8, and
- (b) as a result would be unlawful under section 6 of the Human Rights Act 1998.

(2) In considering the public interest question, the court or tribunal must (in particular) have regard –

- (a) in all cases, to the considerations listed in section 117B, and
- (b) in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C.

(3) In subsection (2), "*the public interest question*" means the question of whether an interference with a person's right to respect for private and family life is justified under Article 8(2).

117B Article 8: public interest considerations applicable in all cases

(1) The maintenance of effective immigration controls is in the public interest.

(2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English –

- (a) are less of a burden on taxpayers, and
- (b) are better able to integrate into society.

(3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons –

- (a) are not a burden on taxpayers, and
- (b) are better able to integrate into society.

(4) Little weight should be given to –

- (a) a private life, or
- (b) a relationship formed with a qualifying partner,

that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

(6) ...

117C Article 8: additional considerations in cases involving foreign criminals

(1) The deportation of foreign criminals is in the public interest.

(2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.

(3) In the case of a foreign criminal (“C”) who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.

(4) Exception 1 applies where –

- (a) C has been lawfully resident in the United Kingdom for most of C's life,
- (b) C is socially and culturally integrated in the United Kingdom, and
- (c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.

(5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.

(6) In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2.

(7) The considerations in subsections (1) to (6) are to be taken into account where a court or tribunal is considering a decision to deport a foreign criminal only to the extent that the reason for the decision was the offence or offences for which the criminal has been convicted.

117D Interpretation of this Part

(1) In this Part –

“Article 8” means Article 8 of the European Convention on Human Rights;

...

(2) In this Part, *“foreign criminal”* means a person –

- (a) who is not a British citizen,

(b) who has been convicted in the United Kingdom of an offence, and

(c) who –

(i) has been sentenced to a period of imprisonment of at least 12 months,

...

428. The relevant provisions of the Immigration Rules, again so far as are relevant, are as follows:

A362. Where Article 8 is raised in the context of deportation under Part 13 of these Rules, the claim under Article 8 will only succeed where the requirements of these rules as at 28 July 2014 are met, regardless of when the notice of intention to deport or the deportation order, as appropriate, was served. (09.07.2012 HC 194)

...

A398. These rules apply

where:

- (a) a foreign criminal liable to deportation claims that his deportation would be contrary to the United Kingdom's obligations under Article 8 of the Human Rights Convention;
- (b) a foreign criminal applies for a deportation order made against him to be revoked.

Deportation and Article 8 (HC 760 13.12.2012)

398. Where a person claims that their deportation would be contrary to the UK's obligations under Article 8 of the Human Rights Convention, and

(a) the deportation of the person from the UK is conducive to the public good and in the public interest because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of at least 4 years;

(b) the deportation of the person from the UK is conducive to the public good and in the public interest because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of less than 4

years but at least 12 months; or

(c) the deportation of the person from the UK is conducive to the public good and in the public interest because, in the view of the Secretary of State, their offending has caused serious harm or they are a persistent offender who shows a particular disregard for the law, the Secretary of State in assessing that claim will consider whether paragraph 399 or 399A applies and, if it does not, the public interest in deportation will only be outweighed by other factors where there are very compelling circumstances over and above those described in paragraphs 399 and 399A.

399. This paragraph applies where paragraph 398 (b) or (c) applies if –

(a) the person has a genuine and subsisting parental relationship with a child under the age of 18 years who is in the UK, and

(i) the child is a British Citizen; or

(ii) the child has lived in the UK continuously for at least the 7 years immediately preceding the date of the immigration decision; and in either case

(a) it would be unduly harsh for the child to live in the country to which the person is to be deported

(b) it would be unduly harsh for the child to remain in the UK without the person who is to be deported or

(b) the person has a genuine and subsisting relationship with a partner who is in the UK and is a British Citizen or settled in the UK and

(i) the relationship was formed at a time when the person (deportee) was in the UK lawfully and their immigration status was not precarious; and

(ii) it would be unduly harsh for that partner to live in the country to which the person is to be deported, because of compelling circumstances over and above those described in paragraph EX.2. of

Appendix FM; and

(iii) it would be unduly harsh for that partner to remain in the UK without the person who is to be deported.

399A. This paragraph applies where paragraph 398(b) or (c) applies if –

(a) the person has been lawfully resident in the UK for most of his life; and

(b) he is socially and culturally integrated in the UK; and

(c) there would be very significant obstacles to his integration into the country to which it is proposed he is deported.

429. Mr Gill submitted that neither section 117 of the 2002 Act nor paragraphs 399 and 399A of the Immigration Rules purport to set out a comprehensively complete framework of circumstances in which a foreign criminal can demonstrate that the public interest does not demand his deportation. Therefore, having followed a structured approach guided by those provisions the Tribunal should look at all that is relied upon in support of the Article 8 claim. Mr Rawat submitted that where it is plain that those matters have already been considered and found not to outweigh the public interest it will be sufficient to say so and nothing more is required. Otherwise, Mr Gill urged the Tribunal to accept that a complete proportionality assessment will be required, which generally is best carried out by addressing the 5 questions posed by Lord Bingham in R (Razgar) v SSHD [2004] UKHL 27, although as has always been the case, depending upon the circumstances some of those can be answered in very brief terms:

(1) Will the proposed removal be an interference by a public authority with the exercise of the applicant's right to respect for his private or (as the case may be) family life?

(2) If so, will such interference have consequences of such gravity as potentially to engage the operation of Article 8?

(3) If so, is such interference in accordance with the law?

(4) If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others?

(5) If so, is such interference proportionate to the legitimate public end sought to be achieved?

430. This appeal is not the appropriate vehicle for a detailed and authoritative analysis of this new framework and we do not purport to offer guidance in that regard. For the purpose of determining this appeal we are content to proceed on the basis summarised above. In that context, we accept Mr Gill's submission that there is no particular threshold to be met or hurdle to overcome before a proportionality assessment is to be carried out. We accept also Mr Rawat's submission that if there is, in reality, nothing of consequence or of a compelling nature speaking in favour of the appellant that has not already been considered, very little will need to be said to recognise that.

431. Mr Gill advances MOJ's human rights claim in the following way. As MOJ says he will be without support, financial or social, upon return to Mogadishu he will fall into poverty and have no alternative but to join the ranks of the city's IDPs and therefore be forced to live in conditions such as to infringe Article 3 of the ECHR.

432. Mr Gill submits that returning MOJ to Mogadishu would also infringe rights protected by Article 3 of the ECHR. As a member of the Gadabursi clan, the clan base of which is in Somaliland, there would be no clan support available to him so that he would become part of the poor IDP population of the city, resulting in him living in conditions that would infringe Article 3 of the ECHR on the basis of destitution. There is no evidence that he has access to economic resources and there is little prospect of him securing even low-skilled work in Mogadishu. In the United Kingdom he has been unemployed since 2008. Although his father was found by the First-tier Tribunal Judge to have been a wealthy businessman prior to 1991, there is no evidence that the family has retained that wealth. The fact that MOJ may have contacts or family in Somaliland is of no assistance to him on return to Mogadishu today.

433. In his written submissions Mr Gill said:

“Aligned to this risk of Article 3 ECHR breach would also be an Article 8 ECHR breach in relation to MOJ's physical and moral integrity. In addition, the fear and stress which the general situation in Mogadishu is likely to cause would be at such a level as

to impact on the physical and moral integrity in contravention of Article 8 ECHR.”

Thus, the Article 8 claim is mainly predicated not upon interference with any family or private life in the United Kingdom but upon the conditions in which MOJ would find himself upon return to Mogadishu. In that respect MOJ will need to show that he faces a risk of a flagrant violation of rights protected by Article 8 of the ECHR in the receiving state, a challenge that Lord Bingham in EM (Lebanon) v SSHD [2008] UKHL 64 described as “a very exacting one”. Lord Bingham went on to approve and adopt the words of Lord Steyn in R (Ullah) v Special Adjudicator [2004] 2 AC 368 that it was necessary to establish at least a real risk of a flagrant violation of the very essence of the right.

434. Mr Gill adds, though, that MOJ has been in the United Kingdom since he was 14 years old (not 13 as earlier suggested) and although he has committed a serious offence, that occurred when he was a young adult. Mr Gill submits that MOJ has spent his formative years in the United Kingdom and, in view of the “extreme situation to which he would be forcibly returned” his removal would not be proportionate to the legitimate aim being pursued by the respondent in seeking to deport him.
435. Developing those submissions, Mr Gill said that MOJ left Somalia when only 10 or 11 years old and has been away from the country for about 13 years so that he has no knowledge of or ties to Mogadishu. Therefore, on return he faces a real risk of persecution on account of imputed political opinion and imputed religious belief. That is because, as someone returning from the West he would be regarded by Al Shabaab as a spy and as someone with pro-government, pro-western views, and with liberal attitudes and political visions. Also, he would be viewed as an infidel and as such at risk of coming to harm at the hands of Al Shabaab.
436. The First-tier Tribunal found that MOJ had left Somalia when he was just 12 years old and had spent time in Ethiopia before arriving in the United Kingdom with a brother in April 2004. The First-tier Tribunal dismissed the appeal on all grounds finding that even if there had been no certificate under section 72 of the Nationality, Immigration and Asylum Act 2002, the effect of which was that MOJ’s appeal fell to be dismissed on asylum grounds, his asylum claim would not be established because, as he asserted only a generalised and non-specific fear of Al Shabaab, that was not a reason recognised by the 1951 Convention and the Tribunal rejected his evidence generally about his circumstances as they would be on his return to Somalia.

437. The Tribunal did not find MOJ to be a credible witness. They rejected his claim to have no family remaining in Somalia. They referred to a pre-sentence report prepared in 2011, saying:

“Amongst other things the report refers to the appellant stating that he originated from Somalia and where most of his family still lives.”

That information plainly was provided by MOJ himself and is impossible to reconcile with his account of having no family remaining in Somalia and of having no contact with them. Further, the Tribunal heard evidence from MOJ’s brother who, although supporting MOJ’s claim to have no family members remaining in Somalia, was reminded that at an earlier hearing in 2004 he had given evidence of having made a telephone call to Somalia. This led the Tribunal to conclude that:

“We do not accept [MOJ’s] evidence that there are no contacts or family left in Somalia. His first language is Somali as such we consider he would be able to return there without any risk to his life, safety or welfare.”

438. The finding in respect of safety on return is not of course preserved but is one to be made afresh by the Upper Tribunal in the light of all that we have considered above. Before leaving the determination of the First-tier Tribunal we take from it first the following observation made in the pre-sentence report:

“My own clinical judgment and my comprehension of the offence analysis leads me to conclude that there is a pattern of violent offending and that his index offence is an escalation in seriousness as he has now resorted to using physical violence. I therefore assess that he poses a high risk of serious harm to the public and that he meets the dangerousness criteria...”

and the findings that MOJ has not had employment in the United Kingdom since 2008 but he has obtained qualifications in adult literacy, life skills and adult numeracy. In addition he undertook some courses while serving his sentence. The Tribunal noted, in particular, that MOJ had learned how to cut hair “and became a regular hairdresser in prison”.

439. We do not accept any of Mr Gill’s submissions in respect of the protection claim. For the reasons we have given above there is no real risk that on return MOJ will be assumed by Al Shabaab to be a spy or apostate or an infidel on account of having spent a number of years living in the United Kingdom. He will not be imputed to possess any

religious belief that he does not possess. We accept that the Gadabursi, although a majority clan nationally, is in a numerical minority in Mogadishu and so will be unlikely to be able to provide the level of support that MOJ might expect to obtain had he been a member of a clan with a predominant presence. However, on the findings of fact preserved, he does have family contacts “in Somalia” and even if those relatives are not in Mogadishu, as he is in contact with them there is no reason at all to suppose that they will not be able to provide him with some financial support if he needs it.

440. In any event, we do not accept that MOJ would be unable to secure employment on return to Mogadishu, either, for example, as a waiter or at a similar level in one of the large number of new businesses that have been established in recent years in Mogadishu or as a hairdresser, either as an employee or on his own account. That is, plainly, a skill that is transferable to another country. Mr Gill points out that hairdressing is “traditionally a job for the Bantu” so that if he took up such an occupation “he would be openly conducting business in a way which is entirely foreign to Somali culture”. But, as we have explained, that represents no disqualification from doing so and Mogadishu today is a very different city than it was in times when issues of clan were of much more significance. There is insufficient to indicate that MOJ could not work in such a capacity and every reason for him to do so in order to provide for himself.
441. Thus we are unable to accept Mr Gill’s submission that MOJ “has no prospects” of obtaining suitable employment on return. Nor, as will be clear from our general conclusions, do we accept that MOJ would be in any way handicapped by being unable to finance expensive personal security arrangements. He would not be driven to live in poverty in an IDP camp. He can call upon relatives in Somalia, even if not in Mogadishu, as well as relatives who remain in the United Kingdom, to provide support while he arranges for employment and suitable accommodation.
442. For these reasons we are satisfied that MOJ faces no real risk on return of being subjected to ill-treatment such as to infringe rights protected by Article 3 of the ECHR and he will not face risks proscribed by Article 15(c) as an ordinary civilian present in Mogadishu, there being no characteristic either to facilitate a lower requirement of risk level on the basis of the Elgafagi sliding scale.
443. We address next MOJ’s claim under Article 8 of the ECHR. Although, as we have observed, the claim is founded upon his circumstances upon removal to Mogadishu rather than any impermissible interference with rights protected by Article 8 relating to his circumstances in the United

Kingdom, for the sake of completeness we record that he has no family life in the United Kingdom and there is no evidence of any particular aspect of private life that would render removal disproportionate.

444. MOJ, having been convicted of an offence of robbery for which he was sentenced to two years imprisonment, is a foreign criminal as defined by section 32 of the UK Borders Act 2007. Therefore, by virtue of section 32(4) his deportation is conducive to the public good. Section 32(5) requires that the SSHD must make a deportation order unless one of the exceptions set out in section 33 apply. MOJ claims that an exception would apply for reasons raised in his asylum and human rights claim. As part of that human rights claim is founded upon rights protected by Article 8 of the ECHR would be infringed, the Upper Tribunal is now required to have regard to the considerations listed in section 117B and 117C of the Nationality, Immigration and Asylum Act 2002, inserted by section 19 of the Immigration Act 2014 with effect from 28 July 2014.
445. Thus, engaging with the claim as advanced on his behalf by Mr Gill, we consider first the considerations we are required to have regard to by virtue of section 117. In the absence of direct evidence on the point, there is no reason to take issue with Mr Gill's submission that MOJ can speak English and has not been a burden on the taxpayer. Those factors can be regarded as speaking in his favour. Turning to section 117C, Mr Gill submits that MOJ falls within Exception 1 and so on that account alone it should be accepted that the public interest does not require his deportation.
446. We do not accept that submission. MOJ was born in Somalia on 10 October 1989 and arrived in the United Kingdom on 22 April 2004 aged 14 years and 6 months. As at the date of the final day of the hearing of this appeal, 9 September 2014, he had been lawfully present in the United Kingdom for 10 years and 4 months and so had not been lawfully resident here for most of his life.
447. Mr Gill complains that there had been an unacceptable delay in processing his application for entry clearance. Had that been dealt with within a reasonable time MOJ would have arrived sooner and so he should be treated as if he had been lawfully present since January 2002. That is because he made his application for entry clearance on 10 October 2001 and the delay was unacceptable such that the respondent should now not be allowed to benefit from it in any way. We do not agree. The statutory provision is clear and the appellant fails to meet it. Even if, which we do not accept, the date proposed by Mr Gill is accepted, MOJ would have arrived in the United Kingdom aged 13 or possibly 12 years old and he has been resident here for 10 years, which

cannot be said is for most of his life. There is no scope for the application of a “near miss” principle.

448. In any event, on our findings generally, applied to the specific circumstances of MOJ, for all of the reasons we have given, it cannot be said that there would be very significant obstacles to his integration into Somalia.
449. It is not suggested that Exception 2 applies and so the next step is to consider whether MOJ derives any benefit from paragraph 398 of the Immigration Rules, on the basis that the public interest in his deportation is outweighed by the other factors he points to amounting to very compelling circumstances over and above those described in paragraphs 399 or 399A, neither of which take MOJ any further.
450. In that regard, Mr Gill relies upon the physical and moral integrity submissions summarised above and, possibly, the unlawfulness disclosed by the respondent’s delay in dealing with the entry clearance application, if we decline to accept his invitation to treat MOJ as having arrived earlier than he did for the purposes of section 117.
451. In our judgement there is no merit in those submissions. Any delay in dealing with the entry clearance application is indicative, at most, of maladministration rather than unlawfulness. The proposed deportation will not have the effect of interfering with the exercise of any right to respect for private and family life in Somalia, and there is no suggestion of an impermissible interference with such rights being exercised in the United Kingdom. In that sense, Article 8 is not engaged. If it is engaged on the basis asserted, based upon the challenges facing MOJ on arrival in Mogadishu, that will be in accordance with the law, given our general findings above, and necessary for the public interest reasons we have discussed. That leaves the question of proportionality. It is sufficient to say that all that is asserted on MOJ’s behalf is not such as to outweigh the pressing public interest in the deportation of a violent foreign criminal, the index offence being one of robbery. That offence, for which on 14 January 2011 he was sentenced to 2 years’ imprisonment, was not his first offence. He had accumulated convictions for racially aggravated threatening words or behaviour, theft, and criminal damage.
452. Therefore, in respect of MOJ we substitute a fresh decision dismissing his appeal on all grounds.

MAA

453. The facts in relation to MAA as agreed between the parties are as follows:

- The appellant is a Somali National, born on 13 November 1986 (now aged 27 years).
- The Appellant was born in Mogadishu. Prior to leaving Somalia he lived in the Hodan district of Mogadishu with his parents and sister. The Appellant claims to have married on 12 November 2011.
- The Appellant left Mogadishu some two and a half weeks before his arrival in the United Kingdom. The last contact he had with his family was a week before he left Somalia.
- He entered the United Kingdom on 7 April 2012 and claimed asylum on arrival.
- A screening interview was conducted on 7 April 2012.
- A full asylum interview was conducted on 26 April 2012.
- On 1 May 2012 the Appellant's representatives made further representations on his behalf. The Appellant's claim to asylum/Humanitarian Protection was based on his claimed membership of a minority clan (Benadiri/Reer Hamar) as well as the lack of security prevailing in Mogadishu.
- On 2 May 2012, the Respondent refused the application for asylum, decided the appellant did not qualify for Humanitarian Protection and that he did not qualify for a grant of limited leave to enter the United Kingdom.
- The Appellant's appeal against the decision not to grant him leave to enter came before the First-tier Tribunal (Immigration and Asylum Chamber) on 29 June 2012. It was dismissed in a determination dated 23 July 2012.
- On 15 November 2012, Upper Tribunal Judge Chalkley granted the Appellant permission to appeal to the Upper Tribunal, on the basis that "the application does raise a properly arguable issue which may identify an error of law, namely the alleged failure by the First-tier Tribunal Judge to deal adequately with the issue of Article 15c risk on return."

- On 9 May 2013, Deputy Upper Tribunal Judge Lewis held that the First Tier Tribunal had made an error of law. The judge set aside the decision of the First-tier Tribunal and directed that “The decision in the appeal in respect of Humanitarian Protection is to be remade by the Upper Tribunal.”
- Deputy Upper Tribunal Judge Lewis further said, “I do not consider that there is any basis for revisiting the first tier tribunal judge is credibility findings in respect of the appellant’s historic account.” Those findings were:
 - a. The Appellant was not a member of a minority clan as he had claimed;
 - b. The Appellant’s claim to have been abducted by Al Shabaab was a recent invention to bolster an otherwise weak claim;
 - c. The appellant had not been targeted by Al Shabaab.
- Deputy Upper Tribunal Judge Lewis also found that “ the [First-tier Tribunal] Judge does not identify a cogent basis for concluding that the Appellant falls within a class of person who can live to a reasonable standard.” On 5 June 2013, the Respondent withdrew a concession made at the error of law hearing that the Appellant “was an ordinary person with no especially influential connections.” In light of such withdrawal, Deputy Upper Tribunal Lewis further directed on 5 June 2013 that oral evidence would be heard from the Appellant in respect of his circumstances/connections in Mogadishu.

454. Thus MAA is someone who left Mogadishu in 2012, leaving behind a wife, his parents and his sister. There is no reason to suppose they do not remain there. MAA gave an account of adverse experiences in Mogadishu, based upon claimed membership of a minority clan, that was comprehensively rejected as untrue by the judge who dismissed his appeal.

455. MAA gave oral evidence before this Tribunal. He described how he had arranged to leave Mogadishu and travel to the United Kingdom. He was living in Mogadishu with his parents and sister. His father did not work, because of health problems, but his mother raised an income by selling sweets in the market. Six years before his departure, MAA had sent a letter to an uncle in Saudi Arabia asking for help to leave Mogadishu. There was no further contact between them but, unexpectedly in 2012,

the uncle sent a man to MAA's house so that he could make the arrangements for the journey to the United Kingdom. He could not explain why, if Mogadishu was then so dangerous as to require his departure, the resources made available by the uncle could not have been used instead to finance the departure of the whole family to a less remote destination, such as Kenya.

456. MAA said that he had no contact with his family or his wife since leaving Mogadishu. He had asked "religious leaders" in the United Kingdom, for example at mosques, for help but they had been unable to help. He had not been able to call upon his uncle in Saudi Arabia, which might have been an obvious thing to do bearing in mind that the uncle was able to find him in Mogadishu six years after the appellant had sent a letter. That was because MAA did not know where his uncle lived. He explained that he had given his letter to a man who was travelling to Saudi Arabia in the hope that he would be able to pass it on and, fortunately, that had been achieved. Although the man sent by the uncle six years later brought with him a letter from the uncle, that did not provide MAA with the address of his benefactor.
457. MAA's evidence disclosed little about his living circumstances in Mogadishu. He persisted in his claim to be a minority clan member, although the finding of fact made to the contrary has been preserved. He said that the family did not pay rent for their house, the inference being that it was owned by them.
458. Ms Panagiotopoulou's submissions relating to MAA's individual circumstance may be summarised as follows. MAA's profile is of someone returning to Mogadishu after living for 2 years in Europe. For that reason he would be at risk from Al Shabaab because he would be seen as someone who had lost their religion and had come to spread evil. That amounts to risk of persecutory ill-treatment on account of imputed political and religious opinion and so a reason recognised by the 1951 Convention.
459. It will be clear from our conclusion set out above that none of those submissions are arguable and we reject each of them.
460. Next, Ms Panagiotopoulou submits that MAA would, on return from the West, be perceived to be wealthy and so would be at risk from criminal elements also. We have already explained why that submission cannot succeed. There is no evidential basis to establish that to be a real risk for those returning to Mogadishu having lived in what are thought to be more wealthy countries.

461. It is submitted on MAA's behalf that he has lost contact with his family. They may have moved. He himself has never worked and in view of the high unemployment rate in Mogadishu he is likely to end up living destitute in an IDP camp in conditions below the Article 3 threshold.
462. The difficulty with that submission, and the reason why we reject it, is that MAA has been found not to be a witness of truth and his bare assertion that he has had no contact with the family he left behind, including the wife to whom he had only recently been married, does not carry very much weight. He has managed in the past to establish contact with a relative in Saudi Arabia who was able to provide what the evidence suggests must have been a significant level of resources to fund his journey to the United Kingdom. If that relative was willing and able to provide that level of support to MAA to improve his experience of life then it would be nothing short of extraordinary if this benefactor left the rest of the family in Mogadishu destitute, especially as, being MAA's uncle, he must have enjoyed a closer blood relationship with one of his parents.
463. In any event, as we have heard from Ms Harper, Somalis are "extraordinary communicators" who know the business of relatives even while they are in this country, such is the level of communication maintained with the diaspora. There is nothing to suggest that MAA's relatives do not remain in Mogadishu and, as his claim to be the member of a minority clan has been rejected as untrue, that means that he will be able to call upon the support network of a majority clan in re-establishing contact with the relatives with whom he was living before his departure and who supported him before he left. Presumably, though, his search will begin at the family home where, absent a reason to believe otherwise, he would expect to find his family still in residence.
464. That means that there is nothing in MAA's personal circumstances that puts him at any enhanced risk on return that any other ordinary civilian in Mogadishu. On that basis, for the reasons we have given, his claim under Article 15(c) cannot succeed and, as there is no reason to suppose that he will be driven to live in an IDP camp, his claim under Article 3 of the ECHR fails also.
465. MAA does not advance a claim before us under Article 8 of the ECHR.
466. For these reasons we substitute a fresh decision to dismiss MAA's appeal on all grounds advanced.

SSM

467. The facts in relation to SMM as agreed between the parties are as follows:

- There is no challenge to that part of the factual matrix on which the First-tier Tribunal (FTJ Brennells and Mr GF Sandall) based its decision, described in paragraph 15 of its determination as follows:

“As the Appellant is now only pursuing his Article 3 and Humanitarian Protection claims we have only to consider the situation now prevailing in Mogadishu. The only personal facts which we have taken into account in so doing is that the Appellant is not a minority clan member and that he does not have any significant resources which would assist him in re-establishing himself in Mogadishu.”

- The following additional facts are agreed:
 - a. the appellant is a Somali national who was born on 2.12.1985 in Mogadishu;
 - b. the appellant arrived in UK with his mother and siblings on 16.7.1997 and has remained in the UK since then and to date;
 - c. he was refused asylum in the UK on 1.8.2001 but was granted exceptional leave to remain until 31.8.2004;
 - d. he applied for indefinite leave to remain on 16.8.2004 and was subsequently granted indefinite leave to remain;
 - e. on 14.2.2005 he was convicted at Snaresbrook Crown Court of robbery and was sentenced on 4.4.2005 to 18 months detention in a young offenders’ institution;
 - f. on 6.6.2008, he was convicted at Highbury Corner Magistrates Court and sentenced to 8 weeks’ imprisonment for using threatening words and/or behaviour with intent to cause fear or provocation of violence;
 - g. on 28.11.2008 the appellant was convicted at Wood Green Crown Court of violent disorder and was sentenced to 3 years and 4 months imprisonment.
- The foregoing facts are agreed by the solicitors for the appellant and the respondent.

468. Thus, SSM is also a foreign criminal in respect of whom the SSHD must make a deportation order unless an exception identified in section 33 of the UK Borders Act 2007 applies. Mr Toal submits that is established. That deportation order has been made and the immigration decision

under challenge by SSM in the proceedings is the refusal of the respondent to revoke the deportation order in response to submissions advanced on SSM's behalf, founded principally on evidence supplied by Dr Hoehne, that on return to Mogadishu he would face treatment that would be contrary to both Article 3 of the ECHR and Article 15(c) of the Directive.

469. We have set out and consider above Mr Toal's submissions on the position of civilians in Mogadishu generally and we have explained why we are unable to accept those arguments. In his submissions Mr Toal says that if the Tribunal does not accept his arguments on the general position, and finds that there is no Article 15(c) risk for the population of Mogadishu generally, SSM should succeed on the basis of his individual characteristics. This is because he would be returning to Mogadishu after a very long absence as a person with no adult experience of living in that city and will be someone easily recognisable as having come from a Western country. He has a profile of someone being deported for having committed a criminal offence and will have no access to resources on return. As a result, according to Mr Toal, he will become an IDP facing all of the difficulties that have been disclosed by the evidence.
470. Those difficulties, faced by IDPs in Mogadishu, are said to include inadequate access to food and water, disease due to insanitary living conditions and inadequate housing. Mr Toal asserts that 90% of IDPs in Mogadishu live in makeshift shelters, that being taken from the Food Security and Nutrition Situation Trends report covering the period July 2011-April 2012. Additional problems will include exploitation by "gatekeepers" and vulnerability to forced eviction from settlements.
471. As a returnee, Mr Toal submits, SSM would be vulnerable because he may be suspected of an intention to join Al Shabaab; he may be perceived to be wealthy, on the basis of having come from Europe, and so attract demands for money or threats from militias, he will find it difficult to find employment and will face risk from Al Shabaab for no reason other than being a returnee from the West. Finally, with no recent knowledge of living in Mogadishu, he will be unable to anticipate and so minimise or avoid risk.
472. Mr Toal accepts that the evidence does not indicate a risk of forced recruitment to Al Shabaab, but in the face of an inability to access a livelihood, SSM may feel driven to work for the group as the only way to access money as well as to enable him to demonstrate he is not a spy or an apostate. This would amount to Al Shabaab abusing his vulnerability so as to amount to trafficking such as to infringe Article 4 of the Convention against Trafficking.

473. Therefore, it is Mr Toal's submission that SSM:
- a. has a well founded fear of persecution by Al Shabaab as a returnee from the West, that being a reason recognised by the Convention so as to require that he be recognised to be a refugee;
 - b. there is an established Article 15(c) risk of serious harm generally and, because of his particular vulnerability, specifically in his case;
 - c. is likely to suffer inhuman and degrading treatment in having to live in circumstances analogous to an IDP such as to infringe Article 3 of the ECHR;
 - d. faces a real risk that he would be "trafficked" by Al Shabaab within the meaning of the Convention.

474. Those submissions go beyond what had been agreed between the parties, which was that SSM was pursuing only his claim under Article 3 of the ECHR and a claim for Humanitarian Protection. However, we can deal with most of the issues raised by Mr Toal quite briefly. For the reasons we have already given, SSM will not face any real risk on return on account of having spent time living in the United Kingdom, whether at the hands of Al Shabaab on the basis that he had been compromised in ideological or religious terms by his time in the West nor on the basis of attracting adverse attention from criminal elements on account of being perceived to be a wealthy returnee. Nor is there any risk of him being suspected by the authorities of being an Al Shabaab supporter, simply because he is returning to Mogadishu after having spent time living in the United Kingdom.

475. The argument, that as someone with no adult experience of living in Mogadishu SSM will be unable to anticipate and so avoid risk, is one that we have considered above but rejected. SSM has acquired criminal convictions for public order offences and a robbery. He has served custodial sentences. He will have learnt how to be aware of his surroundings when on the street and there is no reason at all to consider him to be naïve. Much of the behaviour to be avoided on the streets of Mogadishu identified by the expert witnesses when addressing what can be done to avoid risk in Mogadishu is no more than common sense and we are satisfied that SSM would appreciate that.

476. What remains is this. We accept that SSM would be unfamiliar with the detailed geography of modern Mogadishu. He would be returning without the family members whom he accompanied to the United Kingdom in 1997. We have no difficulty in accepting that it would be a challenging experience for any person to establish himself in any city with which he has no recent experience, even if the city did not generate

the additional difficulties that citizens of Mogadishu have to cope with. Therefore, we do not underestimate the difficulties that would face SSM on his arrival in Mogadishu after an absence of 17 years, having left when just 12 years old.

477. Having said that, a long period of absence from the city and the fact of having had no adult experience of living within it cannot be factors sufficient in themselves to make the prospect of return unreasonable or unacceptable because we have found that it may represent a suitable destination for relocation for Somali citizens who have had no previous connection with the city at all.
478. SSM's claim to be a member of a minority clan has been rejected and so we must assess his position on return on the basis that he is a member of a majority clan and so would be able to look to clan members for assistance in re-establishing himself in what would be an unfamiliar city. As we have seen, the nature of the response to be expected from clan members may not be the same as it once was but the evidence plainly discloses this as a relevant and significant avenue of exploration for someone in SSM's position. Also, many Somali citizens survive with the assistance of remittances from abroad. SSM would remain in contact with relatives in the United Kingdom who, it is reasonable to assume, would do what they could to provide continued financial support from here, as do many thousands of others. Thus, Mr Toal's submission that SSM would not have access to any resources has to be seen in that context.
479. Mr Toal submitted that SSM would face further difficulties precisely because he is being deported on account of having committed criminal offences in this country. There was not a clear consensus in the expert evidence about this matter but we are satisfied that, absent some aspect of the offending disclosing characteristics such as to offend core Somalis *mores* (which is not the case here), simple criminality on a returnee's part, even if it somehow came to be known about, would not cause anyone to act any differently towards him.
480. That leaves two matters. It is said that SSM would find it difficult to find employment, but that is simply asserted as an unexplained fact. As a man approaching 30 years of age who is apparently in good health and who has spent time living in the United Kingdom, it is not immediately obvious what would disqualify him from seeking a low level job in one of the many new enterprises spawned by the economic explosion of entrepreneurship that Mogadishu has seen. There is some evidence that suggests that, especially for businessmen who are themselves diaspora returnees, those returning from abroad may be seen as more attractive prospects for employment than those who have never left. As a member

of a majority clan SSM could seek sponsorship as such if he wished to, and that may make the process easier, but the evidence does not establish that access to employment would be barred without it. We do not accept, therefore, that SSM would be driven to work for Al Shabaab, with all the attendant risk to his life that follows from such an association. There is no risk of forcible recruitment, as we have explained, and we do not accept that the route to a livelihood would be barred such as to leave him with no option but to accept payment from Al Shabaab for carrying out tasks for them.

481. Drawing all this together, while we have no doubt that SSM will find the process difficult, unsettling and challenging, we are unable to accept that SSM would find himself destitute on the streets of Mogadishu, left with no option but to live in an IDP camp in conditions that would reduce him to living below a level tolerated by Article 3 of the ECHR. In sum, the only aspects of SSM's circumstances that might be thought to identify anything different from those facing any other citizen returning to Mogadishu is that he has been away for a long period and so would be unfamiliar with the city and has no nuclear family to look to for assistance as he establishes himself. In our judgement, for a member of a majority clan who remains in contact with relatives in the diaspora, those are not difficulties that can give rise to a finding of a need for international protection such as will displace the public interest in deporting a violent foreign criminal.
482. For these reasons we substitute a decision to dismiss the appeal on all grounds.

Signed:

Upper Tribunal Judge Southern
Dated: 10 September 2014

APPENDIX A

Schedule of Expert and Background Evidence (Appellants)

Item	Document	Source	Date
Appellant: MOJ			
1	Responses to further questions	Hoehne, Dr Markus	23 January 2014
2	Responses to further questions	Harper, Miss Mary	21 January 2014
3	Responses to further questions	Mullen, Dr Joseph	19 January 2014
4	Further questions from Respondent to Experts	Respondent	13 January 2014
5	Responses to Questions	Harper, Miss Mary	6 January 2014
6	Responses to Questions	Hoehne, Dr Markus	23 December 2013
7	Responses to Questions	Mullen, Dr Joseph	20 December 2013
8	Questions to Ms Harper	Respondent	20 December 2013
9	Questions to Dr Mullen	Respondent	9 December 2013
10	Questions to Dr Hoehne	Respondent	9 December 2013
11	Expert Report for	Harper, Miss Mary	3 December 2013
12	Expert Report	Mullen, Dr Joseph	18 November 2013
13	Expert Report	Hoehne, Dr Markus	18 November 2013
Appellant: MAA			
14	Responses to Questions	Mullen, Dr Joseph	26 January 2014
15	Expert Report	Harper, Miss Mary	23 January 2014
Appellant: SSM			
16	Responses to Questions	Harper, Miss Mary	29 January 2014
17	Questions to Ms Harper	Respondent	28 January 2014

18	Expert Report	Harper, Miss Mary	18 January 2014
19	Updated Expert Report	Hoehne, Dr Markus	11 October 2013
20	Expert Report	Hoehne, Dr Markus	11 August 2013
Background Evidence			
1	Total IDPs by Region	UNHCR	Various
2	Human Rights and Democracy 2012: Somalia	Foreign and Commonwealth Office	Various
3	WHO Somalia Biennial Report 2010-2011	WHO	Undated
4	Chronology of recent events	Harper, Mary	Undated
5	Photographs	Harper, Mary	Undated
6	Map of Mogadishu		Undated
7	Map of Internal Displacement	Internal Displacement Monitoring Centre (iDMC)	Undated
8	Mortar fire rains down on Mogadishu	CNN	Undated
9	Mogadishu under constant attack, while senior intelligence officers blame residents for the violence	Harar 24 News	12 February 2014
10	Hormuud halts its mobile internet services all Somali territory	Al Shahid Network	6 February 2014
11	New barrages of mortar fire rattle Mogadishu	Associated Press, reported at Kentucky.com	5 February 2014
12	Somalia: Population Movement Trends	UNHCR	1 February 2014
13	Benadir Regional Administration, Statistics		29 January 2014
14	52 Journalists Killed in Somalia since 1992/Motive Confirmed	Committee to Protect Journalists	27 January 2014
15	Al-Shabab carries out daring daylight attack today in Mogadishu's Huriwaa District	Harar 24 News	26 January 2014
16	Somalia: Big Promises, Scant Change	Human Rights Watch	21 January 2014

17	Somalia travel advice	Foreign and Commonwealth Office	21 January 2014
18	UNSOM Mandate	United Nations Assistance Mission in Somalia	20 January 2014
19	Relatives and families bemoan after Gunmen in Gov't troops dresses sprayed bullets on a public Vehicle	Shabelle Media Network (Mogadishu)	20 January 2014
20	Somalia: Federal Govt confirms presence of US military advisers in Mogadishu	Garowe Online	15 January 2014
21	Somalia government, citizens condemn al-Shabaab's attempt to ban internet access	Sabahi Online	15 January 2014
22	Humanitarian Snapshot - December 2013	UNOCHA	14 January 2014
23	Somalia: Al Shabaab warns Mogadishu residents 'not to work for int'l agencies'	Garowe Online	13 January 2014
24	Political infighting threatens Somalia's government	Integrated Regional Information Networks News	13 January 2014
25	Somalia: Two civilians gunned down in Mogadishu	Garowe Online	12 January 2014
26	Somalia: Federal Govt urges telecom companies not to abide by Al Shabaab internet ban	Garowe Online	11 January 2014
27	US military advisers deployed to Somalia to help African forces	Reuters	10 January 2014
28	Somalia: 7 Federal Govt soldiers killed in ambush near Mogadishu by Al Shabaab	Garowe Online	10 January 2014
29	Somalia: Gunmen kill woman who worked for Turkish agency in Mogadishu	Garowe Online	9 January 2014
30	Somalis from diaspora denounce al-Shabaab threats	Sabahi Online	9 January 2014
31	World Report 2014 - Somalia	Human Rights Watch	3 January 2014
32	Foreign travel advice: Somalia	Foreign and Commonwealth Office	2 January 2014
33	Al Shabaab New Year's Day attack rattles Somalia's security façade	Sabahi Online	2 January 2014

34	Toll now 11 dead, 40 wounded in bomb attacks on Somali hotel	UPI	2 January 2014
35	Somalia: Al Shabaab Claims Responsibility for Deadly Somalia Bombings	VOA News	2 January 2014
36	Death Toll at 20 From al-Shabab Bombings	VOA News	2 January 2014
37	Al-Shabaab claims responsibility for Mogadishu hotel bombings	The Guardian	2 January 2014
38	Al-Shabaab claims responsibility for deadly hotel bombing	UPI	2 January 2014
39	Security Council, Ban deplore Mogadishu bombings, reaffirm resolve to help end Al Shabaab threat	UN News Service	2 January 2014
40	International Protection Considerations with Regard to people fleeing Southern and Central Somalia	UNHCR	1 January 2014
41	Hotel in Somali capital Mogadishu hit by car bombs	BBC News	1 January 2014
42	Real-time analysis of African political violence, January 2014	ACLED	1 January 2014
43	Somalia: Mogadishu hotel rocked by deadly car bomb attacks	Garowe Online	1 January 2014
44	Six killed by car bombs in Somalia	Garowe Online	1 January 2014
45	Somalia: Whose Country Is It, Anyway?	Harper, Mary	Winter 2013
46	Somali soldiers killed in Mogadishu blast	BBC News	27 December 2013
47	Bomb blast at restaurant kills 11 in Mogadishu	Garowe Online	27 December 2013
48	Somalia: UN expert urges government to finalise human rights roadmap	UN News Service	26 December 2013
49	Somalia: Al Shabaab is danger to the public-President Hassan	Garowe Online	24 December 2013
50	Somalia: Federal Govt troops clash at checkpoint	Garowe Online	22 December 2013
51	Syrian and Somali doctors' shot dead near Mogadishu	BBC News	18 December 2013
52	Gunmen Kill 6 outside Somali Capital	VOA News	18 December 2013

53	Four doctors, two bodyguards killed in Somalia attack	UPI	18 December 2013
54	Somalia: UN envoy condemns deadly attack on medical convoy near Mogadishu	UN N0	18 December 2013
55	Food Security and Nutrition: Quarterly Brief	FSNAU	17 December 2013
56	Somalia: Federal Govt forces and Al Shabaab clash in Mogadishu	Garowe Online	15 December 2013
57	Somalia: Fierce Battle Erupts in Baladweyne	Shabelle Media Network (Mogadishu)	9 December 2013
58	Somalia: Bomb blast kills Federal MP in Mogadishu	Garowe Online	6 December 2013
59	Somalia: Heavy Fighting Causes Casualties in Beledweyne	Shabelle Media Network (Mogadishu)	4 December 2013
60	Report of the Secretary-General on Somalia	United Nations Security Council	2 December 2013
61	Somalia PM Abdi Farah Shirdon loses confidence vote	BBC News	1 December 2013
62	The consequences of political infighting	HIPS	1 December 2013
63	Nutrition Update, October - December 2013	FSNAU	1 December 2013
64	Harassment of Radio Shabelle journalists continues	Reporters without Borders	30 November 2013
65	Delivered by the Netherlands into the clutches of a suicide bomber in Somalia	Amnesty International	29 November 2013
66	Delayed planting and floods threaten Deyr crops	FEWSNET	27 November 2013
67	Memo to the Hague: Somalia is not safe	Human Rights Watch	27 November 2013
68	Somalia: Well known Businessman and Woman killed in Kismayo	Dalsan Radio (Mogadishu)	26 November 2013
69	Somalia: Civilians Complain Over Government Forces Loot and Torture	Dalsan Radio (Mogadishu)	25 November 2013
70	Somalia: Court judge gunned down in Mogadishu	Garowe Online	23 November 2013
71	Somalia: Dispute among Govt troops turn deadly	Garowe Online	22 November 2013
72	Somalia arrests woman over rape allegations	Garowe Online	21 November 2013
73	Under fire on a dangerous Somali road	BBC News	20 November 2013

74	Despite Setbacks, al-Shabab Still a Potent Threat	VOA News	19 November 2013
75	Somali African Union Beledweyen base hit by bomb attack	BBC News	19 November 2013
76	Do Somalis in Dadaab refugee camp want to go home?	BBC News	19 November 2013
77	Islamists raid Somali police station, at least 28 dead: witnesses	Reuters	19 November 2013
78	Dispatches: Deported to Danger in Somalia	Human Rights Watch	19 November 2013
79	Al-Shabaab attacks Somali police station	UPI	19 November 2013
80	Al-Shabaab attack on Somali police station kills at least 12	CNN	19 November 2013
81	Al Shabaab claims attack on police station in central Somalia	Reuters	19 November 2013
82	Somalia: Alshabab Burn Down Vehicles Transporting Liquor	Dalsan Radio (Mogadishu)	18 November 2013
83	Politics not Refugees at heart of Repatriation to Somalia	Rawlence, Ben	12 November 2013
84	Deadly explosion rocks Mogadishu hotel	Aljazeera	11 November 2013
85	Security Council 'outraged' by deadly bomb attack in Somali capital	United Nations News Centre	10 November 2013
86	Somalia: Somali Military Soldier Kills Shoeshine Young Boy in Mogadishu	Dalsan Radio (Mogadishu)	10 November 2013
87	Somalia: People Living Alshabab Controlled Areas Fear Using Smartphone After More Questions	Dalsan Radio (Mogadishu)	10 November 2013
88	Somalia: Deeply flawed rape inquiry	Human Rights Watch	10 November 2013
89	Lobby blast may have preceded hotel bombing in which 11 reported dead	UPI	9 November 2013
90	5 killed in bombing outside Mogadishu hotel, Somali official says	CNN	9 November 2013
91	Suspected Car Bomb Kills 6 in Somalia	VOA News	8 November 2013
92	Somalia: 18 Die in Heavy Clan Fighting Near Jowhar	Sabahi Online	8 November 2013

93	Mogadishu blast: 'Suicide attack' in Somali capital	BBC News	8 November 2013
94	Car bomb outside Somalia hotel kills at least 4, injures 5	UPI	8 November 2013
95	6 killed at Mogadishu hotel bombing	Garowe Online	8 November 2013
96	Somalia's Shabaab 'still far from defeat'	Al Shahid Network	7 November 2013
97	When Push Comes to Shove: Displaced Somalis under Threat	Refugees International	7 November 2013
98	Somalia: Somali Poor Leadership Crisis	Shabelle Media Network (Mogadishu)	7 November 2013
99	Somalia's future relies on an army that does not yet exist	Garowe Online	4 November 2013
100	Somalia: Amid internal divisions, Al Shabaab pledges more attacks	Garowe Online	3 November 2013
101	Somalia: How Mogadishu Soldiers Harass Civilians	Dalsan Radio (Mogadishu)	2 November 2013
102	Federal Register, Vol 78, No 212, November 2013, 65692	US Department of Homeland Security	1 November 2013
103	Key actors mapping: Somalia	Browne and Fisher	1 November 2013
104	Repatriation Pact: Insufficient Progress	The Heritage Institute	1 November 2013
105	Somalia: Humanitarian Dashboard (as of 30 October 2013)	UNOCHA	30 October 2013
106	US 'drone strike' kills senior Shabab members	Aljazeera	29 October 2013
107	Somalia: Roadside Bomb Hits On Gov't Soldiers in Mogadishu	Shabelle Media Network (Mogadishu)	29 October 2013
108	Somalia: Al Shabaab Ambushes On AMISON Vehicle in Dhoobley	Shabelle Media Network (Mogadishu)	29 October 2013
109	Al Shabaab rebuilds forces in Somalia as African Union campaign stalls	The Guardian	28 October 2013
110	Drone strike kills at least two in Somalia - residents	Reuters	28 October 2013
111	Kenya calls for Somalis to leave world's largest refugee camp	Shabelle Media Network (Mogadishu)	26 October 2013
112	Somalia: Heavy Explosion Rocks Janale Town	Shabelle Media Network (Mogadishu)	24 October 2013

113	Somalia: Heavy Fighting Between Government Troops and Alshabab in Bakol Region	Shabelle Media Network (Mogadishu)	23 October 2013
114	Somalia: Grenade Bombs Thrown to a House Belonging to the Mayor of Marka	Shabelle Media Network (Mogadishu)	20 October 2013
115	Somalia: Al-Shabab Claims the Responsibility for the Baladweyn Suicide	Dalsan Radio (Mogadishu)	20 October 2013
116	Suicide bomber kills 16 in Somali café attack aimed at foreign troops	Reuters	19 October 2013
117	Somalia: Suicide Bomber Kills Dozens in Beledweyne Town	Shabelle Media Network (Mogadishu)	19 October 2013
118	Somalia: Suicide Bomber Kills 13 At Restaurant in Central Somalia	Dalsan Radio (Mogadishu)	19 October 2013
119	Somalia: Over Dozen Die In Beledweyne Suicide Bombing	Garowe Online	19 October 2013
120	Somali suicide bombing kills AU soldiers in Beledweyne	BBC News	19 October 2013
121	Al Shabab bombing in Somalia kills 16	UPI	19 October 2013
122	Suicide bomber kills at least 12 at restaurant in Somalia	Radio Free Europe	19 October 2013
123	At Least 15 Killed in Somalia Attack	VOA News	18 October 2013
124	Somalia: Heavy Explosions Occur in Lower Shabelle Region	Shabelle Media Network (Mogadishu)	17 October 2013
125	Al Shahid Network 'Thousands of additional troops urged for force in Somalia'	Al Shahid Network	16 October 2013
126	Alshabab called Westgate attack as message to Kenya, no war	Al Shahid Network	16 October 2013
127	Somalia: Government Soldiers Spray Bullets to Poor Civilians At an Aid Distribution Camp in Mogadishu	Shabelle Media Network (Mogadishu)	16 October 2013
128	Letter dated 14 October 2013 from the Secretary-General addressed to the President of the Security Council	United Nations Secretary-General	14 October 2013
129	Somalia: Ten killed in fighting near Mogadishu	Garowe Online	14 October 2013

130	Letter dated 14 October 2013 from the Secretary General addressed to the President of the Security Council	United Nations Security Council	14 October 2013
131	Somalia: PM vows to eliminate terror attacks, 3 killed in Mogadishu	Garowe Online	13 October 2013
132	African Union calls for more African troops in Somalia	Reuters	12 October 2013
133	Somalia: Gun Fire Kills Civilian in Mogadishu	Dalsan Radio (Mogadishu)	12 October 2013
134	Freedom of the Press 2013	Freedom House	10 October 2013
135	Somalia: Al Shabaab remains dangerous presence says Ambassador Linda-Thomas Greenfield	Garowe Online	10 October 2013
136	How the US raid on al-Shabaab in Somalia went wrong	The Guardian	9 October 2013
137	Somalia: Al-Shabab Arrests a Business Man in Connection to Barawe's Attack in Lower Shabelle Region	Shabelle Media Network (Mogadishu)	9 October 2013
138	Al-shabab abducts welfare worker in middle Juba region	Al Shahid	8 October 2013
139	US raid on Somalia: Al-Shabab bolsters presence in Barawe	BBC News	7 October 2013
140	Somalia: Federal Govt seeks confidence from public amid reports of torture by soldiers	Garowe Online	6 October 2013
141	Somalia's Al-Shabab said still benefit from Charcoal trade through 'connections'	Mareeg.com	5 October 2013
142	Somalia: Al Shabaab militants repel raid by unidentified foreign troops	Garowe Online	5 October 2013
143	Somalia: Heavy Blasts Occur in Jowhar Town	Shabelle Media Network (Mogadishu)	3 October 2013
144	Somalia: Heavy Battle Between Allied Troops and Alshabab Occur in the Lower Juba Region of Somalia	Shabelle Media Network (Mogadishu)	3 October 2013
145	Somalia: Scores of Dead Bodies Found in Kismayo	Dalsan Radio (Mogadishu)	2 October 2013

146	Somalia: Alshabab Attacks Newly Liberated District in the Lower Shabelle Region	Shabelle Media Network (Mogadishu)	2 October 2013
147	Somalia: 10 killed in Mahaday clashes, Police officer gunned down in Mogadishu	Garowe Online	2 October 2013
148	Solutions for IDPs revealed as key for future peace and stability in Somalia	Internal Displacement Monitoring Centre	1 October 2013
149	Somalia: AMISON Base in Beledweyne Attacked by Unknown Gunmen	Shabelle Media Network (Mogadishu)	30 September 2013
150	Somalia: President Hassan expresses concern over Al Shabaab attacks	Garowe Online	29 September 2013
151	On the shifting frontlines of the fight against Al Shabaab	The Observer	28 September 2013
152	Africa's Terrorist Threat	The Times	26 September 2013
153	Mogadishu cannot qualify as an Internal Flight Alternative	Amnesty International	26 September 2013
154	Crossing the Al Shabaab frontline in Somalia	BBC News	25 September 2013
155	UNHCR guidance on the application of the internal flight or relocation alternative, particular in respect of Mogadishu, Somalia	UNHCR	25 September 2013
156	Somalia: Heavy Confrontations in the Lower Juba and Shabelle Regions	Shabelle Media Network (Mogadishu)	25 September 2013
157	Crossing the al-Shabab frontline in Somalia	BBC News	25 September 2013
158	Regional intelligence chief killed in southern Somali port city	Dhacdo.com website	23 September 2013
159	Blast hits government troops in southern Somalia	Somali Memo website	23 September 2013
160	Somalia: Land Mine Explosion Targets Government Troops in Afgoye Town Lower Shabelle Region	Shabelle Media Network (Mogadishu)	23 September 2013
161	Somalia MP is killed in Mogadishu	Radio Dalsan	22 September 2013
162	Somalia: Al-Shabab remains a potent threat	BBC News	22 September 2013

163	Three killed in Somali capital blast	Raxanreeb website	21 September 2013
164	Somalia: Two Killed in Mogadishu Grenade Explosion	Garowe Online	21 September 2013
165	Somalia: Grenade Attack in Mogadishu's Bakara Market Leaves Dozens Including a Foreigner Injured	Shabelle Media Network (Mogadishu)	21 September 2013
166	Somalia: Bomb Blast Kills Two Businessmen in Somalia Capital, Mogadishu	Dalsan Radio (Mogadishu)	21 September 2013
167	Somalia: Heavy Confrontations Between Alshabab and Allied Forces in the Lower Juba Region of Somalia	Shabelle Media Network (Mogadishu)	20 September 2013
168	Briefing: Are remittances to Somalia doomed?	Integrated Regional Information Networks	19 September 2013
169	Somalia: Men Wearing Government Military Dresses Rob Passengers	Shabelle Media Network (Mogadishu)	19 September 2013
170	Somalia: Fighting Between Government Forces and Alshabab in the Lower Shabelle Region	Shabelle Media Network (Mogadishu)	18 September 2013
171	Somalia: Grenade Attacks Thrown At a Gov't Military Base in Jowhar	Shabelle Media Network (Mogadishu)	17 September 2013
172	Uganda suspends officers sent to Somalia on AU mission	BBC News	16 September 2013
173	Uganda suspends officers sent to Somalia on AU mission	BBC News	16 September 2013
174	Somalia: Fierce Confrontations and Explosions Rock Marka Town in Overnight Attacks	Shabelle Media Network (Mogadishu)	15 September 2013
175	Gunmen kill prominent traditional elder in southern Somali port city	Radio Gaalkacyo	14 September 2013
176	Somalia: Forced evictions in Mogadishu put thousands of displaced at even greater risk	Amnesty International	13 September 2013
177	U.N. official condemns attack on Jubba administration leader	UPI	13 September 2013
178	Somalia: Somali President Hassan Sheikh Condemns the Attack Against Sheikh Ahmad Madobe in Kismayu	Dalsan Radio (Mogadishu)	13 September 2013

179	Mogadishu's clean-up puts thousands of displaced at risk	Amnesty International	13 September 2013
180	Southern Somalia administration leader injured in blast	Shabeelle Media Network website	12 September 2013
181	12 September 2013 Ten killed, Somali militia leader injured in explosion in port city	Midnimo.com website	12 September 2013
182	Al-Amriki and al-Britani: Militants 'killed' in Somalia	BBC News	12 September 2013
183	Mogadishu's stability under the gun again	Aljazeera	11 September 2013
184	Somali government deplores attack on Ahmed Madobe	RBC Radio	11 September 2013
185	Somalia: Explosions and Confrontations Occur in Marka and Kismayu Respectively	Shabelle Media Network (Mogadishu)	11 September 2013
186	Somalia: Al Shabaab militants target Federal Govt positions with mortar shells	Garowe Online	10 September 2013
187	Somalia: Fighting Between Government Forces and Alshabab in Baay and Lower Juba Regions of Somalia	Shabelle Media Network (Mogadishu)	9 September 2013
188	Somalia: Al-Shabaab Claims Responsibility for Mogadishu Restaurant Attack That Kills 30	Sahahi Online	8 September 2013
189	Somalia: Land Mine Explosion Targets Amisom Troops in Mogadishu	Shabelle Media Network (Mogadishu)	8 September 2013
190	Somalia: At Least One Person Confirmed Dead In Beledweyne Grenade Attacks	Shabelle Media Network (Mogadishu)	8 September 2013
191	Somalia: Al Shabab Claims Responsibility of Attacks Against Civilians in Mogadishu Restaurant	Dalsan Radio (Mogadishu)	8 September 2013
192	Bomb attacks at Somali restaurant kill 15	UPI	8 September 2013
193	Eleven killed in Somali capital bomb blasts	Shabeelle Media Network website	7 September 2013
194	Somalia's Al-Shabab says it bombed Mogadishu eatery	BBC News	7 September 2013
195	Somalia: Two Suicide Bomb Explosions Kill At Least 25 in Mogadishu	Dalsan Radio (Mogadishu)	7 September 2013

196	Somalia: Suicide Explosions Kills Civilians in Somalia Capital	Dalsan Radio (Mogadishu)	7 September 2013
197	Somalia: Car Bomb Explosion Rocks Mogadishu	Shabelle Media Network (Mogadishu)	7 September 2013
198	Somalia blasts hit Mogadishu's village restaurant	BBC News	7 September 2013
199	Al Shabaab bombers strike Mogadishu restaurant, 15 dead	Reuters	7 September 2013
200	Somalia blasts hits Mogadishu's Village restaurant	Garowe Online	7 September 2013
201	Somalia: Over dozen killed in coordinated terror attacks in Mogadishu	Garowe Online	7 September 2013
202	UN envoy strongly condemns terrorist attack in Somali capital	UN News Service	7 September 2013
203	Food security gains in Somalia 'fragile'	Integrated Regional Information Networks News	6 September 2013
204	Somalia: Explosions Heard in Mogadishu During Night Time	Dalsan Radio (Mogadishu)	5 September 2013
205	Somalia: Govt troops go on strike over support services	Garowe Online	5 September 2013
206	Powerful blasts rock Somali capital	Somali Memo website	4 September 2013
207	UN chief warns Somalia could slide back into failed state status	Hiiraan Online	4 September 2013
208	Somali president unhurt in bomb attack	VOA News	3 September 2013
209	Report of the Secretary-General on Somalia	United Nations Security Council	3 September 2013
210	Somalia: President Hassan reaches Marka as Al Shabaab claims to have attacked his convoy	Garowe Online	3 September 2013
211	Somali President Unhurt in Bomb Attack	VOA News	3 September 2013
212	Acute malnutrition persists in Somalia while 870,000 people remain food insecure	FSNAU	3 September 2013
213	Somalia: UN expert hails human rights effort but urges broader consultation process	UN News Service	3 September 2013
214	Somalia: Operational Guidance Note	Home Office UK Border Agency	1 September 2013
215	Somalia: No Place for the Displaced	Amnesty International	1 September 2013

216	Somalia: Civilian Killed After Gun Fire in Central Region	Dalsan Radio (Mogadishu)	1 September 2013
217	Somalia: Landmine Explosion Targets Government Officials of Lower Shabelle Region	Shabelle Media Network (Mogadishu)	31 August 2013
218	Somalia: Rape and sexual violence a constant threat for displaced women	Amnesty International	30 August 2013
219	Humanitarian Dashboard July 2013	UNOCHA	30 August 2013
220	Somalia: Intelligence official killed in ambush in Mogadishu	Garowe Online	29 August 2013
221	Somalia: 'Illegal Roadblocks Are On Increase' in Lower Shabelle Region	Garowe Online	28 August 2013
222	Somalia: Security operations continue in Mogadishu as insecurity looms	Garowe Online	28 August 2013
223	Somalia's Al-Shabaab: Down But Not Out	Homeland Security Policy Institute	27 August 2013
224	Somalia: Alshabab Accused of Killing Civilians in Mustahil, Hiran Region	Shabelle Media Network (Mogadishu)	27 August 2013
225	Somalia: Mogadishu explosions target Federal Govt soldiers	Garowe Online	27 August 2013
226	Somalia: Heavy Fighting in Kismayu, Lower Juba Region	Shabelle Media Network (Mogadishu)	26 August 2013
227	Somalia: Somali Olympic official gunned down in Mogadishu	Garowe Online	24 August 2013
228	Somalia: Raskamboni Militia Evicting Civilians From Their Residencies	Shabelle Media Network (Mogadishu)	23 August 2013
229	Somalia: Heavy Confrontations Between Alshabab and Government Soldiers in Lower Shabelle Region	Shabelle Media Network (Mogadishu)	23 August 2013
230	Somalia: The Administration of Afgoye Town Complain About Escalating Insecurity	Shabelle Media Network (Mogadishu)	22 August 2013
231	Swedish politician attacked in Somalia's Mogadishu	BBC News	21 August 2013
232	Why Doctors Without Borders Left Somalia: Interview with Sophie Delaunay	International Peace Institute	20 August 2013

233	Somalia Redux? Assessing the New Somali Federal Government	Bryden, Matt	19 August 2013
234	Why MSF decided to leave Somalia	Medecins Sans Frontiers	19 August 2013
235	Somalia: Land Mine Explosions Target Amisom Troops in Kismayu, Lower Juba Region	Shabelle Media Network (Mogadishu)	19 August 2013
236	Explosion in kismayo kills pro-Jubbaland clan elder	Dalsan Radio (Mogadishu)	16 August 2013
237	UN humanitarian wing warns of pervasive sexual violence in Somalia	UN News Service	16 August 2013
238	Polio in Somalia: UN warns of 'explosive' outbreak	BBC News	16 August 2013
239	Somalia: A Well-Known Business Man Injured in Mogadishu Blast	Shabelle Media Network (Mogadishu)	15 August 2013
240	Somalia: Car bomb explosion kills one at Mogadishu's Bakara market	Garowe Online	15 August 2013
241	UPDATE 1 - Deadly attacks force Doctors Without Borders to quit Somalia	Reuters	14 August 2013
242	Somalia: Mogadishu residents complain about violent activities by Federal Govt Soldiers	Garowe Online	14 August 2013
243	Somalia: Grenade Attacks Targets Government Troops in the Middle Shabelle Region	Shabelle Media Network (Mogadishu)	14 August 2013
244	MSF closes operations in Somalia over 'extreme attacks'	BBC News	14 August 2013
245	Doctors Without Borders pulls out of Somalia due to attacks	Reuters	14 August 2013
246	Civilians killed after violence erupted in Mogadishu	Dalsan Radio (Mogadishu)	14 August 2013
247	MSF forced to close all medical programmes in Somalia	Garowe Online	14 August 2013
248	Somalia: Al Shabab militants loot MSF offices in Bay region	Garowe Online	14 August 2013
249	MSF decision to leave Somalia 'impacts health sector in Puntland': Minister	Garowe Online	14 August 2013
250	MSF forced to close all medical programmes in Somalia	Medecins Sans Frontiers	14 August 2013

251	Justine Greening under fire over theft of British aid supplies to Somalia	The Guardian	12 August 2013
252	Somalia: In Somalia, UNDP provides vital job-skills training for youth	UNDP	12 August 2013
253	Somalia: Country of Origin Information Report	Home Office UK Border Agency	5 August 2013
254	UNICEF steps up efforts to stop polio outbreak in Somalia	UN News Service	5 August 2013
255	Extremist Violence Returns to Hit Mogadishu	Inter Press Service News Agency	3 August 2013
256	Somali militants attack AU peacekeepers in southern region	Radio Al-Furqaan website	2 August 2013
257	Major roads in Mogadishu closed as explosions rock Somali capital	Shabeelle Media Network website	1 August 2013
258	Humanitarian Dashboard June 2013	UNOCHA	31 July 2013
259	Information on available state protection in Somalia	Refugee Documentation Centre (Ireland)	30 July 2013
260	Somalia and Amisom Forces Conduct Joint Security Operation in Jowhar	Garowe Online	29 July 2013
261	UN chief, Security Council strongly condemn attack on Turkish building in Somalia	UN News Service	29 July 2013
262	Six killed in southwestern Somalia as government troops battle militants	Garoweonline.com website	27 July 2013
263	Blast hits Turkish staff building in Somali capital, casualties reported	Somali Memo website	27 July 2013
264	Al Shabaab claim attack on Turkish mission in Somalia, three dead	Reuters	27 July 2013
265	Five civilians wounded in Mogadishu grenade attack	Raxanreeb website	26 July 2013
266	Kenya: Court Quashes Plan to Force Refugees Into Camps	Human Rights Watch	26 July 2013
267	Deadly Suicide Bombing Strikes Turkish Mission in Somalia	VOA News	26 July 2013
268	Al-Shabab boasts about Ramadan rampage	Sabahi Online	26 July 2013

269	Somali security forces, AU troops' bases attacked in Mogadishu	Dhacdo.com website	25 July 2013
270	Somalia's Islamists strike AU bases in southern districts	Dhacdo.com website	22 July 2013
271	Four killed in Somali port as explosion targets Sierra Leonean troops	Shabeelle Media Network website	20 July 2013
272	Somalia: Land Mine Targets Sierra Leon [sic] Troops	Shabelle Media Network (Mogadishu)	20 July 2013
273	Somalia's Al-Shabab attack southwestern army bases	Shabeelle Media Network website	18 July 2013
274	Insecurity said on the rise in Somalia's capital	Shabeelle Media Network website	16 July 2013
275	Somalia: Kismayu Residents Face Daily Abuses From the Indiscipline Raskamboni Militia and Corrupt Kenyan Peacekeepers	Shabelle Media Network (Mogadishu)	16 July 2013
276	Death toll in Somali capital 12 July attack rises to 11	Shabeelle Media Network website	13 July 2013
277	Grenade attack in Somali capital kills three	Dhacdo.com website	13 July 2013
278	Somalia: At least 5 killed as troops clash with militants	Hiiraan Online	12 July 2013
279	Somali capital Mogadishu hit by 'suicide attack'	BBC News	12 July 2013
280	Two killed in Somali capital grenade attack	Agence France-Presse	12 July 2013
281	Bomber hits peacekeepers in Somalia, 8 civilians dead	Reuters	12 July 2013
282	Report of the Monitoring Group on Somalia and Eritrea pursuant to Security Council resolution 2060 (2012): Somalia	United Nations Security Council	12 July 2013
283	Government forces, Al-Shabab militants clash in southwestern Somalia	Shabeelle Media Network website	11 July 2013
284	Suicide Bomber Kills 3 in Somalia	VOA News	11 July 2013
285	Somali car explodes in Mogadishu's Bakara market	BBC News	9 July 2013
286	Police officers wounded in attack in Somali market	UPI	9 July 2013
287	Five police wounded in Somali bombing by Islamists	Reuters	9 July 2013

288	Ten killed as Somali forces, Al-Shabab militants clash	Shabeelle Media Network website	3 July 2013
289	Al Shabaab extremists kill two of their chiefs	France 24	30 June 2013
290	Al Shabaab Commanders Killed By Own Group	Sky News	30 June 2013
291	Seven said injured in southern Somalia explosion targeting AU troops	Radio Risala	29 June 2013
292	Operations on Mogadishu-Jowhar highway	Goobjoob.com	27 June 2013
293	Clannish Clashes Erupt in Kismayu Again	Shabelle Media Network (Mogadishu)	26 June 2013
294	At least three dead in Somali port clash: witnesses	Reuters	26 June 2013
295	Somalia: Civilians Killed in Kismayo Clashes	Human Rights Watch	25 June 2013
296	Civilians killed in landmine explosion in Somali capital	Shabeelle Media Network website	24 June 2013
297	UN condemns 'despicable' al-Shabab attack in Somalia	BBC News	20 June 2013
298	Somalia: Madina Hospital in Mogadishu Says It Received 18 Patients After Yesterday's Attacks	Shabelle Media Network (Mogadishu)	20 June 2013
299	Somali Islamists threaten more carnage after attack on U.N. base	Reuters	20 June 2013
300	Gunmen target UN compound in Somali capital	Shabeelle Media Network website	19 June 2013
301	Kooxo hubeysan oo Weerarro isugu jira Ismiidaamin iyo kuwa toos ah ku qaaday UNDP ee Magaalada Muqdisho	Hiiraan Online	19 June 2013
302	Somali Islamist rebels attack U.N. base, 22 dead	Reuters	19 June 2013
303	Somalia UN office attack by al-Shabab 'kills 15'	BBC News	19 June 2013
304	Four foreign security staff among 15 dead in Somalia U.N. attack	Reuters	19 June 2013
305	Somali Islamist rebels attack U.N. base, 22 dead	Reuters	19 June 2013
306	Al-Qaeda bombs UN compound in Somalia, killing 15	Telegraph	19 June 2013
307	14 dead, 15 hurt in attack on U.N. compound in Somalia	UPI	19 June 2013

308	UN officials voice outrage at deadly attack on world body's compound in Somali capital	UN News Service	19 June 2013
309	Fifteen reported dead in attack on UN compound in Somalia	Radio Free Europe	19 June 2013
310	Somalia: Explosion Targeting Kenyan Troops in Kismayu As Madobe's Deputy Is Seriously Injured	Shabelle Media Network (Mogadishu)	18 June 2013
311	Al-Shabab Gunmen Attack UN Compound in Mogadishu	VOA News	18 June 2013
312	Land mine blast kills at least 10 in southern Somalia	Radio Simba	15 June 2013
313	Tea shop bomb in Somali town kills at least seven	Reuters	15 June 2013
314	Somalia at risk of unraveling, U.N. says	UPI	14 June 2013
315	Mogadishu's Dilemma: Who's in Control?	Roble, Muhyadin Ahmed of the Jamestown Foundation	14 June 2013
316	Somali forces, Al-Shabab clash in south western locality	Shabeelle Media Network website	13 June 2013
317	Somali forces, Al-Shabab clash in south western town	Shabeelle Media Network website	12 June 2013
318	At least 18 dead in battle over disputed Somali port city	Reuters	8 June 2013
319	Statement by President of the Security Council	United Nations Security Council	6 June 2013
320	Al-Shabab militants kill five civilians in southern Somalia	Shabeelle Media Network website	5 June 2013
321	Somalia: Several People Killed By Alshabab At the Outskirts of Jawhar Town	Shabelle Media Network (Mogadishu)	5 June 2013
322	Somalia: Alshabab Displays Kenyan Soldiers Held Hostage	Shabelle Media Network (Mogadishu)	3 June 2013
323	AU troops targeted with twin explosion attacks in Somali capital	Radio Risala	2 June 2013
324	"Heavy battles" reported between AU troops, Al-Shabab in central Somalia	Shabeelle Media Network website	1 June 2013
325	Report of the Secretary-General on Somalia	United Nations Security Council	31 May 2013
326	Somalia: Heavy Bombardments Rock the Kismayu Airport	Shabelle Media Network (Mogadishu)	28 May 2013

327	Firefight rocks airport in Kismayu, Somalia	UPI	28 May 2013
328	Somalia: Explosions Target Ethiopian Troops in Baidoa	Shabelle Media Network (Mogadishu)	25 May 2013
329	Ten dead in Somalia after al-Shabaab clash with Ethiopian troops	UPI	23 May 2013
330	Mogadishu culture shock for diaspora Somalis	BBC News	23 May 2013
331	Amnesty International Annual Report: Somalia 2013	Amnesty International	23 May 2013
332	Somalia: Military Commander - There Are No Govt Troops Based in Kismayu	Shabelle Media Network (Mogadishu)	21 May 2013
333	Somalia: Alshabab Launches Attacks in Bai and Bakol Regions	Shabelle Media Network (Mogadishu)	17 May 2013
334	Denmark: No forced returns to 'volatile' situation in Somalia	Amnesty International	15 May 2013
335	Returns to South and Central Somalia: A Violation of International Law	Amnesty International	15 May 2013
336	Somalia: Explosion in Mogadishu	Shabelle Media Network (Mogadishu)	15 May 2013
337	Public Statement: Returns to South and Central Somalia: A violation of International Law	Amnesty International	15 May 2013
338	Analysis: Somali security sector reform	Integrated Regional Information Networks	13 May 2013
339	Asylum system not fit for purpose	The Guardian	11 May 2013
340	Somalia: Fighting in Gedo and Lower Juba Region	Shabelle Media Network (Mogadishu)	8 May 2013
341	Somali conflict: Mohamud and Cameron hail 'new era'	BBC News	7 May 2013
342	Somalia: Some Roads in Mogadishu Closed for Security Reasons	Shabelle Media Network (Mogadishu)	7 May 2013
343	Deadly bombings hit drive to save Somalia	UPI	7 May 2013
344	Suicide bomber targets Qatari delegation in Somalia, 8 dead	CNN	6 May 2013
345	Somalia: London Meeting Should Emphasize Rights	Human Rights Watch	6 May 2013
346	Mogadishu car bomb targets Qatari officials	The Telegraph	5 May 2013

347	Somalia: Mogadishu Hit By Deadly Explosion	Shabelle Media Network (Mogadishu)	5 May 2013
348	Car bomb in Mogadishu kills at least 7, injures 10	UPI	5 May 2013
349	Bomb hits convoy carrying Qataris in Somalia, eight dead	Reuters	5 May 2013
350	Somalia: Residents of Kismayu Cry Over Insecurity	Shabelle Media Network (Mogadishu)	4 May 2013
351	Car Bomb Attack Hits Somali Capital	VOA News	4 May 2013
352	United Nations Security Council Resolution 2102 (2013)	United Nations Security Council	2 May 2013
353	Security and protection in Mogadishu and South-Central Somalia	Danish Immigration Service and LANDINFO	1 May 2013
354	USCIRF Annual Report 2013 – Thematic Issues: Severe religious freedom violations by non-state actors	US Commission on International Religious Freedom	30 April 2013
355	When it comes to Somalia’s displaced, don’t mistake ambition for achievement	The Guardian	29 April 2013
356	Global overview 2012: People internally displaced by conflict and violence – Somalia	Norwegian Refugee Council/Internal Displacement Monitoring Centre	29 April 2013
357	Authorities must investigate murder of Somali journalist	Committee to Protect Journalists	22 April 2013
358	Country Reports on Human Rights Practices for 2012	United States Department of State	19 April 2013
359	Suspected militant kills himself in Mogadishu blast: police	Reuters	18 April 2013
360	UN expert urges Somalia to strengthen justice system following attacks	UN News Service	17 April 2013
361	Somalia: UN Condemns Deadly Attacks in Mogadishu	Shabelle Media Network (Mogadishu)	16 April 2013
362	Somalia: Explosion At Beled Weyn	Shabelle Media Network (Mogadishu)	16 April 2013
363	Somalia: urgent investigation needed into suicide court attack	Article 19	16 April 2013
364	Somalia: New Al-Shabaab attacks are war crimes	Human Rights Watch	16 April 2013
365	Death toll rises to 35 in Somalia court attack	Associated Press	15 April 2013

366	Somali militants threaten more attacks after killing 30	Reuters	15 April 2013
367	At least 30 killed in Somali bombings: medical source	Reuters	15 April 2013
368	Human Rights and Democracy: The 2012 Foreign and Commonwealth Office Report – Somalia	UK FCO	15 April 2013
369	Somalia: militants' attacks in capital will not derail determination to achieve peace says UN	UN News Service	15 April 2013
370	Violence returns to Somalia as 19 are killed in Mogadishu	Euronews	14 April 2013
371	Islamist Militant Assault Kills 22 in Somali Capital	VOA News	14 April 2013
372	Gunmen launch deadly attack on Somalia courthouse	BBC News	14 April 2013
373	Bombs and gun battles kill at least 19 in Somali capital	Reuters	14 April 2013
374	Big blast heard amid gunfire at Somalia's Mogadishu courts	Reuters	14 April 2013
375	Somalia: senior UN official 'shocked and outraged' by today's deadly attacks	UN News Service	14 April 2013
376	Interview: OCHA Mogadishu Head of Office	UNOCHA	11 April 2013
377	UNHCR Somalia Operational Highlights 1st - 7th April 2013	UNHCR	7 April 2013
378	Blast rocks Dahabshiil bank headquarters in Mogadishu	Press TV	2 April 2013
379	UPDATE 2 - Bomb hits Somalia's biggest bank after militant threat	Reuters	2 April 2013
380	The Armed Conflict and Event Location Dataset, Somalia, April 2013	ACLED	1 April 2013
381	Country Report: Somalia	ACLED	1 April 2013
382	Disquiet about death penalty for man convicted of journalist's murder	Reporters without Borders	29 March 2013
383	Protect Displaced People at Risk	Human Rights Watch	27 March 2013
384	Somalia: urgent investigation needed after fatal shooting of journalist	Article 19	27 March 2013

385	Somalia: Protect Displaced People at Risk	Human Rights Watch	26 March 2013
386	Briefing: In Somalia, relative peace belies rocky road ahead	Integrated Regional Information Networks News	26 March 2013
387	Somalis flee Hudur after Al Shabaab takeover	Sabahi Online	22 March 2013
388	Somalia: Al-Shabaab Retakes Hudur	Sabahi Online	18 March 2013
389	Somalia's capital Mogadishu hit by deadly car bomb	BBC News	18 March 2013
390	Car bomb kills at least 10 in Somali capital	Reuters	18 March 2013
391	Car bomb kills 8 in Mogadishu	UPI	18 March 2013
392	Car Bomb Kills 10 in Somali Capital	VOA News	18 March 2013
393	Weapons stolen from presidential palace	UPI	17 March 2013
394	Resolution 2093 (2013)	United Nations Security Council	6 March 2013
395	Press releases: Somalia: UN arms embargo must stay in place	Amnesty International	4 March 2013
396	Somalia: Blasts Kill Two At Mogadishu Beach	allafrica.com	1 March 2013
397	Mogadishu beachfront hit by twin attacks	Telegraph	1 March 2013
398	Hostages Of The Gatekeepers: Abuses against Internally Displaced in Mogadishu, Somalia	Human Rights Watch	1 March 2013
399	Blasts Rock Mogadishu Restaurant	VOA News	1 March 2013
400	AMISOM Condemns Repeated Attacks on Somali Civilians in Mogadishu	AMISOM	1 March 2013
401	The Netherlands: Halt plan to deport Somalis	Human Rights Watch	21 February 2013
402	Somalia: UN Political Office condemns recent wave of terror attacks	UN News Service	19 February 2013
403	Briefing notes	Information Centre on Asylum and Migration	18 February 2013
404	Deadly blast hits Mogadishu Eatery	Aljazeera	17 February 2013

405	Landmine danger persists in Somalia	Integrated Regional Information Networks News	1 February 2013
406	World Report 2013 - Somalia	Human Rights Watch	31 January 2013
407	Report of the Secretary-General on Somalia	United Nations Security Council	31 January 2013
408	Somalia beginning 'profound transformation,' UN official says during visit	UN News Centre	30 January 2013
409	Suicide bomber kills two near Somali presidential palace	Reuters	29 January 2013
410	Suicide blast by offices of Somalia president and PM	BBC News	29 January 2013
411	Somalian PM's office bombed	UPI	29 January 2013
412	Bomb detonates near office of Somali prime minister	CNN	29 January 2013
413	Al-Shabab Claims Responsibility for Mogadishu Bombing	VOA News	29 January 2013
414	Al-Shabab fighters "attack" government, Amisom in Somali capital.	Somali Memo website	20 January 2013
415	Militants attack army base in southern Somalia	Jowhar website	19 January 2013
416	Journalist gunned down in Mogadishu, 2013's first fatality	Reporters without Borders	18 January 2013
417	Latest murder of Somali journalist sparks condemnation from UN	UN News Service	18 January 2013
418	Kenyan forces, Al-Shabab militants clash in southern Somalia	Shabeelle Media Network website	17 January 2013
419	Somalia's Al-Shabab launches overnight attack on Burundian troops	Dhacdo.com website	17 January 2013
420	Five police officers killed in southern Somalia grenade attack	Radio Daljir	15 January 2013
421	Somalia: Al Shabab Execute Two Civilians in Jilib	Shabelle Media Network (Mogadishu)	12 January 2013
422	Mogadishu is like Manhattan': Somalis return home to accelerate progress	The Guardian	11 January 2013
423	Land mine explosion kills two Kenyan soldiers in southern Somalia	Shabeelle Media Network website	11 January 2013

424	Pro-Somali government militia, Islamists clash in southern port city	Shabeelle Media Network website	9 January 2013
425	Landmine blast in southern Somalia kills one soldier;	Shabeelle Media Network website,	8 January 2013
426	Fierce fighting erupts in southwestern Somalia	Shabeelle Media Network website	6 January 2013
427	Al-Shabab militants ambush Ethiopian convey carrying Somali soldiers	Somali Memo website	5 January 2013
428	Somalia's A-Shabab detains 100 clerics for failing to recruit fighters for group	Radio Bar-Kulan website	4 January 2013
429	Islamists return to southwestern Somali town, seize 13 clan elders	Dhacdo.com website	3 January 2013
430	Assailants hurl hand grenade at police post in central Somali town	Shabeelle Media Network website,	2 January 2013
431	Blast in southern Somalia injures three civilians	Jowhar website	2 January 2013
432	Somalia: Roadside Bomb Hits Amisom Patrol in Merka Town	Shabelle Media Network (Mogadishu)	2 January 2013
433	Update on security and human rights issues in South-Central Somalia, including in Mogadishu	Danish Immigration Service and LANDINFO	1 January 2013
434	Three injured in Somali New Year's blast	Radio Gaalkacyo	1 January 2013
435	Somalia: Bomb attack targets government troops in Baydhabo	Radio Al-Furqaan website	29 December 2012
436	Three soldiers said killed in Mogadishu bomb attack	Somali Memo website	26 December 2012
437	Somalia's Al-Shabab recapture southern town from allied troops	Radio Gaalkacyo	25 December 2012
438	Grenade attack kills two in Somali capital, Mogadishu	Radio Gaalkacyo	24 December 2012
439	Mortars hit outside Somali presidential palace;	Jowhar website,	22 December 2012
440	Islamist fighters pull out of central Somali town, villages	Radio Bar-Kulan website	21 December 2012
441	Somalia: Eight Killed in a Fight in Kismayo	Shabelle Media Network (Mogadishu)	21 December 2012
442	Grenade attack kills one, injures three in southern Somali town	Radio Gaalkacyo	19 December 2012
443	Somali, AU troops said seize more localities in south	Radio Gaalkacyo	18 December 2012

444	Teeven: the security situation in Mogadishu has improved	Government of the Netherlands	17 December 2012
445	Somali gunmen shoot dead commandant in Mogadishu	Dhacdo.com website,	17 December 2012
446	Somalia: Al-Shabab fighters clash with government, AU troops	Somali Memo website	16 December 2012
447	Explosives-laden vehicle goes off in Somali capital, kills one	Jowhar website	14 December 2012
448	Fighting between Somali Islamists, Ethiopian troops leaves 10 dead	Radio Gaalkacyo	13 December 2012
449	Somalia's Al-Shabab pulls out of yet another southern town	Radio Bar-Kulan website	11 December 2012
450	Somali Islamists attack AU troops in southern region	Dhacdo.com website	9 December 2012
451	Twin land mine blasts rock seized southern Somali town;	Radio Gaalkacyo	9 December 2012
452	Powerful explosion reported at military base in Somali capital	Dhacdo.com	8 December 2012
453	Grenade attack at cinema in Somalia capital causes casualties	Dhacdo.com website	8 December 2012
454	Twenty Somali women traders said injured in Mogadishu market blast	Jowhar website	6 December 2012
455	Some 11 Somali regional troops killed in Islamist landmine attack	Radio Gaalkacyo	5 December 2012
456	Family of five injured in Somali Islamists' mortar attack in capital	Radio Gaalkacyo	5 December 2012
457	Somalia's Al-Shabab said attack Ethiopian convoy in south-central region	Somali Memo website	4 December 2012
458	Government forces capture southwestern Somali town	Radio Gaalkacyo	3 December 2012
459	Somali government ministers "survive" another Al-Shabab attack;	Dhacdo.com website	3 December 2012
460	Blasts target government officials' home in central Somalia;	Midnimo.com	3 December 2012
461	AU convoy said hit by landmine attack in southern Somalia town	Radio Mustaqbal, Mogadishu	2 December 2012
462	Militants create buffer zone between warring sub-clans in central Somalia region	Somali Memo website	2 December 2012
463	38 dead in Somali clan violence	UPI	2 December 2012

464	Meeting the mayor of Mogadishu: Somalia's Tarzan	BBC News	15 November 2012
465	Mogadishu hospitals push on despite shortages, obstacles	Sabahi	9 November 2012
466	Dahabshiil CEO and Dr Laura Hammond Discuss Preliminary Findings of Remittance Research	PR Newswire	7 November 2012
467	Somalis welcome formation of new cabinet	Hiiraan Online	7 November 2012
468	Somalia: Car Bomb Kills a Soldier, Injures Three in Somali Capital	Shabelle Media Network (Mogadishu)	7 November 2012
469	Car Bomb Outside Federal Somali Parliament Kills 1 Police Officer	Garowe Online	7 November 2012
470	Bomb attack in Mogadishu	Foreign and Commonwealth Office	7 November 2012
471	Blasts Rock Somali Parliament	VOA News	7 November 2012
472	Somalia: Roadside Blast Kills Four Soldiers in Somalia's Port City of Kismayo	Shabelle Media Network (Mogadishu)	5 November 2012
473	Somalia: Two Suicide Explosions Kill Four in Mogadishu	Shabelle Media Network (Mogadishu)	3 November 2012
474	British-Somali Businessman's 2nd Restaurant Targeted	VOA News	3 November 2012
475	Somalia: Mogadishu IDPs suffer extortion, eviction	Integrated Regional Information Networks News	1 November 2012
476	Somalia Fact Sheet	UNHCR	1 November 2012
477	Many Somalis Still See al-Shabab as Threat	VOA News	22 October 2012
478	Two killed in Mogadishu restaurant grenade attack	Jowhar website	20 October 2012
479	Somali government official killed in capital	Shabeelle Media Network website	18 October 2012
480	Gunmen kill prominent elder in southern Somali port city	Jowhar website	18 October 2012
481	Gunmen kill 1, hurt 5 on Somali bus	UPI	15 October 2012
482	Somali government forces open fire, kill three in Mogadishu	Midnimo.com website	11 October 2012
483	Somali commentator says Kenyan troops being used to pursue clan interests	Mareeg website	11 October 2012

484	Islamist militants ban Muslim agency's aid to 1.3 million Somalis	Reuters	8 October 2012
485	The strategic port city of Kismayo has now been wrested from al-Shabab. But it's still a long way from safe.	Foreign Policy	3 October 2012
486	Somali militants hit Kismayu as African troops move in	Reuters	2 October 2012
487	Operation Guidance Note: Somalia	UK Border Agency	1 October 2012
488	Update on security and human rights issues in South-Central Somalia, including in Mogadishu	Danish Immigration Service and LANDINFO	1 October 2012
489	Somalia Islamists abandon Kismayo amid AU attack	BBC News	29 September 2012
490	Somalia Human Development Report 2012: Empowering youth for peace and development	United Nations Development Programme	28 September 2012
491	Somalia, allies batter al Shabaab, but gains may be fragile	Reuters	28 September 2012
492	KDF soldier arrested for killing Somali civilians	The Standard website	25 September 2012
493	Kenyan troops blamed in 7 Somalia deaths	UPI	24 September 2012
494	Somali government says it has new plans for Mogadishu security	Midnimo.com website	23 September 2012
495	Somali MP assassinated outside home	UPI	23 September 2012
496	Gunmen kill Somali lawmaker in Mogadishu	Radio Bar-Kulan website	22 September 2012
497	Al Shabaab withdraws and abandons Jawhar town	RBC Radio	22 September 2012
498	Somali journalist shoot dead in Mogadishu	Shabeelle Media Network website	21 September 2012
499	Suicide bombers kill 15 in Somali capital	Reuters	21 September 2012
500	Somali suicide bombing kills at least 10	UPI	21 September 2012
501	Journalists, civilians killed in twin blasts in Somali capital	Jowhar website	20 September 2012
502	Somalia: Mogadishu Restaurant Bombings Kill 10, Including 3 Journalists	Shabelle Media Network (Mogadishu)	20 September 2012

503	Somalia suicide bombing hits Mogadishu - 14 Killed	BBC News	20 September 2012
504	14 killed in Mogadishu suicide attack	Telegraph	20 September 2012
505	Suicide Bomber Kill at Least 15 at Mogadishu Restaurant	VOA News	20 September 2012
506	The Angel of Mogadishu who raised a hospital from the ruins of war		14 September 2012
507	Al-Shabab claims attack on new Somalia leader	Aljazeera	13 September 2012
508	Attack on Somali president exposes fragile "new era"	Reuters	13 September 2012
509	Two days into job, Somali president survives attacks	Reuters	12 September 2012
510	Somalia: Roadside Blast Kills Four, Wounds 10 in Mogadishu	Shabelle Media Network (Mogadishu)	12 September 2012
511	Two killed in grenade attack in Somali capital	Midnimo.com website	6 September 2012
512	Ten die in central Somalia clan fighting	Jowhar website	6 September 2012
513	Somalia: Grenade Attack Kills Two in Mogadishu	Shabelle Media Network (Mogadishu)	5 September 2012
514	Two killed, three injured in southern Somalia as gunmen open fire on lorry	Radio Bar-Kulan website	4 September 2012
515	Gunmen kill two in Somali capital	Midnimo.com website	3 September 2012
516	Five killed in Somali capital grenade attack	Radio Bar-Kulan website	2 September 2012
517	Grenade attack "kills" three, injuries four in Somali capital	Radio Gaalkacyo	30 August 2012
518	Rape and sexual violence in Somalia - an ongoing epidemic	Amnesty International	30 August 2012
519	Somalia's Al Shabaab loses control of Merca port to army	BBC News	27 August 2012
520	Report of the Secretary-General on Somalia	United Nations Security Council	22 August 2012
521	Somalia COI Bulletin	UK Border Agency	17 August 2012
522	Somalia Bulletin: Security Situation in Southern and Central Somalia	Home Office UK Border Agency	17 August 2012
523	Somalia: Roadside Bomb Kills Two in Somali Capital, Mogadishu	Shabelle Media Network (Mogadishu)	6 August 2012

524	Street FIGHT: Conflict: August 2012	SomaliaReport	1 August 2012
525	Somalia: Blast Kills Two, Hurt Seven in Somali Capital	Shabelle Media Network (Mogadishu)	29 July 2012
526	Somalia: Blast Hits a Café in Somalia's Baido Town	Shabelle Media Network (Mogadishu)	15 July 2012
527	Letter dated 11 July 2012 from the Chair 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	United Nations Security Council	13 July 2012
528	Hammers Replace Bullets as Mogadishu Rebuilds	VOA News	6 July 2012
529	Somalia: Fighting displaces thousands in Middle Shabelle	Integrated Regional Information Networks News	5 July 2012
530	Street FIGHT: Conflict: July 2012	SomaliaReport	1 July 2012
531	IRIN: Concern over planned relocation of refugees from Kenya to Somalia	Refugees International	28 June 2012
532	From King's Cross to Mogadishu: how one man is leading the changing face of our beloved capital city	Hiiraan Online	17 June 2012
533	Somalia: Car Bomb in Busy Market, Injures Three	Garowe Online	17 June 2012
534	Somali opens Mogadishu's first dry cleaners in decades	BBC News	8 June 2012
535	Street FIGHT: Conflict: June 2012	SomaliaReport	1 June 2012
536	Somalis flee as Al Shabaab stronghold falls	Aljazeera	26 May 2012
537	Somalia: Crisis far from over	Medecins Sans Frontiers	24 May 2012
538	Country Reports on Human Rights Practices for 2011	United States Department of State	24 May 2012
539	Amnesty International Annual Report: Somalia 2012	Amnesty International	24 May 2012
540	Mortar Attack Kills 7 in Somali Capital	VOA News	7 May 2012
541	Street FIGHT: Conflict: May 2012	SomaliaReport	1 May 2012

542	Report of the Secretary-General on Somalia	United Nations Security Council	1 May 2012
543	Blast Kills At Least 10 in Somali Town	VOA News	8 April 2012
544	Somalia theatre bombing kills top sports officials	BBC News	4 April 2012
545	Suicide Bomber Kills 8 in Somali Capital	VOA News	3 April 2012
546	Security and human rights issues in South-Central Somalia including Mogadishu	Danish Immigration Service	1 April 2012
547	Street FIGHT: Conflict: April 2012	SomaliaReport	1 April 2012
548	Somalia: Pro-Government Militias Executing Civilians	Human Rights Watch	28 March 2012
549	Somalia: Thousands displaced by fighting in Gedo	Integrated Regional Information Networks News	15 March 2012
550	Al-Shabab Says It Carried Out Mogadishu Attack, 3 Dead	VOA News	13 March 2012
551	Street FIGHT: Conflict: March 2012	SomaliaReport	1 March 2012
552	Civilian Accused of Shabaab Ties Shot in Baidoa	SomaliaReport	28 February 2012
553	Press releases: Protection of civilians and human rights are critical for stable future	Amnesty International	23 February 2012
554	Somalia Al Shabaab militant base of Baidoa captured	BBC News	22 February 2012
555	Militants and civilians killed in multiple US Somalia strikes	Bureau of Investigative Journalism (UK)	22 February 2012
556	Street FIGHT: Conflict: February 2012	SomaliaReport	1 February 2012
557	Public Statement: African Union: Put protection of Civilians at the Forefront of Efforts to Address Peace and Security in Somalia	Amnesty International	25 January 2012
558	Somalia's Al Shabaab attack Ethiopian base in Beledweyne	BBC News	24 January 2012
559	Suicide Bomber Strikes in Central Somalia	VOA News	23 January 2012
560	World Report 2012 - Somalia	Human Rights Watch	22 January 2012
561	MSF closes largest medical centres in Somali capital	Reuters	19 January 2012

562	MSF closes its largest medical centres in Mogadishu after killings	Medecins Sans Frontiers	19 January 2012
563	Somalia: Country of Origin Information (COI) Report	Home Office UK Border Agency	17 January 2012
564	Street FIGHT: Conflict: January 2012	SomaliaReport	1 January 2012
565	Two aid workers killed in Somalia capital	CNN	30 December 2011
566	Somali staff member kills 2 MSF aid workers in Mogadishu	Reuters	29 December 2011
567	Report of the Security-General on Somalia	United Nations Security Council	9 December 2011
568	Fighting breaks out in parts of Mogadishu	UPI	8 December 2011
569	At least 19 dead in Somali fighting	UPI	8 December 2011
570	Violence in Somali Capital Escalates	VOA News	7 December 2011
571	Street FIGHT: Conflict: December 2011	SomaliaReport	1 December 2011
572	5 Dead in Suicide Bombing in Mogadishu	VOA News	29 November 2011
573	Somali Militants Ban 16 Aid Agencies	VOA News	28 November 2011
574	Violence in Southern Somalia Kills 11	VOA News	21 November 2011
575	Street FIGHT: Conflict: November 2011	SomaliaReport	1 November 2011
576	Report: Airstrike kills 5 at refugee camp in Somalia	UPI	31 October 2011
577	Suicide car bomb kills 3 in Somali capital	Reuters	18 October 2011
578	Somali rebels fortify defenses, blast kills six in capital	Reuters	18 October 2011
579	Statement by Amnesty International: Item 6: Human Rights Situation in Africa	Amnesty International	11 October 2011
580	Somalia: Civilians pay the price of bomb attack in Mogadishu	Amnesty International	5 October 2011
581	Somali's al Shabaab kills 70 in Mogadishu bomb	Reuters	4 October 2011
582	Mogadishu blast kills dozens	UPI	4 October 2011

583	Massive al-Shabaab suicide bomb kills over 80 in Somali capital Mogadishu	Telegraph	4 October 2011
584	Car bomb kills 65 in Mogadishu	Telegraph	4 October 2011
585	UN depllores deadly bombing in Somali capital	United Nations News Centre	4 October 2011
586	Insurgents Kill 60 in Somali Capital Blast	VOA News	3 October 2011
587	Deadly Bombing in Mogadishu Marks Return of Al-Shabab	VOA News	3 October 2011
588	Street FIGHT: Conflict: October 2011	SomaliaReport	1 October 2011
589	Somalia's al Shabaab launches offensive in south	Reuters	30 September 2011
590	Somalia: Protection and Conflict Resolution Mechanisms	Landinfo	30 September 2011
591	UN Human Rights Council Eighteenth Session: Item 10 Technical assistance and capacity-building	Amnesty International	28 September 2011
592	Briefing: Somalia: A humanitarian and human rights catastrophe	Amnesty International	26 September 2011
593	UN declares sixth famine zone in Somalia	The Guardian	5 September 2011
594	Street FIGHT: Conflict: September 2011	SomaliaReport	1 September 2011
595	Report of the independent expert on the situation of human rights in Somalia, Shamsul Bari	United Nations General Assembly	29 August 2011
596	Somali militants behead boys in Mogadishu attacks	Reuters	26 August 2011
597	Al Shabaab rebels withdraw from Somali capital	The Telegraph	6 August 2011
598	Street FIGHT: Conflict: August 2011	SomaliaReport	1 August 2011
599	"You Don't Know Who to Blame": War Crimes in Somalia	Human Rights Watch	1 August 2011
600	10 Killed in Battle to Keep Somali Aid Flowing	VOA News	27 July 2011
601	Al-Shabaab arrests 30 women	UPI	26 July 2011
602	Street FIGHT: Conflict: July 2011	SomaliaReport	1 July 2011

603	Public Statement: African Union must prioritize the protection of civilians in conflict situations	Amnesty International	23 June 2011
604	Al Shabaab rebels claim killing of Somalia minister	Reuters	11 June 2011
605	Street FIGHT: Conflict: June 2011	SomaliaReport	1 June 2011
606	Fighting in Somali Capital Kills 17	VOA News	1 June 2011
607	Somalia: Country of Origin Information (COI) Report	Home Office UK Border Agency	27 May 2011
608	Amnesty International Annual Report: Somalia 2011	Amnesty International	13 May 2011
609	Militants, government clash in Somalia	UPI	12 May 2011
610	26 Killed in Fighting Between Somali Forces, Militants	VOA News	2 May 2011
611	Street FIGHT: Conflict: May 2011	SomaliaReport	1 May 2011
612	Country Reports on Human Rights Practices for 2010	United States Department of State	8 April 2011
613	Street FIGHT: Conflict: April 2011	SomaliaReport	1 April 2011
614	Artillery fire lands in Mogadishu market	UPI	24 March 2011
615	At least 10 dead in Somalia fighting	UPI	23 March 2011
616	Fighting hits parts of Mogadishu; 10 die	UPI	16 March 2011
617	The Rise of a Jihadi Movement in a Country at War	Marchal, Roland	1 March 2011
618	Street FIGHT: Conflict: March 2011	SomaliaReport	1 March 2011
619	Suicide car bomb near Mogadishu police camp in Somalia	Reuters	21 February 2011
620	Suicide car bomb in Somalia kills 10: police	Reuters	21 February 2011
621	Gunfire, suicide bombing rock Mogadishu	UPI	21 February 2011
622	Suicide Blast Kills 11 in Somali Capital	VOA News	20 February 2011
623	UNHCR condemns killings and displacement of civilians in Mogadishu	UNHCR	4 February 2011

624	Somalia Conflict takes Toll on Civilian Mental Health	VOA News	3 February 2011
625	Street FIGHT: Conflict: February 2011	SomaliaReport	1 February 2011
626	At Least 17 Killed in Mogadishu Violence	VOA News	31 January 2011
627	20 die in Mogadishu violence	UPI	31 January 2011
628	Somalia: ever higher numbers of war-wounded in Mogadishu hospitals	International Committee of the Red Cross	27 January 2011
629	World Report 2011 - Somalia	Human Rights Watch	24 January 2011
630	Somalia chooses new leader in presidential elections	The Guardian	10 September 2010
631	Harsh War, Harsh Peace: Abuses by al-Shabaab, the Transitional Federal Government, and AMISOM in Somalia	Human Rights Watch	1 April 2010
632	Counter-terrorism in Somalia: How external interference helped to produce militant Islamism	Hoehne, Markus Virgil	17 December 2009
633	Comment to The Independent	Mullen, Joseph	15 November 2009
634	Letter published in The Independent	Mullen, Joseph	20 September 2009
635	Annex C - Somali Clan Structure (extract from COI Report)	UK Border Agency	24 February 2009
636	Report on Profiling of Internally Displaced Persons, Mogadishu	Danish Refugee Council / UNHCR Branch Office Somalia	18 May 2007
637	Conflict in Somalia: Drivers and Dynamics	World Bank	1 January 2005
638	A Gap in their Hearts: the experience of separated Somalia Children	UNOCHA	6 January 2003
639	Villes en Guerre en Somalie: Mogadiscio et Hargeisa	Centre Francais sur la Population et le Developpement/INED	1 April 2000
640	Somalia: Genealogical table of Somali clans	UNHCR	2000

APPENDIX B

Schedule of Background Evidence (Respondent)

Item	Document	Source	Date
1	Mogadishu Food security & Nutrition Situation trends (July 2011 - April 2012)	FSNAU	Undated
2	Available Services at Selected Hospitals in Mogadishu	Somali Health Cluster	Undated
3	SAACID: Mogadishu Food Kitchens	SAACID	Retrieved 2014
4	DFID in Somalia	UKaid	Autumn 2013
5	Somalia: Somalia twin bombing toll rises to 11: police	Agence France-Presse	1 February 2014
6	Africa: Wildlife Poaching Thought to Bankroll International Terrorism	Inter Press Service	11 January 2014
7	IOM Aids Somalis Evacuated from South Sudan	IOM	10 January 2014
8	Somalia: Somalis From Diaspora Denounce Al-Shabaab Threats	Sabahi	9 January 2014
9	Somalia Evacuates 300 More of its Citizens From South Sudan	Sabahi	8 January 2014
10	Iraq Body Count: Recent Events	iraqbodycount.org	5 January 2014
11	Somalia: Saudi Arabia Deports More Than 200 Somalis to Mogadishu	Dalsan Radio	4 January 2014
12	Somalia: Somalia's Shebab boasts of twin hotel bombing killing 11	Agence France-Presse	2 January 2014
13	Somalia: PM Family Relocated for Security Purpose	Dalsan Radio	29 December 2013
14	Market Data Update - November 2013	FSNAU	20 December 2013
15	Somalia: IDP settlement planning and strategy presented in Mogadishu	UN Human Settlements Program	16 December 2013
16	Update 6: reduction of Somali IDP shelter concentrations in Mogadishu, Somalia (03/06/2013 - 24/11/13)	UNOSAT	10 December 2013
17	UNOSAT: updated assessment of IDP shelter concentrations in	UNOSAT	10 December 2013

	Mogadishu, Somalia (24/11/13)		
18	Saudi Deportations Gain Momentum	SSBSAQ	6 December 2013
19	UNSC S/2013/709	UNSC	2 December 2013
20	Somalia: Shooting in Somalia? Dial 888 for police	Agence France-Press	2 December 2013
21	Talking to the other side	HPG	December 2013
22	Somalia: How Safe is Going Home to Somalia?	IRIN	28 November 2013
23	Humanitarian Bulletin Somalia	UNOCHA	18 November 2013
24	Kenya: new procedures set for Somali refugees to return home voluntarily from Kenya	UNHCR	11 November 2013
25	Somalia: ten killed in Al Shabaab militants clash	Garowe Online	11 November 2013
26	Somalia: Somali Vendors Cash in on Free Rent at Mogadishu Market	Sabahi	1 November 2013
27	Somalia: Fact Sheet	UNHCR	November 2013
28	SAACID: Hawl-wadag district	SAACID	November 2013
29	Somalia: President welcomes 'Historic Visit Demonstrating the UN's Unwavering Support for Somalia', As UN opens new office in Somalia	Dalsan Radio	26 October 2013
30	Somalia: Lower Shabelle	Landinfo	18 October 2013
31	Amid dangers, Mogadishu residents relish ordinary pleasures	swissinfo.com	17 October 2013
32	Humanitarian Bulletin Somalia	UNOCHA	15 October 2013
33	Somalia: Diaspora Drawn Back to Mogadishu	Voice of America	14 October 2013
34	Somalia: First installations of Solar-Powered traffic Lights in Mogadishu Since 1990	Dalsan Radio	14 October 2013
35	Somalia: Braving the tide together with E-cash in Mogadishu	Oxfam	09 October 2013
36	Mogadishu roads get much needed upgrades	Sabahi	3 October 2013

37	Turkish aid in Somalia: the irresistible appeal of boots on the ground	guardian.com	30 September 2013
38	Somalia: Humanitarian Dashboard (as of 30 September 2013)	UNOCHA	30 September 2013
39	UNHCR: Guidance on the application of the internal flight or relocation alternative, particularly in respect of Mogadishu, Somalia	UNHCR	25 September 2013
40	Tri-Cluster: Mogadishu, Dharkenley X-Control-K13 09-17 September 2013	REACH	15 September 2013
41	Report of the Secretary General on Somalia S/2013/521	UNSC	3 September 2013
42	Story: Somalia/Mogadishu Roads (transcript)	AU/UN	1 September 2013
43	Operational Guidance Note: Somalia: v.24.0	Home Office	September 2013
44	Somalia: Mogadishu still not a safe place	Institute for Security Studies	28 August 2013
45	Iraq Body Count: Recent Events	iraqbodycount.org	26 August 2013
46	Somalia: Returning Diaspora Men Transform Mogadishu Wedding Industry	Sabahi	23 August 2013
47	Somalia: Country of Origin Information Report	Home Office	5 August 2013
48	Somalia: Extremist Violence Returns to Hit Mogadishu	Inter Press Service	3 August 2013
49	Civilian casualties up 23% in Afghan War	WN.com	1 August 2013
50	Somalia Redux?	CSIS	August 2013
51	Iraq Body Count: Recent Events	iraqbodycount.org	29 July 2013
52	Update 5: reduction of Somali IDP shelter concentrations in Mogadishu, Somalia (02/05/12 - 03/06/2013)	UNOSAT	19 July 2013
53	UN Monitoring Report S/2013/413	UNSC	12 July 2013
54	Somalia: Improved Security Brings Prosperity to Property Owners in Mogadishu	Sabahi	4 July 2013

55	ACLED: Conflict trends (No.16)	Armed Conflict Location & Event Dataset	July 2013
56	Somalia: Al Shabaab Admits Killing its Own Senior Officials	Garowe Online	30 June 2013
57	Somalia: Aweys Arrested in Mogadishu, Al- Shabaab Denies 'execution' of Leaders	Sabahi	30 June 2013
58	Somalia: Al-Shabaab Leader Twists Islamic Tenets to Enforce Obedience, Justify Killings	Sabahi	28 June 2013
59	Somalia: Al Shabaab Dispute turns violent, Factions emerge	Garowe Online	21 June 2013
60	Somalia: UN 'not deterred' by attack on its Mogadishu compound	AP	20 June 2013
61	Quarterly Brief	FSNAU	20 June 2013
62	Somalia: New Taxi Companies Offer Peace of Mind to Mogadishu Residents	Sabahi	14 June 2013
63	Report of the Chairperson of the Commission on the Situation in Somalia	AUC	14 June 2013
64	Somalia: Mogadishu residents welcome, vow to protect solar streetlights	Sabahi	3 June 2013
65	Structural Development, Afgooye Corridor, Somalia	UNOSAT	3 June 2013
66	Complex attack on UN Compound in Somalia	Atmospherics Unlimited	June 2013
67	Mogadishu District Assessments	Atmospherics Unlimited	June 2013
68	South Central - Functioning Health Facilities, April-June 2013	UNOCHA	June 2013
69	South Central - Nutrition Interventions and Implementing Agencies, April - June 2013	UNOCHA	June 2013
70	Mogadishu - Nutrition Interventions and Implementing Agencies, April - June 2013	UNOCHA	June 2013
71	UNSC S/2013/326		31 May 2013
72	GBVWG Mogadishu Meeting Minutes	Somalia Protection Cluster	27 May 2013

73	Somalia: Amisom Spokesman Refutes Casualty Numbers, Outlines long-term plans	Sabahi	22 May 2013
74	Somalia: Somali Govt Begins Removing Illegal Roadblocks Outside Mogadishu	Sabahi	21 May 2013
75	Somalia Taking Steps to Re-Open Embassies	Sabahi	14 May 2013
76	Somalia: Mogadishu District Provides Free Education for Adult Women	Sabahi	13 May 2013
77	Streetlights bring normality to Mogadishu	BBC News	11 May 2013
78	Somalia: From Fear to Hope - Finally Getting it Right in Somalia	The New Times	9 May 2013
79	Bullets to Babies, Somalia's war surgeons learn skills of peace	Agence France- Presse	2 May 2013
80	Somalia: Security and protection in Mogadishu and South-Central Somalia (April-May 2013)	Landinfo/DIS	May 2013
81	Mogadishu IDPs by District	UNHCR	May 2013
82	Surviving the odds: education, commerce and development among displaced Somalis (Issue 43 (extract) May 2013)	Forced Migration Review	May 2013
83	Somalia: Al-Amriki and Foreign Fighters in Showdown With Al-Shabaab Leader	Sabahi	30 April 2013
84	Somalia Hospitals see Fewer War Victims	Voice of America	29 April 2013
85	Somalia: Foreign Secretary opens new British Embassy in Mogadishu	horseedmedia	26 April 2013
86	Somalia: Al-Shabaab in Crosshairs of Somalia's Anti-Terrorism Law	Sabahi	26 April 2013
87	Somalia: Shirdon Praises Elite Police Unit for Mogadishu	Sabahi	26 April 2013
88	Mail services could soon resume in Somalia	Universal Postal Union	26 April 2013
89	Somalia: Women from Somali Diaspora Return Home to Start Enterprises	Sabahi	22 April 2013
90	Somalia: Somali Women Cashing in On Business	Inter Press Service	22 April 2013

91	Somali: 14,353 Refugees Return Home Since January: UNHCR	Somalilandsun	20 April 2013
92	Somalia: Special Forces to Take Over Mogadishu's Security	Garowe Online	20 April 2013
93	Somalia: Mogadishu Launches Neighbourhood Watches	Sabahi	19 April 2013
94	Counter-terrorism Unit to hit Mogadishu Streets	Sabahi	18 April 2013
95	Somalia: PM says 'Foreign Involvement' in Mogadishu Courthouse Massacre	Garowe Online	16 April 2013
96	Somalia: Mogadishu Attack an 'Act of Desperation' for Al-Shabaab	Sabahi	15 April 2013
97	Somalia: "I found Signs of Hope in Somalia", Says Bishop Bertin	Catholic Information Service for Africa	12 April 2013
98	Mogadishu Music Festival	Somalisunrise.org	10 April 2013
99	Somalia: Immigration Officials Order All Foreigners in the Country to Register Themselves	Shabelle Media Network	10 April 2013
100	Somalia: Govt Troops Conduct Operations in Darkeenley, Mogadishu	Shabelle Media Network	8 April 2013
101	Somalia: Somali Officials Vow to Improve Human Rights Following Rape report	Sabahi	3 April 2013
102	Somalia: Amisom Opens the Last Section of the Mogadishu to Baidoa Road	Government of Ethiopia	2 April 2013
103	Somalia: Humanitarian Snapshot (April 2013)	UNCHA	April 2013
104	Somalia: Relative Peace Belies Rocky Road Ahead	IRIN	26 March 2013
105	Allafrica: Somalia: Intelligence Official Targeted in Suicide Car Bomb Attack	Garowe Online	18 March 2013
106	Somalia frees journalist in 'rape case'	Sabahi	17 March 2013
107	Allafrica: Somalia: Somalis seek government jobs without fear of Al-Shabaab	Sabahi	4 March 2013
108	Donors step up ties with Somalia; praise rebuilding efforts	Reuters	1 March 2013

109	Somalia: Mogadishu-Baidoa highway now safe, Shirdon says	Sabahi	28 February 2013
110	UNSC S/2013/69		31 January 2013
111	Gatekeepers in Mogadishu	The Somalis Cash Consortium	31 January 2013
112	Somalia beginning 'profound transformation', UN official says during visit	UN News Service	30 January 2013
113	Suicide blast by offices of Somalia president and PM	BBC News	29 January 2013
114	Somalia: Somali forces tighten security in Mogadishu	Sabahi	22 January 2013
115	Somalia: return of Somali refugees "a positive indicator": UN envoy	UN Radio	7 January 2013
116	Somalia: Mogadishu and government-controlled regions secure, AMISOM spokesman says	Sabahi	6 January 2013
117	Somalia Emergency Weekly health Update	WHO	January 2013
118	Somalia: Security and human rights issues in S-C Somalia, including Mogadishu (October 2012)	Danish/Norwegian Fact-Finding Mission to Nairobi and Mogadishu	January 2013
119	Somalia: Humanitarian snapshot - Jan 2013	UNOCHA	January 2013
120	Mogadishu - Health Facilities and Implementing Partners - January 2013	UNOCHA	January 2013
121	Mogadishu - Health Facilities and Implementing Partners	Somali Health Cluster	January 2013
122	Keeping the Lifeline Open	Oxfam	2013
123	Somalia Emergency Health Update 13/05/13 - 02/06/13	WHO	2013
124	Somalia Situation Report August - October 2013	WHO	2013
125	Hostages of the Gatekeepers	HRW	2013
126	South Central Dashboard 01/01/13 - 28/03/13	UNHCR	2013
127	Mogadishu residents welcome removal of illegal roadblocks	Sabahi	5 December 2012

128	Humanitarian Bulletin (Somalia)	UNOCHA	December 2012
129	SAACID: Community-Based Therapeutic Care [CTC] Mogadishu	SAACID	December 2012
130	PMT Quarterly Dashboard (October 2011 - September 2012)	UNHCR	30 October 2012
131	Allafrica: Somalia: govt arrests over 300 suspected Al-Shebab	RFI	13 October 2012
132	Allafrica: Somalia has made a 'quantum leap' in its progress but security threats remain, UN envoy warns	UN News Service	4 October 2012
133	The Shelter Bulletin - Emergency Shelter/NFI Cluster, Somalia (Issue 3)	UNHCR	October 2012
134	Allafrica: Somalia: Hizbul Islam group withdraws allegiance, says 'Al Shabaab is weakened'	Garowe Online	25 September 2012
135	Somalia: 200 former Al Shabaab agents Surrender to Allied Forces	Garowe Online	23 September 2012
136	Somalia: Suicide bomb attack targets popular Mogadishu restaurant	Globalpost	20 September 2012
137	Tri-cluster (Zona K mapping)	REACH	19 September 2012
138	Kismayo Population Movements & Protection Monitoring (01/09/12 - 26/09/12)	UNHCR	September 2012
139	Somalia successfully concludes first elections in over 20 years	Sabahi	29 August 2012
140	Tri-Cluster (Camp 77 mapping)	REACH	22 August 2012
141	Population Movement Tracking Monthly Report (August 2012)	UNHCR	August 2012
142	Saferworld - Mogadishu Rising		August 2012
143	One Million return to Mogadishu	IRIN	18 July 2012
144	Population Movement Tracking Monthly Report (July 2012)	UNHCR	July 2012
145	Violence waning, Mogadishu experiences building boom	UPI	23 June 2012

146	Mogadishu boom turns famine victims into urban labourers	Reuters	20 June 2012
147	Small businesses a sign improving economy, security in Mogadishu	Sabahi	15 June 2012
148	Can Somalia's cheap peacekeeping defeat al-Shabab?	BBC News	11 June 2012
149	ICRC: Mogadishu IDP survey - June 2012	ICRC	June 2012
150	Population Movement Tracking Monthly Report (June 2012)	UNHCR	June 2012
151	IDP settlement changes as of 2 April 2012: Afgoye Corridor, Somalia	UNOSAT	30 May 2012
152	Update 4: continued expansion of Somali IDP shelter concentrations in Mogadishu, Somalia (18/10/11 - 02/05/12)	UNOSAT	22 May 2012
153	Somalia: Mogadishu on the Up	IRIN	18 May 2012
154	UNSC S/2012/283		1 May 2012
155	Population Movement Tracking Monthly Report (May 2012)	UNHCR	May 2012
156	Somalia: AU troops in Somalia report gains against rebels	Agence France-Press	20 April 2012
157	A taste of hope in Somalia's battered capital	New York Times	3 April 2012
158	Security and human rights issues in South-Central Somalia, including Mogadishu (30/01/12 - 19/02/12)	DIS	April 2012
159	Protection Cluster Update - weekly report	IASC	10 February 2012
160	UN says Somalia famine is over	al jazeera	4 February 2012
161	UNSC S/2012/74		31 January 2012
162	UN GASC A/66/657 - S/2012/33		13 January 2012
163	ICRC Annual report (excerpt) 2012	ICRC	2012
164	Somalia Common Humanitarian Fund - Annual report 2012	UNOCHA	2012
165	SPC Protection Cluster Annual Report - Jan-Dec 2012	UNHCR	2012

166	Mogadishu EFP II Post-Programme Participant Tracer Survey	SAACID	November 2011
167	Protection Cluster Update	IASC Somalia	9 September 2011
168	Somalia: Security and conflict in the south	Landinfo	29 August 2011
169	Terrorism Monitor Volume IX, Issue 33	The Jamestown Foundation	19 August 2011
170	Safety and Security: Mogadishu	Observatory of Conflict and Violence Prevention (OCVP)	August 2011
171	AU force closing in on Mogadishu's prized market in tricky urban warfare	Daily Nation	22 June 2011
172	Somalia Helath Cluster Bulletin #47		1 May 2011
173	Terrorism Monitor Volume IX, Issue 15	The Jamestown Foundation	14 April 2011
174	UNPOS Quarterly, March 2011, Issue No.1	UNPOS	March 2011
175	ICRC Annual Report (excerpt) 2011	ICRC	2011
176	Mogadishu EFP II Socio-Economic Survey	SAACID	2011
177	WHO's support to hospital care for conflict-related communities in Somalia in 2011	WHO	November 2010
178	Terrorism Monitor Volume VIII, Issue 38	The Jamestown Foundation	21 October 2010
179	Somalia: Report of Fact Finding Mission to Nairobi (8-15 September 2010)	UKBA	8 October 2010
180	Mogadishu Periphery - IDP Population Assessment	UNOCHA	September 2010
181	Policy Briefing - Somalia's Divided Islamists	International Crisis Group	18 May 2010
182	ORB/BBC: The View From Mogadishu: Opinion Poll Results April 2010	Opinion Research Business (ORB)	April 2010
183	Whose Peace is it anyway? Connecting Somali and international peacemaking (issue 21)	Accord	2010

184	ICRC Annual Report (excerpt) 2010	ICRC	2010
185	Somalia: Reer Hamar	Landinfo	17 December 2009
186	Clans in Somalia - Report on a Lecture by Joakim Gundel, COI Workshop Vienna, 15 May 2009 (Revised Edition)	Austrian Red Cross and Austrian Centre for Country of Origin & Asylum Research and Documentation (ACCORD)	December 2009
187	ICRC Annual Report (excerpt) 2009	ICRC	2009
188	Somalia - Afgooye Corridor - IDP Settlements	UNOCHR	30 April 2008
189	Report on Key Local Leader Informants For Rapid Assessment of IDPs in Mogadishu and Afgoye District, Lower Shabelle	SAACID	June 2007
190	U.N. Urges Attention to Somalia	Associated Press	22 May 2007
191	Report on Profiling of Internally Displaced Persons (Mogadishu) Final Draft	Danish Refugee Council and UNHCR	18 May 2007
192	Dialogue for Peace Somali Programme - Pioneers of Peace Advancing the Involvement of Women in Peace-building in South-Central Somalia	Centre for Research and Dialogue - Somalia	January 2007
193	SAACID: results of the "Rapid Population Assessment of IDP settlements in Mogadishu"	SAACID	2007
194	Stateless Justice in Somalia: formal and Informal Rule of Law Initiatives	Dr Andre Le Sage, Centre for Humanitarian Dialogue	July 2005
195	Benadir-Watch letter to IGAD		26 August 2004

APPENDIX C

Summary of written expert evidence

MOJ, MAA AND SSM v SECRETARY OF STATE

Expert Written Evidence

There were three expert witnesses who prepared reports on the security position in South-Central Somalia, specifically Mogadishu, and its impact on returnees to that area. Each expert prepared an initial or primary report that was supplemented with written responses to questions posed by the Secretary of State.

The reports issued were as follows:

Appellant	Expert	Date of initial report	Date of supplemental responses
MOJ	Dr Mullen	18 Nov 2013	20 Dec 2013 & 19 Jan 2014
	Dr Hoehne	18 Nov 2013	23 Dec 2013 & 23 Jan 2014
	Ms Harper	3 Dec 2013	6 Jan 2014 & 21 Jan 2014
MAA	Ms Harper	23 Jan 2014	
	Dr Mullen		26 Jan 2014
SSM	Dr Hoehne	11 Aug 2013 (updated on 11 Oct 2013)	
	Ms Harper	18 Jan 2014	29 Jan 2014

Summary of reports

Dr Mullen

In his report for the first appellant, Dr Mullen wrote the following:

Al-Shabaab

The Al-Shabaab movement had deep roots in Mogadishu as it was the offshoot of the Union of Islamic Courts which confronted the warlords that had plagued and undermined security in Mogadishu since 1991. Since the fall of the government in 1991, the country had fragmented into a mosaic of clan and sub-clan based conflicts which led to famine, internal displacement of populations (IDP), and a collapse of formal judicial structures, rape and looting. Mogadishu became the crucible of conflict between two Hawiye sub-clans. With the splintering off of a radical youth wing known as Al-Shabaab, a phenomenon of jihadist armed struggle was created, as it was a major departure from previous Islamic movements

in Somalia. Its fighting force was estimated originally at 7,500 men, but more recently 5,000, with as many as 1,000 being foreign nationals. They had become engaged in a variety of bombings, suicide killings and murders and had been denounced for such by the UN Security Council. As of July 2011, Al-Shabaab controlled eight of the sixteen districts of the capital with a strategy to intimidate people and infiltrate the city.

With the withdrawal of Al-Shabaab from Mogadishu in August 2011, the security situation had unquestionably improved but in a rather eclectic manner. There had been substantive changes of governance for the better underpinning the improved security situation. However, reports suggested that the situation of security was temporary and fragile, falling short of the standard of durability required. It was further reported that towards the end of 2013, the overall security situation had actually deteriorated due to significantly increased clan tension, which was partly due to the fact that the government was slow to fill the space vacated by Al-Shabaab in and around Mogadishu.

Mogadishu Clans

The major clan controlling Mogadishu was the Hawiye and its two main sub-clans: the Abgal and the Habr Gedir. The Ayr and the Murusade were also influential actors. The sixteen districts of Mogadishu were shaped by their clan configurations which reflected itself in the choice of District Commissioners and their militia support. A corollary of clan control was that they had a shared interest in maintaining a degree of peace as the peace dividend was prosperity and an enabling economic environment. The approach was inclusive and offered opportunities to the select few with services to offer or resources to invest, but excluded the vulnerable minority clan member. Clanship may be partly replaced by wealth but at the individual level, clanship was an important survival attribute or conversely, in the case of minority clans, could be a negative and require resources to rectify. A Gadabursi which was a majority clan but numerically minor in Mogadishu, would require cross-clan alliances and the resources to fund them to survive. Therefore, low income migrants, or failed asylum seekers, were unlikely to be able to achieve the level of security acceptable under the ECHR.

Recruitment

Al-Shabaab was known for forcibly recruiting young males into jihadi activities. Children were especially recruited to Al-Shabaab as fighters. There was considerable evidence to indicate that the recruitment of child soldiers continued in and around Mogadishu.

Population Movement

There has always been a degree of mobility between the sixteen districts of Mogadishu depending upon security, clan cohesion and food security. The movement of populations peaked in 2011 but between 2011 and 2013 there had been a 45-50% decline in the level of movements, year on year. This greater stabilisation of population could have been indicative of a greater degree of normalisation of residential patterns within the city. The outward migration from Mogadishu to other districts also showed a decline of about 70% per year.

IDPs

The level of IDPs on the city perimeter and the violence in the IDP camps remained a major factor of risk for returning failed asylum seekers and a *fortiori* to vulnerable groups. The driving force behind the population movement into IDP camps had been insecurity. IDPs have been living in overcrowded and unsafe settlements and remain extremely vulnerable to various forms of human rights abuses, including widespread sexual violence.

Protection

The ability to access protection in Mogadishu would be contingent on three significant factors: financial wealth, social status and clan protection. Returning migrant citizens without a minimal combination of these attributes would mean they would be unlikely to gain access to livelihoods or safety and were likely to end up in an IDP camp.

The Security Situation

There were clearly differing perceptions of the security situation in the city of Mogadishu and it may also have been viewed differently by different actors in the light of their institutional perspectives. There was a certain coalition of interests between the Government, who desperately sought international funding, and the key international donors. The geopolitical aspect of security in Somalia was locked into an international perception of internal security in terms of it containing a major jihadist movement with ramifications to the stability of neighbouring countries. Dr Mullen highlighted that according to a UN monitoring report, Al-Shabaab had built up a powerful secret service under the direct command of the insurgent's chief and even if international efforts to dismantle the group's fighting forces succeeded, there was still a high chance that the cells under his leadership would continue to operate. In many frontline zones, territory patrolled during the day by AMISOM, was controlled at night by Al-Shabaab.

Many aid agencies had down-scaled their operations or stopped work completely due to the deteriorating security situation. Dr Mullen stated that the UNHCR were cautious about the situation, commenting that although there had been some encouraging developments in Somalia, it did not mean that large numbers of Somali refugees could all go home as it would take time before conditions in general, regarding security as well as law and order, were restored throughout Somalia and local administrations were rebuilt. Overall there appeared to be a reluctance to sanction a planned return of refugees because of the unacceptable level of risk in Mogadishu and South-Central Somalia.

The environment of Mogadishu was circumscribed by credible and real security threats as identified by national and international agencies, both from a military perspective and a human rights dimension. There was an under-estimation of the influence of Al-Shabaab and the dynamics of local politics at the level of localities/districts within Mogadishu. The evidence pointed to the overt and covert presence of Al-Shabaab in both Mogadishu and South-Central Somalia. There appeared to be a marked correlation between Al-Shabaab and

individualised targeted assassinations of government officials, journalists and peacemakers. Targeted assassinations affected the morale of Somalis every day returning to the city/other areas of South-Central, in creating a climate of fear, particularly against a background of regular bombings and Improvised Explosive Devices (IEDs). The territories held by Al-Shabaab were under a harsh extremist Sharia regime where amputations, stoning, summary executions and exhumations of religious dissenters were commonplace. The consensus of opinion appeared to Dr Mullen to be that the current security situation could not support any large scale returns to urban areas such as Mogadishu.

The significance of risk in an Al-Shabaab controlled area had not materially changed since AMM, but the geographical expanse of that risk has somewhat reduced due to the significant swathes of territory being liberated from Al-Shabaab. However it was still thought that 75% of the countryside remained under the jurisdiction of Al-Shabaab. Nevertheless, the change in tactics and the increased use of Iraqi-type asymmetrical warfare had shifted the boundaries of risk from being geographically-bound to being more universal, irrespective of territorial control. In changing their tactic to operate as a clandestine underground movement, driven by a fanatical religious ideology and fully committed to an Islamic Caliphate state, they presented a specific threat to a particular profile of person, such as a westernised Somali citizen. Although there had been an increased international commitment to Somalia with a more credible national government in place; Mogadishu being administered by the Somali Federal Government in its totality; the national security forces being better trained and expanded in numbers; and, Al-Shabaab having been pushed to the margins and acting as an underground force rather than a mainstream administrative authority with revenue raising and security powers, Al-Shabaab continued to constitute a credible risk.

There were further threats to good governance and human rights in Somalia: there was the threat of return to neighbouring warlords, clan-based conflict, protective militias and their corollary, the alienation of minority clans who did not have militia protection and general criminal gangs who thrived in a context of weak domestic society.

Human Rights Situation

It would be disingenuous to argue that the Human Rights situation in Somalia had not improved when the Prime Minister had committed Somalia to an independent Task Force on Human Rights which presented a possibility of positive implications. But it remained to be seen when the legislative reforms would be introduced and what their real impact would be on events on the ground. A new resolution had been adopted at the United Nations guaranteeing a stronger partnership in subsisting good governance and the enforcement of human rights legislation directly correlating to the level of good governance achievable, and resulting in the protection of vulnerable sections of the population being ensured, instead of being victims of human rights abuses by powerful figures, the militias and security forces.

Civilian Casualties

Although there had been improvements in security, Dr Mullen noted that Amnesty did not consider them adequate enough for governments to consider forcibly returning Somali nationals and suggested that in Mogadishu, the conflict continued to take place, though at a lower level, with civilians persistently facing insecurity and risks, falling victim to grave human rights abuses. Dr Mullen included data of conflict events and reported fatalities between 2009 and 2013, noting that between 2010 and 2011, it was reported that more than 14,700 war-wounded civilians were admitted to hospitals in Mogadishu. Furthermore, there were 1.1 million IDPs on Somali territory and in many respects they were the weathervane of the security status of an area.

Conclusion

It was therefore the opinion of Dr Mullen that there were cogent evidential facts to support the proposition that Mogadishu remained unsafe for certain vulnerable groups of returning asylum seekers. His recommendation was to adopt a wait-and-see approach that extended the *AMM* provisions for a further twelve months whilst a new set of differential legal entitlements were refined as the security situation in South-Central Somalia clarified.

Response Report

In his response reports to the questions raised by the Secretary of State for further information, Dr Mullen added the following points:

- In support of the definition of civilians in *AMM*, as 'all genuine non-combatants at the time when the serious threat of real harm may have materialised', Dr Mullen simply identified civilians as non-military personnel.
- Al-Shabaab were identified as a fully functioning military and administrative force in the territory south of Merca in the Lower Shabelle to Jibib in Juba, South-Central Somalia.
- The ability of Al-Shabaab to kill indiscriminately was linked to two tactics widely used in Mogadishu: one being asymmetrical warfare based on IEDs, mine deployment and assassination of known individuals, such as those associated with the government, defectors from Al-Shabaab ranks, aid agency personnel and journalists; the second being the exertion of moral and religious pressure on individuals at the level of the mosque and of the street.
- The tactic of Al-Shabaab was not to engage AMISOM directly in head-on battle confrontations but rather to rely on suicide bombings and guerrilla tactics. When Al-Shabaab occupied large areas of Mogadishu, the tactic was to attack AMISOM from civilian areas whose populations were used as human shields. AMISOM often retaliated with blanket fire and mortars, which often resulted in high levels of civilian casualties. Under the new dispensation of a SNA/AMISOM-controlled Mogadishu, Al-Shabaab had upped its attacking momentum on government and affiliated personnel, with substantial collateral damage among civilians.

- Dr Mullen stated that the UNHCR found it difficult to state whether or not civilian casualties had increased or decreased since February 2014, nevertheless, the increased involvement of individuals in disputes may have also meant higher civilian casualty figures.

Dr Hoehne

In his report for the first appellant, Dr Hoehne wrote the following:

Al-Shabaab

After the collapse of its government in January 1991, Somalia was in a state of protracted (civil) war. The main actors of violence were clan militias, Islamist militias and foreign intervention forces. In 2007, Al-Shabaab, an Islamist force with ties to Al Qaida, emerged as an important political and military actor. In Al-Shabaab's battle for power with various transitional governments of Somalia and the governments' foreign allies, tens of thousand of people (mostly civilians) had been killed and hundreds of thousands had to flee their homes. Until early 2011 Al-Shabaab was in control of much of South-Central Somalia including many parts of Mogadishu. In August 2011, Al-Shabaab officially withdrew from the capital Mogadishu, but retained a strong presence around the city and in much of South-Central Somalia. From 2009 to mid 2011, Al-Shabaab had been the de facto government in most parts of South-Central Somalia and had physically controlled areas including 90 per cent of the capital city. But from mid 2012 onward, a new trend regarding the security situation in Southern Somalia emerged: on the one hand, Al-Shabaab was severely weakened as a military power in Somalia with the security in Mogadishu being strengthened; but on the other hand, they had retained some considerable military capabilities in several regions.

In June and July 2013, Al-Shabaab stepped up its operations considerably and conducted dozens of smaller and several big attacks on Somali government troops, AMISOM forces and institutions of governments supporting the government in Mogadishu that resulted in dozens of people, including security forces and civilians, being killed. Heavy fighting erupted in Southern Somalia and in other regions of South-Central Somalia, Al-Shabab retained the capacity to operate, conduct terror attacks and engage its enemy forces in battle.

Al-Shabaab, according to Dr Hoehne, became smaller but even more radical over the course of 2013. The evidence suggested that Al-Shabaab recently reorganised itself as a smaller movement. Scores of civilians had been killed between September 2012 and January 2013 by gunmen, through indiscriminate use of force by armed groups or in bomb attacks. The UN Security General mentioned that 'civilian casualties and extrajudicial killings were frequently reported in conflict areas, with civilians caught in the crossfire between the parties.

The preliminary conclusion by Dr Hoehne was that Al-Shabaab in South-Central Somalia was not a spent-force. It had been seriously weakened militarily and lost direct control over main resources bases in Mogadishu and Kismayo. However, it had turned into an effective

guerrilla movement operating mostly through hit-and-run attacks. In some areas the movement was still able to engage in more conventional clashes with its enemies. It was reported that despite its setbacks, Al-Shabaab still commanded territory and fighters, remaining a serious threat capable of destabilizing Somalia and the great Horn of Africa region, and potentially inspiring attacks globally.

The Security Situation

There was a sharp decline in security related incidents between the end of 2012 and early 2013. However, the fact that hand grenade attacks, attacks with IEDs and assassinations/assassination attempts were on the increase again since April/May 2013 showed that Al-Shabaab retained a clandestine presence in Mogadishu and had reorganised its operations in the city. News reports indicated that government and army officials in Mogadishu were the main targets of assassinations and bomb attacks, even occasional shoot-outs. But since around May 2013, many civilians were again falling victim to Al-Shabaab attacks. The security situation had deteriorated due to the lack of capacity, funds and expertise of the Somali government. Al-Shabaab obviously reorganised itself into a smaller, more radical, more flexible guerrilla force that employed tactics of asymmetrical warfare quite successfully. It stepped up operations in Mogadishu and even proved its capacity to conduct complex terror attacks abroad in Kenya in September 2013.

Civilian Casualties

The Secretary General of the United Nations reported that despite some improvements in Mogadishu, Al-Shabaab continued to launch asymmetrical attacks on soft targets using terrorist tactics that often resulted in civilian casualties. The intensification of Al-Shabaab attacks led to many civilian casualties in Mogadishu in recent months. Al-Shabaab even published a list of its operations. In October 2013, Al-Shabaab had a considerable capacity to operate in Mogadishu and to mount attacks on government and military officials, but also on civilians who fell victim to suicide and other bomb attacks, were on the increase. Al-Shabaab still posed a very serious threat to people in Mogadishu and that was corroborated by a statement of the mayor of Mogadishu. Besides Al-Shabaab, undisciplined government soldiers were proving to be a security risk for ordinary civilians.

Conclusion

Dr Hoehne's view was that the battle against Al-Shabaab was far from over and Mogadishu was not a safe place where ordinary Somalis would be able to live without a considerable threat to their physical integrity and psychological well-being. He considered an Article 15(c) risk to exist as in AMM. Although there were up to 17,000 AMISOM troops in Southern Somalia that provided some services to ordinary civilians, it was not a force that would provide protection to individual civilians, apart from its general services such as guarding important public spaces. Therefore, ordinary civilians were extremely unlikely to receive any individual protection from AMISOM.

Supplementary Points

In his reports for the third appellant, Dr Hoehne added more substance to the security situation in South-Central Somalia and the impact upon returnees as follows:

- In early 2013, the situation had been gradually changing for the better but many people still faced severe challenges for survival. Insecurity was still a major issue in Mogadishu and other parts of South Somalia. The new government was struggling to contain lawlessness and establish security in Mogadishu. It was still in no position to prevent Al-Shabaab from operating or in providing a reasonable level of law and order. The security situation declined in 2013, suggesting that Al-Shabaab was not defeated. The evidence suggested Al-Shabaab had reorganised itself as a smaller movement under radical leadership. Even if Al-Shabaab were pushed back, the structural problems of Somalia, including lack of regard for human rights, a culture of violence, massive conflicts even within the 'government's camp', corruption and impunity, endemic poverty, and the vulnerability of women and girls to endemic sexual violence, would remain.
- According to the September 2013 report of the UN Secretary General on the situation in Somalia, the intensification of Al-Shabaab attacks led to many civilian casualties in Mogadishu, with the security situation remaining volatile.
- As of mid-October 2013, insecurity was still a major issue in Mogadishu and other parts of southern Somalia. The Somali government had not managed to increase security permanently or establish itself firmly in the country. It still depended on massive military backing by foreign forces and it could not prevent frequent and devastating Al-Shabaab attacks.
- The return of a Somali, who had no strong or active family network or protection, provided great risks for that person's physical integrity and survival.

Ms Harper

In her report for the first appellant, Ms Harper wrote the following:

Al-Shabaab

Al-Shabaab had changed tactics in Mogadishu to asymmetric, insurgent style warfare. It carried out regular attacks using suicide bombers, car bombs, grenades and IEDs. The scale, sophistication and regularity of these attacks had increased in Mogadishu in 2013.

Al-Shabaab had a particularly strong presence in outlying districts of Mogadishu with its fighters emerging at night and controlling some of the streets. As well as conducting regular acts of violence, Al-Shabaab continued other activities in Mogadishu: reports mentioning general intimidation and abuse, harassment, forced recruitment and infiltration in the capital's neighbourhoods and districts. It was not only Al-Shabaab conducting acts of violence and abuse against civilians, members of the Somali security forces, and to a lesser

extent AMISOM troops, were also responsible. Somalis in Mogadishu were not able to depend on the police or judicial system for protection. The judiciary was corrupt and virtually non-existent and there were frequent reports of abuse of civilians by the police. In some districts, most civilian males carried weapons and were prepared to use them.

The Security Situation

The security situation in Mogadishu had changed significantly since Al-Shabaab's abrupt withdrawal from the city in August 2011. There were no longer running battles involving heavy weaponry between Al-Shabaab fighters and government troops. The city remained dangerous, with regular acts of violence carried out by Al-Shabaab, the Somali security services and other armed groups and individuals. Civilians were often caught up in the violence. The violence had become more unpredictable because a conventional war was no longer being fought. Mogadishu was no longer a city of frontlines; attacks could happen anywhere at anytime.

Al-Shabaab maintained a presence and ability to strike in most of the towns in South-Central Somalia from which it had officially withdrawn. Many regions were also politically and militarily unstable with inter-clan violence on the rise. The changes in the security in South-Central Somalia since August 2011, and their durability, were heavily dependent on the continued presence of AMISOM troops. The Somali security forces were unable to take charge, with clashes sometimes erupting between different clan groups within the Somali army and increased tension over land leading to a resurgence of clan violence.

Al-Shabaab was likely to maintain a presence in Mogadishu and there was no indication that the number and scale of attacks would diminish. Discord at the centre of power of the Somali administration could further lead to a diminishing focus on security. There were also significant tensions between the federal government and the Somali regional authorities.

Civilian Casualties

Civilians often bore the brunt of the violence, as many of the attacks occurred in public places, including restaurants, hotels, roads and roundabouts. Civilian casualties had also been high in attacks on government and foreign targets, or on specific individuals, as Al-Shabaab were carrying out more complex assaults with more powerful explosives. Previously, they would conduct targeted assassinations or plant roadside bombs intended for vehicles carrying government officials, members of the Somali security forces or African Union (AMISOM) troops. However, they were now ramming cars packed with explosives into public buildings, government offices and the premises of international organisations. Armed men, often wearing suicide vests, then stormed the buildings, shooting and throwing grenades before blowing themselves up. Many attacks by Al-Shabaab went unreported, with only the more spectacular attacks receiving international media attention.

Ongoing violence and instability meant it was impossible to obtain accurate casualty figures for Mogadishu or elsewhere in South-Central Somalia. Ms referred to some figures for weapons related casualties that were available from the World Health Organisation: 5279 in

2010; 9689 in 2011; 6687 in 2012; and 3889 until October 2013. There were discrepancies in casualty figures from different sources but they did illustrate the unpredictability of the violence in the city and the fluctuations in its intensity.

Relocation

Relocating removed or deported Somalis from Mogadishu to other parts of South-Central Somalia would not be a viable option as sending people to areas within which they had no family or clan connection would leave them isolated and vulnerable to persecution or attack. People also often had to travel through areas controlled by many different and sometimes conflicting armed groups. The situation was by no means safe, especially for those without significant resources, both in terms of financial means and in terms of having wealthy and powerful relatives and other contacts. Further, those persons returning from a Western country would face possible violence from Al-Shabaab and be vulnerable to recruitment. They would also face hostility from other armed groups.

Conclusion

Somalia remained a dangerous and unpredictable place, with frequent suicide, grenade and other attacks, as well as more conventional warfare between armed groups.

Supplementary Points

In her reports for the second and third appellants, Ms Harper added more substance to the security situation in South-Central Somalia and the impact upon returnees as follows:

- A person who had been absent for several years would probably be more at risk than someone who had been away for a shorter period because of the dramatic ways in which Mogadishu had changed, both in terms of physical geography and in terms of security, clan dynamics, politics and society. A person who had been away for many years would find it harder to navigate and negotiate his way around the dangerous and unpredictable city than would someone who had left more recently.
- Civilians in Mogadishu were at risk of serious harm from Al-Shabaab's regular attacks. Civilians were often killed and injured during regular acts of violence (whether carried out by Al-Shabaab, the security forces or other armed groups) because they were directly targeted or just because they were in the wrong place at the wrong time. Nobody in Mogadishu can fully protect themselves from such attacks. Civilians were at risk during those incidents because they often occurred in public places. Many civilian males carried weapons mainly to protect them from the Somali police and army, who they said could not be trusted and were responsible for much of the violence in Mogadishu. Female civilians faced the additional risk of rape and other forms of sexual violence, and forced marriage of under-age girls was a growing problem in the city.

- There were more than 360,000 IDPs living in makeshift camps in the city. Conditions in most camps were desperate with inadequate, flimsy shelters, limited food, water and sanitation and poor security.
- Members of minority clans were at an increased risk of serious harm in Mogadishu because they suffered prejudice, and lacked any residual degree of protection members of majority clans might have. Although an individual's clan membership was of relevance in Mogadishu, family connections were more important in terms of providing protection, shelter and other basic necessities. However, families were less likely to help with protection and livelihood if a person had brought shame onto that family.

APPENDIX D

Error of Law decisions

1. MOJ
2. MAA
3. SSM



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/00210/2013

THE IMMIGRATION ACTS

Heard at Field House
On 5 July 2013

Determination Promulgated

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Before

UPPER TRIBUNAL JUDGE STOREY

Between

MOJ

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr H Cheng, Legal Representative, instructed by Duncan Lewis & Co Solicitors (Harrow Office)

For the Respondent: Mr T Wilding, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a national of Somalia, has been granted permission to appeal against the determination by the First-tier Tribunal (FtT), Judge Walker and Mr D R Brewster, sent on 23 April 2013 dismissing his appeal on all grounds against the decision of the

respondent to make a deportation order under section 32(5) of the UK Borders Act 2007 and to further certify that his case fell within section 72 of the Nationality, Immigration and Asylum Act 2002 because he had been convicted by a final judgment of a particularly serious crime and constituted a danger to the community of the United Kingdom.

2. The grounds do not seek to challenge the panel's findings that section 72(2) of the 2007 Act applied against the appellant (the appellant had failed to rebut the presumption that the crime he was convicted of was a particularly serious one or the presumption that his continued presence in the UK constituted a danger to the community). The only ground of challenge to the FtT decision is that it failed to give sufficient reasons for its conclusions, contrary to **R (Iran) [2005] EWCA Civ 982** in particular because it failed to recognise that there was an "applicable country guidance case... binding on the First-tier Tribunal". As amplified in the skeleton argument of the appellant: "Country guidance cases are binding on the Tribunal, and a departure can only come about if all the evidence is weighted and properly considered, which, in this case, looking at [42(9)] cannot be said to have been the case. In light of the authorities cited above, and the departure from a binding authority, the FtT should have given more details as to its reasoning in weighing up the evidence".

3. [42(9)] of the FtT determination stated:

"As Section 72 applied then he is precluded from being considered as a refugee. Even if Section 72 did not apply we do not accept the Appellant's asylum claim and Appeal. The reasons he has put forward for fearing a return to Somalia do not amount to convention reasons. His claim is based upon a general fear for his safety arising from the activities in Mogadishu of Al-Shabab. The objective evidence shows that Al-Shabab have not been in control in Mogadishu since they were expelled in August 2011. The transitional government is now in control in Mogadishu and the security situation there is much improved although there are still incidents of terrorist violence. The Appellant is a young man who is fit and healthy and who is a member of a majority clan. We do not accept his evidence that there are no contacts or family left in Somalia. His first language is Somali and as such we consider he would be able to return there without any risk to his life, safety or welfare."

4. I heard submissions from Mr Cheng and Mr Wilding and I commend them for the clarity of their presentations, although it will be apparent that I do not think either paid sufficient regard to the guidance given in AMM in respect of Article 3 risk in Mogadishu.

5. I have decided that this ground is in substance made out.

6. There being no challenge raised to the respondent's section 72 certificate, the challenge is potentially confined to the panel's assessment of the appellant's eligibility for either

humanitarian protection (under paragraph 339C) or protection under Articles 3 and 2 of the ECHR.

7. As regards the appellant's claim for humanitarian protection, the only reason the panel gave for rejecting it was that, as set out in [45], that "[b]ased upon our above conclusions, we are satisfied that the Appellant's claim for humanitarian protection must, similarly, fail, for the reason that we conclude that substantial grounds have not been shown for believing that the Appellant, if returned to Somalia, would face a real risk of sufferings serious harm". This paragraph can only have had in mind the earlier conclusion drawn at [42(9)] which is prefaced by the observation that as section 72 applies the panel was precluded from considering the appellant as a refugee but that, even if section 72 did not apply, it was not considered that on return to Mogadishu there would be any risk to his "life, safety or welfare".
8. The only paragraph where the panel addressed Articles 3 and 2 was [46] in which it merely stated that it had examined the arguments put forward but, in the light of the facts as established, it had concluded that the appellant had not established a risk under Articles 3 or 2. As with [45], this paragraph can only have had in mind what was said in [42(9)].
9. I consider that even read together with 42(9), [45] does not furnish adequate reasons for rejection of the appellant's humanitarian protection grounds. Unlike refugee protection, which is subject to Article 33(2) of the refugee Convention and has been the subject of a section 72 certificate, there is no corresponding provision in the Qualification Directive, not even a provision which corresponds to Article 14 (dealing with revocation, ending of or refusal to renew refugee status). Hence the panel's reliance on [42(9)] was only justifiable if that could be said to have furnished satisfactory reasons for considered the appellant had failed to show he was at real risk of serious harm.
10. First of all, the issue of whether return to Mogadishu would expose a person to a real risk of persecution, serious harm or ill-treatment was the subject of country guidance from the Tribunal in **AMM and Others (conflict; humanitarian crisis; returnees; FGM) Somalia CG [2011] UKUT 445 (IAC)** and pursuant to Practice Directions Tribunal judges should not depart from current country guidance except where very strong grounds supported by cogent evidence are adduced: see **SG (Iraq) [2012] EWCA Civ 940** at [47]. In **AMM** the Tribunal had concluded that in Mogadishu there was a real risk of Article 15(c) serious harm to all but persons who might obtain the protection of powerful actors.
11. Second, not only did the panel fail to refer to **AMM** and its findings on Article 15(c) risk but there is nothing to indicate that it had regard to its analysis of relevant factors for deciding the level of risk in Mogadishu. That was all the more important because the Tribunal in **AMM** went out of its way to emphasise that the situation in Mogadishu was highly contingent and considered it was necessary (at least for Refugee Convention and humanitarian protection purposes) to consider whether any

changes occurring would be durable and to what extent there were changes not just in the quantitative but also in the qualitative nature of the violence: see AMM [345]-[371].

12. Whilst there was certainly a very significant body of evidence before the panel, much of it contained in the two Danish Fact-finding reports of April 2012 and January 2013 respectively, indicating that in Mogadishu the level of civilian casualties had fallen considerably, that Al-Shabab no longer controlled the city, that the markets had reopened etc, there were also some indications that such changes might not be durable. Accordingly, if the panel was minded to depart from the view taken in AMM as to durability in the context of Article 15(c), it was incumbent upon it to indicate (i) why it preferred the view that Mogadishu was now generally safe to the opposite view; (ii) why it considered that the evidence in support of the view that Mogadishu was generally safe demonstrated durable change. The panel failed on both counts.
13. I would observe that had the grounds confined themselves only to the panel's findings in respect of Article 3, I doubt that I would have granted permission because, in contrast to its decision on Article 15(c) harm in Mogadishu, the Tribunal in AMM expressly found that there was no Article 3 risk in Mogadishu for the generality of its population. Hence for the panel to have concluded that Articles 2 and 3 did not apply could not be said to have been a departure from country guidance. However, given that I have found an error in the panel's findings on humanitarian protection, I consider that it would be wrong to exclude from the scope of the next hearing any ground not covered by section 72, i.e. any ground other than refugee protection.
14. For the above reasons, I consider that the panel erred in law and that it is necessary for its decision to be set aside.
15. I discussed with the parties whether, if I were to decide the FtT had erred, they would have any objection to the case proceeding as new country guidance on Mogadishu. Both representatives confirmed that in that eventuality they would have no objections to such a course.
16. For the avoidance of doubt, there has been no challenge to the First-tier Tribunal's primary finding of fact. Hence the only issue at the hearing (which will be concerned with re-making the decision) will be whether a person whose home area is Mogadishu will be at a real risk of serious harm contrary to Article 15(c) or ill-treatment contrary to Article 3 or a violation of his right to life contrary to Article 2. The appellant has been found not credible and the only characteristics which it is accepted that he has for the purposes of the next hearing is that he is a native of Somalia, from Mogadishu and is a member of a majority clan (the Gadarbursi).
17. I will issue instructions for the case to be subject to a CMR hearing to settle the ambit of the potential country guidance.

Signed

Date

Upper Tribunal Judge Storey



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number
AA/05376/2012

THE IMMIGRATION ACTS

Heard at Field House
On 5 March 2013

Determination promulgated

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Before

Deputy Judge of the Upper Tribunal I. A. Lewis

Between

MAA
(Anonymity direction made)
Appellant
and

Secretary of State for the Home Department
Respondent

Representation

For the Appellant: Ms. S. Panagiocopoulou of Counsel instructed by Trott & Gentry LLP.
For the Respondent: Mr. G. Saunders, Home Office Presenting Officer.

DETERMINATION: ERROR OF LAW

1. This is an appeal against the decision of First-tier Tribunal Judge Bart-Stewart dated 23 July 2013, dismissing the Appellant's appeal against the Respondent's decision dated 3 May 2012 to refuse leave to enter the UK following a refusal to grant asylum.

Background

2. The Appellant is a national of Somalia born on 13 November 1986. He arrived in the UK on 8 April 2012 and claimed asylum at port on the same day. His application for asylum was refused for reasons set out in a 'reasons for refusal' letter ('RFRL') dated 2 May 2012 and a decision was taken to refuse leave to enter the UK in consequence.

3. The Appellant appealed to the IAC. The First-tier Tribunal Judge refused the Appellant's appeal for reasons set out in his determination.
4. The Appellant sought permission to appeal: this was initially refused by First-tier Tribunal Judge Frankish, but was granted by Upper Tribunal Judge Chalkley on 15 November 2012. Permission to appeal was granted for the following reason:

"I believe that the application does raise a properly arguable issue which may identify an error of law, namely the alleged failure by the First Tier Tribunal Judge to deal adequately with the issue of Article 15c risk on return."
5. The Respondent has not filed a Rule 24 response.

Error of Law

6. The Appellant's claim for protection under the Refugee Convention was, in my judgement, given careful and anxious scrutiny by the First-tier Tribunal Judge. It is plain that the Judge had regard to all of the available evidence, and has given clear and sustainable reasons for rejecting the credibility of the Appellant's account in respect of the events he claims to have experienced in Somalia, and in respect of his claimed clan membership (paragraphs 41-51). The Judge also gave brief, but sustainable, reasons in respect of Article 8 of the ECHR (paragraph 54).
7. However, the Judge erred in law in his consideration of humanitarian protection. He addressed the matter with reference to the country guidance case of **AMM & others (conflict; humanitarian crisis; returnees; FGM) Somalia CG [2011] UKUT 445 (IAC)**, at paragraph 53 of the determination in the following terms:

"In AMM, the risk of Article 15(c) harm is to those returning to Mogadishu after a significant period of time abroad. The appellant has only been outside of the country for a few months. Further as he has not told the truth, his background is unclear. He may well be from the class of persons who are living to a reasonable standard in Somalia. The armed conflict does not pose a real risk of Article 3 harm, regardless of circumstances. The Upper Tribunal found that it is unlikely that a proposed return to Mogadishu at the present time will raise Refugee Convention issues. I find that the appellant can be removed there and there would not be a breach of the United Kingdom's obligation under the Refugee Convention or Qualification Directive."

8. The Judge misdirects himself in the following respects:

(i) The risk of harm identified in AMM is not apparently restricted to “those returning to Mogadishu after a significant period of time abroad”. Reference is made, for example at paragraphs 350 and 358 to a risk “in respect of the majority of those in Mogadishu” and “for most people in Mogadishu”. Whilst reference is made to risk “as a general matter” in respect of those returning to Mogadishu from the UK, I do not read this to mean that the period of absence is considered significant.

(ii) The Judge does not identify a cogent basis for concluding that the Appellant falls within a class of person who can live to a reasonable standard. Beyond the fact of his adverse credibility assessment, the Judge advances no reasoning for such a conclusion; further in expressing his consideration in this regard with the phrase “He may well be...” it appears that the Judge is misapplying the standard of proof. It is relevant to note the following aspect of the Country Guidance, to which the Judge does not appear to have had due regard:

“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.” (paragraph 358).

See also from the headnote: *“the existence of this category is not automatically to be assumed to exist, merely because a person has told lies.”*

9. In all of the circumstances I conclude that the First-tier Tribunal Judge’s decision in respect of Humanitarian Protection cannot stand and is to be set aside. However, for the reasons identified above, I do not consider that there is any basis for revisiting the Judge’s credibility findings in respect of the Appellant’s historical account. The issue of humanitarian protection may be dealt with by way of submissions before the Upper Tribunal, with leave to both parties to file any further country information that they consider may be relevant bearing in mind the passage of time since the factual assessment in AMM - in particular in respect of any changes of circumstances in respect of the influence of Al-Shabaab in Mogadishu.

Decision

10. The decision of the First-tier Tribunal Judge contained an error of law and is set aside. The decision in the appeal in respect of Humanitarian Protection is to be remade by the Upper Tribunal.

Consequent Directions

(i) The appeal is to be listed before any judge of the Upper Tribunal on the first available date for submissions only on the issue of Humanitarian Protection.

(ii) The parties are at liberty to file any further evidence in respect of the country situation. Any such further evidence should be filed and served at least seven days prior to the resumed hearing date.

(iii) The Appellant is to file and serve a Skeleton Argument at least seven days prior to the resumed hearing date in support of his claim to be entitled to Humanitarian Protection, to include cross-references to the guidance in AMM and to any relevant supporting country information.

Deputy Judge of the Upper Tribunal I. A. Lewis 9 May 2013



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: DA/00728/2013

THE IMMIGRATION ACTS

Heard at Field House
On 4 November 2013

Determination Promulgated

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Before

UPPER TRIBUNAL JUDGE DAWSON
UPPER TRIBUNAL JUDGE REEDS

Between

SSM

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Eaton instructed by Wilson Solicitors
For the Respondent: Mr T Wilding, Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant, who is a national of Somalia where he was born on 2 December 1985 in Mogadishu, appeals with permission the decision of the First-tier Tribunal (First-tier

Tribunal Judge Brenells and Mr G F Sandall) who dismissed his appeal against the decision dated 2 April 2013 refusing to revoke the deportation order made 9 November 2006. The appellant had arrived in the United Kingdom as a dependant on his mother on 16 July 1997. Asylum was refused however the appellant was granted exceptional leave to remain on 31 August 2004 and thereafter was granted indefinite leave to remain.

2. At the hearing before the First-tier Tribunal, Mr Eaton explained that the appellant now only wished to pursue his appeal on Article 3 and humanitarian protection grounds. As observed by the tribunal in [15] of its determination :

“As the appellant is now only pursuing his Article 3 and humanitarian protection claims we have only to consider the situation now prevailing in Mogadishu. The only personal facts which we have taken into account in doing so is that the appellant is not a minority clan member and that he does not have any significant resources such would assist him in re- establishing himself in Mogadishu.”

3. The tribunal recorded in its determination in tabular form submissions from the Presenting Officer and Mr Eaton in respect of the following reports:

- (i) By Mr Hoehne on behalf of the appellant
- (ii) UN Security Council Report dated 31 May 2013 on behalf of the Secretary of State
- (iii) Landinfo Report dated May 2013 on behalf of the Secretary of State
- (iv) Material otherwise comprising country of origin information on current conditions in Somalia of some 30 pages.

4. The tables comprise a brief summary of extracts from this material to which the panel’s attention was drawn.

5. The Tribunal directed itself as to the relevant country guidance case, *AMM & Others (Conflict; humanitarian crisis; returnees; FGM) Somalia CG [2011] UKUT 445 (IAC)* and quoted an extract from [357] and [38] of the determination in respect of the conclusions on humanitarian protection. It observed there was no evidence showing that the appellant would, on arrival, belong to the category of middle class or professional persons who could live to a reasonable standard and it was on that basis the current situation was considered.

6. The Tribunal thereafter expressed its conclusions at [27] and [28] of the determination as follows:

“27. We have given close attention to these submissions and to the information contained in the background information presented to us. We are satisfied that Al-Shabab continues to remain excluded from Mogadishu although they have not been entirely defeated and femasni as a threat to the country as a whole. The background material however shows that they are not a

direct threat to civilians other than employees of the Government, the UN and Aid Agencies and the security situation has improved since AMM was decided. There is a danger of injury to innocent civilians as a result of being in the line of fire when a terrorist attack is being perpetrated, but particularly in Mogadishu these are not so frequent as to pose a real danger to all civilians. Whilst there have been some misdemeanours perpetrated by a member of the national and international civilians.

28. Significant resources derived from the international community have been made available in Somalia. International flights have been resumed to Mogadishu and other airports in the country. There is evidence that the road to Mogadishu airport is normally open. Comparatively wealthy Somaliland are returning from exile and are boosting the local economy. Infrastructure is being repaired. Street lighting in Mogadishu has been restored. The international community is committed to supporting the current government. The country still has a long way to go, but real progress is being achieved.”
7. The tribunal then explained that return of the appellant would not therefore breach his Article 3 rights and furthermore that he was not entitled to humanitarian protection.
8. Permission to appeal was granted by First-tier Tribunal Judge Cruthers on the basis that it was arguable that the evidence before the Tribunal was not sufficient to depart from the country guidance.
9. The application identifies four grounds as follows:
 - (i) Failure to resolve dispute and facts and failure to give reasons for findings of fact, the tribunal having failed to give any reasons for preferring the evidence submitted by the respondent over that submitted by the appellant. The differences in the evidence were not resolved in the determination.
 - (ii) The tribunal failed to consider the expert evidence of Mr Markus Hoehne. This was the most contemporaneous evidence before the panel and it is argued that the tribunal failed to consider that evidence at all in its actual conclusions on the current security situation.
 - (iii) The tribunal failed to consider the specific findings of AMM. There are examples given of the improvements the tribunal considered which had occurred at the time when AMM was being considered and were included in its consideration.
 - (iv) The panel made findings of fact that were contradicted by evidence submitted by the appellant and the respondent with reference to the UN Security Council Report indicating that Al-Shabab continued to launch asymmetrical attacks (on Mogadishu) and the report of Mr Hoehne who had referred to scores of civilians having been killed particularly in Mogadishu and surroundings between September 2012 and August 2013.

10. After hearing submissions from the parties we reserved our determination. In summary, Mr Eaton did not add anything new of a material nature to the grounds of application. Mr Wilding made a number of references to *AMM* in support of his contention that the predicted possibility of durable change had come about based on the evidence before the tribunal.
11. We drew the attention of the parties to the tribunal's decision in *DSG and Others (Afghan Sikhs: departure from CG)* [2013] UKUT 148 which explains that a judge may depart from existing country guidance in the circumstances described in the Practice Direction 12.2 and 12.4 and the UT (IAC) Guidance No. 2011 No. 2 paragraphs 11 and 12.
12. We did not hear specific submissions on the Practice Direction or the Guidance Note. Both are of importance to our approach to the challenge. [12.4] of the former is in these terms:

“Because of the principle that like cases should be treated in like manner, any failure to follow a clear, apparently applicable country guidance case or to show why it does not apply to the case in question is likely to be regarded as grounds for appeal on a point of law.”
13. The Upper Tribunal Immigration and Asylum Chamber Guidance Note 2011 No. 2 at [11] states:

“If there is credible fresh evidence relevant to the issue that has not been considered in the country guidance cases or if a subsequent case includes further issues that have not been considered in the CG case, the judge will reach the appropriate conclusion on the evidence, taking into account the conclusion of the CG case so far as it remains relevant.”
14. *AMM* is a formidable work revealing an authoritative analysis of the situation in Somalia at the date of promulgation. It is correct, as observed by Mr Wilding in his submissions, that at [342] the Tribunal observed there was common ground between the parties that Al-Shabab’s military withdrawal from Mogadishu was of significance. However it concluded at [344] that an Article 15(c) risk continued to exist for the majority of those returning to Mogadishu after any significant period of time abroad. It went on to explain why, for the ordinary inhabitant, there was still a significant risk of harm from conflict related incidents in the southern district and with specific reference to the withdrawal of Al-Shabab observed that it “cannot yet be said to be durable” [at 345]. The Tribunal in *AMM* did not confine its risk assessment to the Al-Shabab factor but took account also of the humanitarian crises in Mogadishu, the risk of ending up in one of the districts where conventional fighting is still occurring and the inability to find of a person who stood to get funds then available (£1,500) to surmount the problems identified.
15. This brief summary does not do justice to the careful analysis in *AMM* of the evidence and the conclusions drawn.

16. The tribunal in the appeal before us did not explain how it resolved the differences in the opinion expressed by Mr Hoehne and the positive aspects the UN Security Council and Landinfo reports as urged by Mr Zukunft. Instead, it reached conclusions on the facts which did not appear to be supported by the evidence before it and then, in the following paragraph, after identifying positive developments (which were in play at the time *AMM* was decided), decided the appellant would not be at risk.
17. The First-tier Tribunal was not expected to undertake a task of the kind in *AMM*. But at the very least it was required to give adequate reasons why it considered the evidence before it supported its conclusion that the changes which have occurred are such that the guidance in *AMM* on the issue of humanitarian protection was no longer applicable.
18. What is missing from the determination is a sufficiently detailed analysis of the evidence and sufficient reasons to give confidence that return of the appellant would not breach his absolutely rights under Article 3 or otherwise entitled him to humanitarian protection. Had the tribunal engaged with the body of the evidence in a way that the case required it might have been able to give sustainable reasons for departing from country guidance. But this is not at all evident from its determination.
19. We are satisfied therefore that the First-tier Tribunal erred in law such that its decision is required to be set aside. We do so.
20. As indicated to the parties, the Upper Tribunal will be hearing two further appeals in the near future by appellants who are in circumstances similar to the appellant before us. Consideration will be given to whether it is appropriate for this appeal to join those in that exercise or for the further hearing to be adjourned until the outcome is known. In either event there will be a case management review of the appeal on 10 December 2013 when consideration will be given to the future conduct of the appeal.

Signed

Date 7 November 2013



Upper Tribunal Judge Dawson