Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: RP/00102/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 14, 15, 16, 17, 18 and 21 June 2021	
Further submissions received	……
On 21 September, 8, 12 and 14 October 2021	

Before

UPPER TRIBUNAL JUDGE KEBEDE
UPPER TRIBUNAL JUDGE FRANCES
UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

OA (SOMALIA)
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:	Mr R. Toal, Ms G. Loughran, Ms U. Dirie, counsel, instructed by Wilson Solicitors LLP
For the Respondent:	Mr W. Hansen, Mr M. Wyard, Ms N. Webber, counsel, instructed by the Government Legal Department

DECISION AND REASONS

© CROWN COPYRIGHT 2022

Introduction

1. This appeal has been listed to consider whether the country guidance given in *MOJ & Ors (Return to Mogadishu) Somalia CG* [2014] UKUT 00442 (IAC) continues accurately to summarise the factual position and relevant considerations.

The appellant: factual and procedural background

2. There is a single appeal before the tribunal. The appellant, OA, was born in October 1986. At the time of the hearing before us he was aged 34. Until the age of five, he lived in Mogadishu with his family. In or around July 1992, following the commencement of the civil war in 1991, OA travelled to Kenya with his mother. He has 11 siblings, eight of whom were born before the family fled Somalia; the youngest three were born in Kenya. The siblings are said to live in a variety of locations around the world, including Canada, Finland, Holland, Greece and the UK. His father died in Somalia.

3. In April 2002, OA's mother left Kenya and claimed asylum in this country. She was recognised as a refugee on the basis that, as a member of a minority clan, she was at risk of being persecuted by the majority Hawiye and Darood clans. She now holds indefinite leave to remain. OA arrived here shortly afterwards and claimed asylum on 2 July 2002. On 9 August 2002, he was granted asylum "in line" with his mother, followed by indefinite leave to remain on 10 December 2003. That is the status the appellant continues to enjoy (as confirmed by Mr Hansen in his closing submissions), subject to the resolution of these proceedings which concern the Secretary of State's decision to revoke his protection status, and refuse the human rights claim he made in the context of resisting the Secretary of State's decision to deport him to Somalia.

4. OA has a long history of criminal offending in this country, which began while he was still a child. He now has 39 convictions for 80 offences, committed over a period of 17 years. In the

time since his arrival, OA has spent over ten years serving sentences of imprisonment and in detention.

5. OA's early offences led to the Secretary of State sending "warning letters" to him on three occasions: April and July 2008, and in January 2013. Each letter stated that the Secretary of State had "taken note" of certain of the appellant's then recent convictions and had decided not to pursue deportation action on those occasions, but warned him that he faced deportation in the future, should his conduct continue.

6. On 27 August 2014 the appellant was sentenced to 16 months' imprisonment for burglary with intent to steal, contrary to section 9(1)(a) of the Theft Act 1968, following an earlier plea of guilty. This offence triggered the automatic deportation provisions of the UK Borders Act 2007, as set out by the Secretary of State in a decision to deport the appellant dated 19 December 2014.

7. On 10 April 2015, the Secretary of State notified the appellant that she intended to cease his refugee status under Article 1C of the Refugee Convention. On 1 May 2015, she informed the United Nations High Commissioner for Refugees ("the UNHCR") of her intention to cease the appellant's refugee status. On 9 October 2015, the Secretary of State signed a deportation order against the appellant, refused his human rights and protection claim, and ceased his refugee status under Article 1C(5) of the Convention. It is that decision that is under appeal in these proceedings.

Procedural background

8. The appellant's appeal was originally heard and allowed by First-tier Tribunal Judge Beach, in a decision promulgated on 9 May 2018, following a hearing on 5 April 2018. That decision was the subject of a successful appeal by the Secretary of State to the Upper Tribunal. On 30 August 2018, Upper Tribunal Judge Kopieczek found that the decision of Judge Beach involved the making of an error of law, and directed that the decision be remade in the Upper Tribunal, with certain findings of fact preserved. Upper Tribunal Judge Coker conducted the resumed hearing, and dismissed the appellant's appeal in a decision promulgated on 29 January 2019. The appellant appealed to the Court of Appeal. On 30 September 2019, Sir Ross Cranston granted permission to appeal. On 21 November 2019, the appeal was allowed with the consent of both parties, pursuant to an order of Master Bancroft-Rimmer. At paragraph 2 of the Master's order, the entire composite decision of the Upper Tribunal was set aside, expressly including the "error of law" decision dated 30 August 2018, in addition to Judge Coker's decision remaking the appeal. No findings from the decisions of either Judges Kopieczek or Coker were preserved.

9. Pursuant to the order of Master Bancroft-Rimmer, the appeal returned to the Upper Tribunal in order for "a fresh determination of the Appellant's appeal" (paragraph 3). In light of Judge Kopieczek's "error of law" decision being set aside, with no findings preserved, it was necessary for the remitted hearing in the Upper Tribunal to consider, first, whether the decision of Judge Beach involved the making of an error of law, and, if so, whether it should be set aside. An error of law hearing took place on 25 February 2020 before McGowan J, sitting as a Judge of the Upper Tribunal, and Upper Tribunal Judge Kebede.

10. By a decision promulgated on 7 April 2020, McGowan J and Judge Kebede found that the decision of Judge Beach involved the making of an error of law, set it aside with no findings of fact preserved, and directed that the appeal be remade in this tribunal. Mr Toal, who has

represented the appellant at all stages in this tribunal and above, submitted at a hearing on 25 February 2020 that this appeal may be a suitable vehicle for a further Somalia country guidance case, which led to the appeal being designated as such, and a series of case management review hearings took place.

11. The true scope of the 7 April 2020 error of law decision, in particular its approach to the findings of fact reached by Judge Beach, has been a matter of some dispute in these proceedings. Judge Beach reached a number of findings of fact that Mr Toal contends are favourable to OA's case, and which should form the foundation for our findings of fact unless the *Ladd v Marshall* criteria apply. Those findings include, at paragraph 68, a finding that the appellant's siblings would be unlikely to assist him financially, due to the harm the appellant's drug abuse has caused to their relationships; at paragraph 70 that OA has no family or friends in Somalia, that he would have minimal financial assistance and knew little Somali, and that he would stand out as a returnee from the West upon his arrival. At a case management hearing on 19 April 2021, Mr Toal submitted that those findings were not infected by any error of law and, as such, should have been preserved. He invited us expressly to (re)preserve those findings, revisiting those aspects of the 7 April 2020 error of law decision promulgated by McGowan J and Judge Kebede. We refused to do so, for the reasons set out below.

12. We consider that Mr Toal's submission that there were key matters upon which the appellant was entirely successful overstates the position; see, for example, paragraph 66 of Judge Beach's decision, with emphasis added:

> "The evidence of the appellant and of his mother was that neither of them had any connections in Somalia. There had been a previous reference by the mother to distant relatives of friends living in Somalia but she states that they are no longer there**. It is hard to know whether this is the truth or whether the appellant and his mother simply want to distance themselves from any connections in Somalia**."

13. The 7 April 2020 error of law decision sets out why Judge Beach's findings of fact involved the making of an error of law. At [10], the presenting officer made a range of submissions attacking Judge Beach's findings of fact: the judge had failed to consider material evidence, resolve conflicts, and give clear reasons on central issues. Paragraph 15 outlines those submissions in depth, demonstrating that they draw on the established jurisprudence relating to challenging findings of fact ("the judge had erred by failing to give proper reasons…", "the judge made no proper findings…", "there was a failure to consider the Facilitated Returns Scheme…", "the judge departed from the country guidance and failed to explain how that was justified…" and so on). The detail of presenting officer's submissions is important because the panel later expressly accepted them.

14. At [20], the panel found that Judge Beach had erred by departing from the then extant country guidance in *MOJ* concerning the availability of employment in Mogadishu, conflating new country evidence concerning the lack of *skilled* employment with the many unskilled opportunities available in Mogadishu. She had departed from other aspects of *MOJ*, creating a sub-category of risk not found in *MOJ,* concerning those said to be unable to access IDP camps (IDP stands for "internally displaced person"). The judge's findings about the appellant's likely financial circumstances in Mogadishu failed to take into account the Facilitated Returns Scheme. The panel concluded in these terms:

> "Accordingly, we agree with [the Secretary of State] that there was a failure by the judge to give clear and proper reasons for reaching the conclusions that she did about the appellant's circumstances on return to Somalia and we conclude that her decision is also unsustainable on that basis."

At [21], the panel went onto say:

> "…we consider the judge's decision on protection, Article 3 and Article 8 claims **must be set aside**… The case will therefore be re-listed for a resumed hearing before the Upper Tribunal… **to re-assess and make proper findings on the appellant's circumstances on return to Somalia and to consider the risk on return in light of those findings** in the context of the Refugee Convention, humanitarian protection and Article 3, as well as considering Article 8." (Emphasis added)

15. Properly understood, therefore, the operative reasoning of the panel's error of law decision was that the findings of fact reached by Judge Beach had involved the making of an error of law, that those findings had to be set aside in their entirety, and that "proper" findings had to be made. Mr Toal's submissions did not seek to engage with the reasoning of the Panel on any of the established bases for challenging findings of fact, but rather addressed the prejudice to the appellant of having to revisit those findings, for example submitting that it was "oppressive" to cross-examine the appellant in relation to issues upon which he was "entirely successful". For the reasons given above, we disagree; as found by McGowan J and Judge Kebede, Judge Beach's findings of fact were infected by the errors highlighted by the Secretary of State, including a failure to give sufficient reasons. Isolating certain findings of fact reached as part of the judge's broader (and impugned) findings of fact is not possible. We see no reason to revisit the 7 April 2020 decision's approach to Judge Beach's findings of fact and, once again, we decline to do so.

Other case management issues

16. An hour before the Case Management Review Hearing ("CMRH") on 19 April 2021, the appellant made a written application to expand the grounds of appeal to include Article 4 ECHR, on account of the exploitation he contended that he would face at the hands of the "gatekeepers" to IDP camps in Mogadishu. We refused the application, and gave the following reasons in the note of our hearing, issued on 19 April 2021:

> "4. The application was refused. Bearing in mind the overriding objective and the need to decide cases fairly and justly, in light of the existing and well-established focus of these proceedings, we considered that the requirements of fairness were such that the proposed new ground of appeal should not be permitted at this very late stage. These proceedings have a lengthy history, having already been the subject of a substantive appeal before the Upper Tribunal and an onward appeal to the Court of Appeal. At no stage had the appellant sought to expand his grounds of appeal in this way, even though he has been represented by the same experienced firm of immigration solicitors throughout. The case management timetable in these country guidance proceedings is already well under way. Expanding the scope of the proceedings at this late stage could prejudice the final hearing date, and lead to considerable expense and delay. The experts have not focussed on the relationship between the IDP 'gatekeepers' and human trafficking thus far, and

> expanding the scope of the proceedings may require the experts to revisit their evidence, with the potential for delay and inconvenience. To the extent the conduct of the 'gatekeepers' is relevant to the appellant's circumstances upon return, it will be possible for such matters to be considered in any event, in the context of the existing issues already before the tribunal."

17. At the substantive hearing, we treated the appellant as a vulnerable witness in line with the Joint Presidential Guidance Note No. 2 of 2010. We ensured that regular breaks were available to him, and directed Mr Hansen to direct his questions to the appellant with an appropriate degree of sensitivity. No concerns were raised during the hearing by Mr Toal about the appellant's ability fully and properly to participate in the proceedings.

18. On the penultimate and final days of the re-hearing, we admitted medical reports by Dr N. Galappathie, a consultant forensic psychiatrist, concerning the appellant's mother (dated 17 June 2021) and the appellant (dated 20 June 2021) respectively. While it was unfortunate that these reports were adduced at such a late stage in breach of a number of earlier case management directions, we considered that it was in the interests of justice to admit them.

19. Following the conclusion of the hearing, there were a number of further developments:

    a. On 17 August 2021, those representing the appellant wrote to the Tribunal enclosing evidence from other proceedings involving the deportation of another Somali to Somalia, in which the Secretary of State appears to have taken steps to arrange medical and other provision for that individual upon their return. The name of the individual and all other identifying details had been redacted. The Secretary of State subsequently provided copies of her correspondence in return. In our judgment, that the Secretary of State chose to adopt certain measures in an individual case (the details of which we are not privy to) does not mean that she is compelled to adopt equivalent measures in all other cases concerning removal to Somalia. We address the significance of this material in further depth at paragraph 128, below.

    b. On 31 August 2021, we gave the parties the opportunity to make further written submissions of the impact, if any, of *Ainte (material deprivation - Art 3 - AM (Zimbabwe))* [2021] UKUT 203 (IAC) on their submissions in this matter. We are grateful to both parties for their responses, both dated 21 September 2021, which we will consider in due course.

    c. On 8 October 2021, the appellant applied for permission to rely on further evidence, namely that, following the conclusion of the fact-finding hearing on 21 June 2021 (at which, as we set out below, his oral evidence had been that he had stopped using heroin and was taking prescribed methadone), he had relapsed into heroin use, and had been attacked by a person to whom he was said to owe a drugs-based debt, with the result that his jaw had been broken. The evidence was in the form of a letter from a person working at the appellant's hostel dated 8 October 2021. We invited submissions in response from the Secretary of State, which we received on 12 October 2021, requesting us not to admit the evidence. We deal with this in our case-specific analysis, below.

    d. On 14 October 2021, those representing the Secretary of State informed us that on 24 September 2021 the Secretary of State had amended the Facilitated Return Scheme, with the effect that OA would now be eligible for a resettlement grant of £750 upon

return to Somalia (£500 is loaded to a pre-payment card upon departure; a further £250 is available via the International Organisation for Migration in-country within the first month; a further £500 is available for those who meet the policy's definition of "vulnerable"). The current version, 9.0, no longer provides that a person is ineligible because they have "pursued an immigration appeal beyond the First-tier Tribunal or its earlier equivalent in the past", which was a feature of earlier versions of the policy (and so would have been in force when earlier country guidance concerning return to Somalia was given).

THE ISSUES

20. In Judge Kebede's note of a CMRH held on 10 November 2020, the scope of the intended country guidance was said to be:

> "It was clarified and confirmed at the CMRH that the country guidance will provide an update to *MOJ & Ors (Return to Mogadishu) Somalia CG* [2014] UKUT 00442 to address the situation in Mogadishu in general, in terms of the level of violence for the purposes of Article 15(c) of the Qualification Directive and the Article 3 risks on return. This will include, but will not be limited to, the risks to minority clan members and the risks associated with living in an IDP camp or being unable to find a place in an IDP camp."

21. The parties subsequently proposed a list of country guidance issues which appeared to focus primarily on the appellant's individual circumstances, rather than identifying the broader country guidance issues identified by Judge Kebede for resolution. Mindful of the identified need to consider whether the position had changed since *MOJ* in light of the agreed issues pertaining to the appellant's individual case, we proposed the following reformulated country guidance issues in the terms set out below. We discussed these with the parties at a further CMRH on 10 May 2021. At the CMRH on that date, the parties were content with the issues as reformulated by the panel. In our view, these questions address the same underlying issues identified by the schedule of issues originally agreed between the parties, and ensure that all relevant factors are considered in the appellant's appeal, but are expressed in terms which may be of assistance to other appellants in similar circumstances to this appellant, thereby enabling this decision to be specified as country guidance for the purposes of section 107(3) of the 2002 Act.

22. The agreed reformulated country guidance issues are therefore as follows:

> (1) Does an 'ordinary civilian' returning to Mogadishu following a period in the UK face a real risk of being persecuted or subjected to serious harm contrary to Article 3 of the ECHR or paragraph 339C of the Immigration Rules?
>
> (2) What factors are relevant to whether such a returnee will be able to establish themselves in Mogadishu?
>
> (3) What factors go to whether such a returnee will be compelled to seek accommodation in an IDP camp, and whether they will be able to do so?
>
> (4) If a returnee is successful in securing accommodation in an IDP camp, would that entail a real risk of being persecuted or serious harm or cruel, inhuman or degrading treatment owing to the conditions in which the returnee will live?

> (5) If even accommodation in an IDP camp is not a realistic prospect, what are the reasonably likely alternatives, and would they entail a real risk of being persecuted or serious harm or cruel, inhuman or degrading treatment owing to the conditions in which the returnee will live?
>
> (6) What impact, if any, does membership of a minority clan have on the resolution of issues 1 to 5?

23. Following the CMRH, on 26 May 2021, those representing the appellant wrote to the Tribunal requesting that the matter should no longer be regarded as suitable for giving country guidance. Mr Toal expanded upon the letter at the final CMRH, held on 8 June 2021. To the extent it was within the gift of the Panel to do so, we refused that application, but noted that the decision as to whether to designate a decision of the tribunal to be country guidance lies with the President of the Upper Tribunal (IAC), as set out in the Presential Guidance Note 2011 No. 2, amended by Mr Justice Lane, President, on 21 May 2021. To that end, the resumed hearing was conducted on the basis that the appeal had been identified as being potentially suitable to be heard as country guidance.

SOMALIA: EXISTING COUNTRY GUIDANCE

Return to Mogadishu: context

24. The conflict and instability that has characterised much of Somalia's recent history following the overthrow of President Barre in 1991 by opposing clans has been well documented, including in the earlier country guidance decisions of this tribunal. *AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia CG* [2011] UKUT 00445 (IAC), addressing the position as it stood in 2011, said this, at [27]:

> "From the start of the civil war in Somalia in the early 1990s until the rise of the Union of Islamic Courts and, more recently, Al-Shabab, the internal conflict in Somalia was primarily clan-based, with majority clans using their militias to battle rival armed clans and also to dominate minority clans, which lacked militias of their own or majority clan patronage."

25. The humanitarian impact of the conflict has been devastating, leaving an estimated 2.1 million Somalis internally displaced (although, as will be seen, the term "internally displaced persons" now has a broad meaning). The impact of the conflict has been augmented by extreme meteorological conditions, including the worst drought for 60 years in 2011. Al-Shabab were driven from Mogadishu in late 2011, and by 2014, the city experienced an "economic boom", particularly in the construction industry, catalysed in part by the return of many members of the global Somalia diaspora.

26. Clans have always performed an important role in Somali society. While their significance is not as great as it was previously, such as when clan rivalry was involved in the overthrow of the Barre regime in 1991, they continue to perform a role. Clans can provide support and connections for returning Somalis, depending on their influence and status. Traditionally, there has been a distinction between majority and minority clans, although as will be seen, that distinction is now questioned by some.

27. The conditions in Mogadishu upon an enforced return have been the focus of country guidance decisions of this tribunal, and its predecessor tribunals, in recent years. We set out

below the key findings of the current country guidance cases, for they provide the starting point for our findings.

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

28. On 28 November 2011, the tribunal published *AMM*. The scope of the guidance in *AMM* was broad, concerning not only Mogadishu, but southern and central Somalia, Somaliland and Puntland, and female genital mutilation.

29. Addressing the then-recent impact of the withdrawal of Al-Shabaab from Mogadishu, the country guidance given in *AMM* was:

> "595. The armed conflict in Mogadishu does not, however, pose a real risk of Article 3 harm in respect of any person in that city, regardless of circumstances. The humanitarian crisis in southern and central Somalia has led to a declaration of famine in IDP camps in Mogadishu; but a returnee from the United Kingdom who is fit for work or has family connections may be able to avoid having to live in such a camp. A returnee may, nevertheless, face a real risk of Article 3 harm, by reason of his or her vulnerability."

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

30. *MOJ* was published as country guidance on 3 October 2014. This tribunal gave the following country guidance at [407] and following:

> "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."

31. However, in light of *Secretary of State for the Home Department v Said* [2016] EWCA Civ 442, paragraphs 407(h) and 408 of *MOJ* must be read subject to the judgment of Burnett LJ (as he then was). The impact of *Said* was summarised in the headnote to *SB (refugee revocation; IDP camps) Somalia* [2019] UKUT 358 (IAC) in these terms:

> "The conclusion of the Court of Appeal in *Secretary of State for the Home Department v Said* [2016] EWCA Civ 442 was that the country guidance in *MOJ & Ors (Return to Mogadishu) Somalia CG* [2014] UKUT 442 (IAC) did not include any finding that a person who finds themselves in an IDP camp is thereby likely to face Article 3 ECHR harm (having regard to the high threshold established by *D v United Kingdom* (1997) 24 EHRR 43 and *N v United Kingdom* (2008) 47 EHRR 39). Although that conclusion may have been obiter, it was confirmed by Hamblen LJ in *MS (Somalia)*. There is nothing in the country guidance in *AA and Others (conflict; humanitarian crisis; returnees; FGM)* Somalia [2011] UKUT 445 (IAC) that requires a different view to be taken of the position of such a person. It will be an error of law for a judge to refuse to follow the Court of Appeal's conclusion on this issue."

32. We are invited by Mr Toal to adopt a different reading of *Said* and *MOJ*, which we address below.

THE LAW

33. Before outlining the parties' competing legal submissions, we set out the essential context within which those submissions sit, by recalling the essential legal framework of the issues in these proceedings.

The Refugee Convention

34. Article 1A(2) of the 1951 Convention Relating to the Status of Refugees defines a "refugee" as any person who:

> "…owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

35. Addressing the meaning of the term "particular social group", a majority of the House of Lords in *Shah and Islam* [1999] 2 AC 629 approved the terminology of *Acosta* case 19 I. & N. 211, where a "particular social group" was held to mean:

> "an immutable characteristic: a characteristic that is either beyond the power of the individual to change or is so fundamental to individual identity or conscience that it ought not be required to be changed".

36. As this is a revocation of protection case, we address the cessation provisions. Under Article 1C(5) of the 1951 Convention, it ceases to apply to any person if:

> "He can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality; Provided that this paragraph shall not apply to a refugee falling under section A(1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality".

37. There is a "requirement for symmetry between the grant and cessation of refugee status", and a cessation decision is the "mirror image" of a decision determining refugee status (*MA (Somalia)* [2018] EWCA Civ 994, per Arden LJ at [47] and [51]). "The relevant question", held Arden LJ at paragraph 2, is:

> "…whether there has been a significant and non-temporary change in circumstances so that the circumstances which caused the person to be a refugee have ceased to apply and there is no other basis on which he would be held to be a refugee."

It is for the Secretary of State to demonstrate that the above criteria are met.

The Qualification Directive

38. Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, known as the "Qualification Directive", makes provision within the EU legal order for subsidiary international protection to be enjoyed by those at risk of "serious harm". For the reasons given in *Ainte* at [63] to [67], the directive and its implementing regulations continue to have effect (although we should add that we did not hear full argument on the issue).

39. Article 15 of the directive defines "serious harm" in this way:

> "Serious harm consists of:
>
> (a) death penalty or execution; or
>
> (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or
>
> (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."

40. While Article 15(b) broadly corresponds with the protection offered by Article 3 ECHR, "to meet the requirements for humanitarian protection under Article 15(b) of the Qualification Directive s/he must demonstrate that substantial grounds exist for believing there to be a real risk of serious harm by virtue of actors of harm (as defined by Article 6 QD) *intentionally*

depriving that individual of appropriate health care in that country" (see *NM (Art 15(b): intention requirement) Iraq* [2021] UKUT 00259 (IAC)).

Article 8 ECHR

41. Article 8 of the ECHR provides:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is 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"

42. The framework for considering whether an individual's deportation would be proportionate for the purposes of Article 8 of the ECHR is set out in Part 5A of the 2002 Act. It provides, where relevant:

> "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."

Article 3 ECHR

43. Article 3 of the ECHR provides:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

44. The paradigm Article 3 violation is an intentional act which constitutes torture or inhuman or degrading treatment: see *GS (India) v Secretary of State for the Home Department* [2015] EWCA Civ 40, [2015] 1 WLR 3312 at [39], per Laws LJ. Article 3 primarily imposes a negative obligation on states to refrain from inflicting serious harm on persons within their jurisdiction: see *Pretty v United Kingdom* (Application no 2346/02) (2002) 35 E.H.R.R. 1 at [50]. Although the ECHR is primarily engaged on a territorial basis, the Article 3 obligations of High Contracting Parties under the Convention prevent the removal of a person from their territory to circumstances where "substantial grounds have been shown for believing the that the person concerned faced a real risk of being subjected to torture or inhuman treatment" (see *Vilvarajah v UK* (1992) 14 EHRR 248 at [103]).

45. The Strasbourg Court has held that "other very exceptional cases where the humanitarian considerations are equally compelling" may engage the protection of Article 3, and has held the article to be engaged in certain health-based claims: see *N v United Kingdom* (2008) 47 EHRR 39 at [42], following *D v United Kingdom* (1997) 24 EHRR 423. *D* concerned the proposed removal of a man to St Kitts in circumstances which were held to violate Article 3: the applicant was critically ill and appeared to be close to death. He was receiving palliative care in this country. He could not be guaranteed any nursing or medical care in St Kitts, and had no family willing or able to care for him, or provide him with even a basic level of food, shelter or social support (see *D* at [52], *N* at [42]). *D* would have been removed to St Kitts to an imminent death, on the streets, with no palliative care for his terminal illness, thereby rendering his case very exceptional, with compelling humanitarian considerations. As the *D* case itself put it at [52]:

> "The abrupt withdrawal of these [health] facilities will entail the most dramatic consequences for him… there is a serious danger that the conditions of adversity which await him in St Kitts will further reduce his already limited life expectancy and subject him to acute mental and physical suffering…"

While at [43] the court in *N* expressly preserved the possibility that there may be other very exceptional cases where the humanitarian considerations are equally compelling, it held that it was necessary to maintain that very high threshold:

> "…given that in such cases the alleged future harm would emanate not from the intentional acts or omissions of public authorities or non-state bodies, but instead from a naturally occurring illness and the lack of sufficient resources to deal with it in the receiving country."

46. The Strasbourg court "clarified" its approach to the *N* test in *Paposhvili v Belgium* [2017] Imm AR 867, at paragraph 183:

> "The Court considers that the 'other very exceptional cases' within the meaning of the judgment in *N v The United Kingdom* (para 43) which may raise an issue under article 3 should be understood to refer to situations involving the removal of a seriously ill person in which substantial grounds have been shown for believing that he or she, although not at imminent risk of dying, would face a real risk, on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment, of being exposed to a serious, *rapid* and irreversible decline in his or her state of health resulting in intense suffering or to a significant reduction in life expectancy. The Court points out that these situations correspond to a high threshold for the application of article 3 of the Convention in cases concerning the removal of aliens suffering from serious illness." (Emphasis added)

47. The Grand Chamber handed down judgment in *Savran v Denmark* (Application no. 57467/15) on 7 December 2021. It upheld the Fourth Section's judgment, in which the *Paposhvili* clarification was applied to mental health conditions. See the discussion at [137] and following, which held that the concept of a "seriously ill person" is not confined to any specific category of illness, and may extend to all medical conditions.

48. In *MSS v Belgium and Greece* (2011) 53 EHRR 2, the Strasbourg court held that it would be a violation of the Article 3 rights of the applicant, an asylum seeker, for him to be forcibly returned to Greece under the EU's Dublin arrangements to circumstances of extreme material deprivation. There was evidence before the court that Greece failed to comply with its obligations under EU law concerning the reception of asylum seekers, and that those failures contributed in material terms to the likely extreme destitution MSS would face if returned to Greece. The applicant was an asylum seeker, so the court attached considerable importance to his status in that regard, categorising him as a "member of a particularly underprivileged and vulnerable population group in need of special protection": [251]. At [254] the Strasbourg Court noted that the applicant claimed to have spent months in Greece living in "the most extreme poverty", and was unable to cater for even his most basic needs. He was in constant fear of being robbed, and the lack of any prospect in his livelihood improving drove him to want to escape "that situation of insecurity and of material and psychological want". The Strasbourg Court held that the removal of the applicant from Belgium to Greece would violate Article 3.

49. In *GS (India)*, Laws LJ described *MSS* as a "fork in the road", and sought to reconcile the Strasbourg Court's approach to its earlier Article 3 jurisprudence in these terms, at [57]:

> "In *MSS* it is to be noted that Greece (unlike Belgium) was not impugned for breach of Article 3 on account of anything that would happen to the applicant in a third country to which Greece proposed to remove him, but by reason of his plight in Greece itself… In *MSS* a critical factor was the existence of legal duties owed by Greece under its own law implementing EU obligations: paragraphs 250 and 263 which I have cited; and it is clear that the court attached particular importance to the fact that the applicant was an asylum-seeker."

50. We turn next to *Sufi and Elmi v UK* (8319/07 and 11449/07) in which the Strasbourg Court reached findings of fact, on the basis of the evidence before it at the time, that the poor humanitarian conditions in Somalia were predominantly attributable to the direct and indirect actions of the parties to the then conflict. That being so, the *N* threshold did not need to be met in order to establish a violation of Article 3 upon return. It held at [282]:

> "If the dire humanitarian conditions in Somalia were solely or even predominantly attributable to poverty or to the state's lack of resources to deal with a naturally occurring phenomenon, such as a drought, the test in *N v United Kingdom* may well have been considered to be the appropriate one."

51. Instead, held the court, the *MSS* approach applied, leading to the conclusion that a returnee forced to seek refuge in an IDP camp on the Afgoye Corridor or the Dadaab camps would be at real risk of Article 3 ECHR ill-treatment, on account of the dire humanitarian conditions then prevailing, and their cause at the time: [282], [292].

Article 3 and suicide

52. *J v Secretary of State for the Home Department* [2005] EWCA Civ 629 and *Y and Z (Sri Lanka)* [2009] EWCA Civ 362 considered the approach to be taken where suicide is said to be a risk upon return. *Y* and *Z* considered the position where the fear of ill-treatment upon return is objectively without foundation, but is subjectively "not only real, but overwhelming". In *MY (Suicide risk after Paposhvili)* [2021] UKUT 232 (IAC), this tribunal held the *J* and *Y and Z* approaches continue to apply, provided a claimant has demonstrated that, in principle, the *Paposhvili* Article 3 threshold has been met. The overall approach was summarised in concise terms by Sir Duncan Ouseley in *R (on the application of Emmanuel Carlos) v Secretary of State for the Home Department* [2021] EWHC 986 (Admin) at [159] in these terms:

> "Article 3 and suicide risk: this is another facet to which *Paposhvili* and *AM (Zimbabwe)* apply. It is for [the applicant] to establish the real risk of a completed act of suicide. Of course, the risk must stem, not from a voluntary act, but from impulses which he is not able to control because of his mental state."

Disputed legal issues

53. In these proceedings there is a dispute as to the appropriate legal test for determining whether the appellant's rights guaranteed by Article 3 ECHR would be breached on account of the living conditions and general socio-economic circumstances of his return. The primary cause of the dispute lies in the decision of the Grand Chamber of the European Court of Human Rights in *Paposhvili v Belgium*, as explained and applied by the Supreme Court in *AM (Zimbabwe) v Secretary of State for the Home Department (AIRE Centre intervening)* [2020] UKSC 17, [2020] 2 WLR 1152. The appellant submits that the *Paposhvili* modification to the Article 3 threshold in health cases extends to living condition cases, such as his. The appellant also submits that the *MSS* threshold applies to him, for the reasons set out in our summary of Mr Toal's submissions, below.

THE APPELLANT: SUBMISSIONS ON THE LAW

54. Mr Toal submits that Article 3 of the ECHR would be breached on a number of bases if the appellant were to be removed to Somalia. In his submission, the findings of fact concerning IDP camps reached by this tribunal in *MOJ* continue to apply, as there has been no sufficiently cogent evidence to the contrary. Further, the country guidance in *AMM* (which held that residence in an IDP camp gave rise to a real risk of Article 3 being breached) continues to apply. Nothing in the Court of Appeal's judgment in *Secretary of State for the Home Department v Said* [2016] EWCA Civ 442 calls for a different approach.

55. Mr Toal's submissions surveyed the development of the jurisprudence of this tribunal, and the Court of Appeal, concerning the conditions in IDP camps viewed through the lens of

Article 3 ECHR. The starting point for Mr Toal's survey of the relevant country guidance is that the decisions he relies upon, outlined below, continue to be listed on this tribunal's website as extant country guidance. That being so, pursuant to paragraph 12.3 of *Practice Directions Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal,* it is categorised as "current" country guidance, and remains binding on that basis.

56. The first strand of this aspect of Mr Toal's argument is found in *NM and Others (Lone women – Ashraf) Somalia CG* [2005] UKIAT 00076, in which the tribunal held :

> "These appeals do not raise specifically the discrete question of the safety for persons in IDP camps. However, we would observe in passing that, on the strength of the background evidence and the oral evidence of Professor Lewis, **we would consider any person at real risk on return of being compelled to live in one of these camps as having little difficulty in making out a claim under Article 3, if not under the Refugee Convention also**." (emphasis added)

57. Mr Toal highlighted paragraph 85, the evidence of Professor Lewis, an country expert relied upon in *NM,* which was that:

> "If a person were forced to live in one of these camps, they would face an utterly insecure, destitute and menaced existence."

58. Next, Mr Toal draws on *HH & others (Mogadishu: armed conflict: risk) Somalia CG* [2008] UKAIT 00022, in which the tribunal held at [299]:

> "So far as 2007 is concerned, the mass migrations evidenced in the background materials disclose a very serious state of affairs. A person who has been displaced from his or her home in Mogadishu, without being able to find a place elsewhere (including in another part of that city) with clan members or friends, and who as a result, is likely to have to spend any significant period of time in a makeshift shelter alongside the road to Afgoye, for example, or in an IDP camp**, may well experience treatment that would be proscribed by article 3 of ECHR**." (emphasis added)

59. Mr Toal also relies on *AM & AM (armed conflict: risk categories) Somalia CG* [2008] UKAIT 00091, in which the tribunal rejected the Secretary of State's submission that poor conditions in an IDP camp could *never* establish a breach of Article 3 ECHR, in these terms, at [87]:

> "Whilst the Strasbourg Court has made clear that such claims could only succeed in extreme circumstances, it has expressly not excluded them entirely…"

60. The terms in which the tribunal in *AM & AM* found that the general situation in central and southern Somalia had not reached a level where civilians or IDPs could be said to face being persecuted or subject to a real risk of harm contrary to Article 3 ECHR, reveal, in Mr Toal's submission, what the tribunal considered *would* amount to such mistreatment. At [157], the tribunal held:

> "…whilst the humanitarian situation is dire, it does not appear that civilians *per se* face a real risk of denial of basic food and shelter and other bare necessities of life. There are two aspects to this: many appear not to need humanitarian assistance and many who do need it, get help of some kind…"

61. Accordingly, it is clear, submits Mr Toal, that the tribunal equated "a denial of basic food and shelter and other bare necessities of life" as being the sort of extreme circumstances in the Somali context that would breach Article 3 ECHR. The Secretary of State did not cross-appeal against those findings, despite the appellants appealing to the Court of Appeal on other matters: see *HH (Somalia) & Ors v Secretary of State for the Home Department* [2010] EWCA Civ 426.

62. A central plank of Mr Toal's submissions rests on *AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia CG* [2011] UKUT 00445 (IAC). At [486], this tribunal held:

> "…as a general matter a returnee who would find themselves in an IDP camp, following a return to southern and central Somalia at the present time, would be at real risk of exposure to treatment contrary to Article 3 on account of the humanitarian conditions there."

63. Mr Toal highlights how the tribunal in *AMM* found that the predominant cause for the humanitarian conditions was the extreme drought at the time, rather than the actions of the parties to the conflict: [132]. The country conditions were such that, as a general matter, the circumstances were exceptional, thereby meeting the very high standard required to meet the Article 3 ECHR *N* threshold. Against that background, Mr Toal relies on the findings in *MOJ* at [420] that:

> "…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"

And, at [421], that:

> "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…"

64. Drawing those strands together, Mr Toal's submission is that for those living in IDP camps, the country guidance in *AMM* continues to apply; that is, that residence in an IDP camp presents a real risk of cruel, inhuman or degrading treatment contrary to Article 3 ECHR.

65. In his skeleton argument, Mr Toal sought to persuade us not to follow the decision of this tribunal in *SB (refugee revocation; IDP camps) Somalia* [2019] UKUT 358 (IAC), in which the above submission was rejected by a Presidential panel. In *SB*, the panel held that the largely naturally-caused events that led the tribunal in *AMM* to conclude that the high threshold for Article 3 harm in relation to conditions in IDP camps had been met no longer pertained.

66. Unless there were "very strong grounds supported by cogent evidence", this tribunal in *SB* should have followed *MOJ* and, in turn, *AMM*, submits Mr Toal; there were no such "very strong grounds", and nor was there cogent evidence to support a departure from *AMM* in *SB*. Accordingly we should take the findings in *AMM* concerning IDP camps as our starting point, and conclude that those forced to resort to residence in an IDP camp would face a real risk of their rights under Article 3 ECHR being breached. We should not follow *SB*. Nothing turns on the fact that Davis LJ refused permission to appeal to the Court of Appeal against the decision in *SB*; it was a process conducted on the papers, and the applicant was not permitted to make oral submissions in support of his application.

67. Addressing *Secretary of State for the Home Department v Said*, Mr Toal submitted that it was important to have clarity about what the Court of Appeal there decided. It did not constitute itself as a form of "super country guidance" court. Had it done so, it would have been acting unlawfully; the House of Lords held that the court was wrong to assume such a role in *AH (Sudan)* [2007] UKHL 49. Properly understood, the court in *Said* held that this tribunal in *MOJ* had misdirected itself concerning the engagement of Article 3 ECHR. It did not make its own findings concerning the conditions in IDP camps, or otherwise engage with the findings in *MOJ* concerning such matters. *Said's* criticism of *MOJ* lay in the fact that, in concluding that the conditions in IDP camps engaged the Article 3 ECHR threshold, it had failed to apply the test elucidated in *N* and *D*. It had failed to make a finding that those conditions were "exceptional and compelling", in the way that the Strasbourg Court had reached such findings in *D's* case. *Said* held that *MOJ* was wrongly decided because the tribunal failed to direct itself concerning the correct test for meeting the threshold for Article 3 ECHR, not because having to live in an IDP camp could not, in principle, satisfy that test.

68. In Mr Toal's submission, the Court of Appeal authorities that had post-dated *Said* did not decide as a matter of principle that Article 3 ECHR could not be breached by the conditions that would be faced by a person having to live in an IDP camp in Somalia. In *Secretary of State for the Home Department v MA (Somalia)* [2018] EWCA Civ 994, *MS (Somalia)* [2019] EWCA Civ 1345 and *MI (Palestine)* [2018] EWCA Civ 1782, the court held that whether such conditions would amount to a breach of Article 3 would first depend upon making findings of fact concerning what those conditions were. Mr Toal submits that findings of fact as to the conditions in IDP camps is a matter for this tribunal, and not for the Court of Appeal.

69. To that end, Mr Toal submits that the country guidance given in *AMM* at [486] and [487] has not been displaced, and that this tribunal should conclude that if there is a real risk the appellant will have to resort to living in an IDP camp, there is corresponding real risk that he will be subject to treatment that is contrary to Article 3 ECHR.

Forced eviction

70. We set out below the background materials Mr Toal relies upon to demonstrate that the appellant will be at risk of a forced eviction. We summarise here the legal principles upon which Mr Toal founds those submissions. Mr Toal relies on a range of international materials to place the above submissions on a legal foundation. The UN Committee on Economic, Social and Cultural Rights adopted views under the Optional Protocol to the ICESCR, concerning communication No. 52/2018, *Rosario Gómez-Limón Pardo v. Spain,* in relation to the eviction, in 2018, of a female victim of gender-based violence from the family home her late parents had first rented in 1963. Praying the views of the Committee in aid, Mr Toal submits that the evidence demonstrates that Somalia regularly breaches its own international obligations towards evictees, on account of their forced and arbitrary nature, with inadequate legal supervision, absences of suitable alternative accommodation, and by pursuing evictions when it is not proportionate to do so.

71. In *Selçuk and Asker v Turkey* (1998) 26 EHRR 477, at [77] to [80], and *Bilgin v Turkey* (2003) 36 EHRR 50, *Dulas v Turkey* (Application no. 25801/94) and *Moldovan and Others v Romania No. 2* (2007) EHRR 16, the European Court of Human Rights has held that the destruction of people's homes by the authorities may amount to inhuman treatment contrary to Article 3 of the ECHR. The African Commission on Human Rights made similar findings in *Sudan Human Rights Organisation, Centre on Housing Rights and Evictions v Sudan* [2009] ACHPR 100 at [159]. In *Hijrizi v Yugoslavia* (2002) Communication No. 161/200, UN Doc CAT/C/29/D/161/2000 the

UN Committee Against Torture held that the police's failure to prevent forced evictions amounted to cruel, inhuman or degrading treatment or punishment.

72. Accordingly, Mr Toal submits that the risk of forced eviction faced by IDPs in Somalia gives rise to a real risk of a breach of the rights guaranteed by Article 3 ECHR and the international instruments outlined above, in light of (i) the willingness of the Federal Government of Somalia ("FGS") to engage in forced evictions; (ii) the provision by the FGS of its own security forces to conduct forced evictions on its own behalf, and on behalf of private actors; (iii) the FGS's failure to protect IDPs against forced evictions; (iv) the FGS's failure to provide procedural and remedial protections from forced eviction; (v) the FGS's failure to provide adequate alternative accommodation for those forcibly evicted; and (vi) the failure to ensure that evictions are only conducted when it is proportionate to do so.

Risk of breach of Article 3 on account of Somalia's failure to comply with its own international obligations

73. Mr Toal submits that the applicable threshold for the breach of Article 3 ECHR is that contained in *MSS v Belgium and Greece* (2011) 53 EHRR 2. At [251], the Strasbourg Court attached "considerable importance" to the applicant's status as an asylum seeker and, "as such, a member of a particularly underprivileged and vulnerable population group in need of special protection", thereby engaging the protection of Article 3, in view of the Hellenic Republic's failure to meet its legal obligations towards the applicant in those proceedings. The principle is not confined to asylum seekers; in *Orsus v Croatia* (2011) 52 EHRR 7 at [147]. That IDPs are especially vulnerable is confirmed by the introductory note to the *Guiding Principles on Internal Displacement* (E/CN.4/1998/53.Add.2) at [1] and the *Handbook for the protection of internally displaced persons (2007)* at page 6. Mr Toal relies on recitals to the protocol to the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) to underline this submission. In parallel to the situation in *MSS*, the obligations owed by Somalia to the appellant under the International Covenant on Economic, Social and Cultural Rights 1966 and the Kampala Convention are of a similar order to the operative legal obligations at play in *MSS*, submits Mr Toal. Under those conventions, Somalia owes legal obligations to its citizens which, upon his putative return, will include the appellant. As those obligations stem from human rights treaties, they have a "special character", as held by the Inter-American Court of Human Rights in *Advisory Opinion OC-2/82* of 24 September 1982 (Ser A) No 2 (1982), and as endorsed by the dissenting minority of the Board of the Privy Council in *Matthew v State of Trinidad and Tobago* [2004] UKPC 33; [2005] 1 AC 433 at [55], which examined Trinidad and Tobago's international legal obligations in order to resolve what the minority considered to be an ambiguity in the construction of the constitution.

74. Mr Toal relies upon Articles 2(1) and (2), 6(1), 9, 11(1) and (2) and 16 of the ICESCR, as explained, where relevant, by General Comments Nos 4, 7, 12, 18 and 19. Of the Kampala Convention, Mr Toal relies upon Articles II(d), III, III, V, and IX, which he contends have been incorporated into the FGS *National Policy on Refugee-Returnees and Internally Displaced Persons (IDPs)*. We set out relevant detail of these provisions in our substantive discussion of this submission. Drawing on these authorities, in light of the submissions advanced based on the background materials as set out below, Mr Toal submits that there is a real risk that the appellant, upon his return to Mogadishu, will not be provided with basic shelter and housing, essential food, potable water, essential medical services and sanitation, and personal security. The appellant will face discrimination based on his clan membership in his attempts to access such essential goods and services, and that the state will fail to take measures to end such discrimination.

75. The relevance of the above conventions, submits Mr Toal, is that they go to the interpretation of Article 3 ECHR: see *Airey v Ireland* (1979-80) 2 EHRR 305 at [26], and *Demir v Turkey* (2009) 48 EHRR 54 at [85]. In *Demir*, the Strasbourg Court held that, in defining the meaning of terms and notions in the text of the ECHR, it "can and must" take into account elements of international law other than the Convention: [85]. Mr Toal relies on a series of Strasbourg cases concerning the concept of "dignity" and its relevance to Article 3 ECHR, in order to support his submission that the treatment faced by the appellant in Somalia will contravene the article. Similar support may be found in the Strasbourg Court's approach to the Council of Europe Convention against Trafficking to support the construction of Article 4 ECHR, and the court's approach to interpreting Article 8 ECHR in light of the UN Convention on the Rights of the Child. The "extreme poverty" and constant fear and risk of being attacked or robbed place the appellant in an analogous position to the applicant in *MSS v Greece and Belgium.* Somalia's lack of resources does not mitigate its legal obligations towards the appellant, submits Mr Toal, as the evidence before the tribunal does not demonstrate that Somalia has made every effort to use all its resources to satisfy its obligations under the ICESCR and the Kampala Convention. In any event, a lack of resources cannot be prayed in aid of a failure to meet the minimum standards prescribed by Article 3 ECHR.

76. In a further attempt to place the appellant's case within the *MSS* paradigm, Mr Toal submits that it would be "wrong" to treat extreme poverty of the sort awaiting the appellant as being equivalent to a naturally occurring condition. The well-documented "economic boom" in Somalia has not resulted in a fair distribution of the benefits that have flowed from it. Moreover, the boom has catalysed unlawful activity such as forced eviction, in relation to which the State has acquiesced if not facilitated. The appellant's reception would breach his rights under Article 3 of the ECHR.

77. Addressing the test for Article 3 enunciated in *N v United Kingdom* (2008) 47 EHRR 39 (for example, at [43]: "other very exceptional cases where the humanitarian conditions are equally compelling..."), Mr Toal submits that it should be applied in light of *Paposhvili v Belgium*, as endorsed by the Supreme Court in *AM (Zimbabwe) v Secretary of State for the Home Department* [2020] UKSC 17. In *Said* at [18], Burnett LJ contemplated the possibility that poverty or deprivation could form the basis of a successful Article 3 claim based on the *N* threshold. In *KAM (Nuba – return) Sudan CG* [2020] UKUT 269 (IAC), this tribunal assumed that the *Paposhvili* test applied to living condition cases. See [52], with emphasis added:

> "Whilst the case of *N v UK* (2008) 47 EHRR 39 has recently been reconsidered by the Strasbourg Court in *Paposhvili v Belgium* [2017] Imm AR 867 and adopted by the Supreme Court in *AM (Zimbabwe) v SSHD* [2020] UKSC 17 so as to broaden the category of 'exceptional case' falling within Art 3 in medical/health cases (**and here by analogy we assume in 'living condition' cases**), it remains a rigorous test requiring serious and immediate suffering reaching the high Art 3 threshold or a significant diminution in life expectancy (see [27]-[31] per Lord Wilson in *AM*)."

Ainte (material deprivation - Art 3 - AM (Zimbabwe)) [2021] UKUT 203 (IAC)

78. In his post-hearing submissions concerning *Ainte*, dated 21 September 2021, Mr Toal endorsed the principle encapsulated at paragraph (ii) of the Headnote to *Ainte*, which held that *Paposhvili* modified the *N* test in living conditions cases, such that the relevant question is whether the "conditions are such that there is a real risk that an individual will be exposed to intense suffering or a significant reduction in life expectancy".

79. Mr Toal advanced a range of additional submissions concerning *Ainte*. First, the tribunal in *Ainte* was wrong to reject the argument, also advanced in these proceedings, that the country guidance given in *AMM* continues to apply insofar as it found that residence in an IDP would entail a real risk of a breach of Article 3, for the reasons Mr Toal had already advanced in these proceedings. Secondly, in relation to *MSS*, Mr Toal submitted that the tribunal in *Ainte* rightly accepted certain strands of his submissions concerning the ICESCR and the Kampala Convention. However, Mr Toal submits that the tribunal was wrong to conclude that the *MSS* approach did not extend "to cover situations in which non-ECHR signatories fail to meet their own regional or international commitments" (see [35]). There was no principled basis to draw that distinction. *Ainte*'s reliance upon *SHH v Belgium* at [90] ("*…the Convention does not purport to be a means of requiring Contracting States to impose Convention standards on other States…*") was misplaced; there is no principled basis to adopt different standards for deciding whether treatment is inhuman or degrading depending on whether it occurs in a signatory state or a non-signatory state.

80. The case-specific findings in *Ainte* addressed a range of other matters, concerning the likely profile of that appellant in Mogadishu, the spectrum of conditions in IDP camps, the availability of the Secretary of State's Facilitated Returns Scheme to Mr Ainte, and certain findings of fact reached by the tribunal concerning the availability of employment. To the extent Mr Toal's submissions concerning those other matters are relevant to the issues in these proceedings, we return to them in our analysis in our substantive decision. We simply observe at this stage that the *ratio* of the case is as set out in the judicial headnote, and it is always necessary to approach case-specific findings of fact with a degree of caution: see *MI (Pakistan) v Secretary of State for the Home Department* [2021] EWCA Civ 1711 at [50] and [51].

The Refugee Convention

81. Mr Toal submits that the harm the appellant faces in Somalia amounts to "being persecuted" for the purposes of the Refugee Convention. The appellant is a member of "a particular social group" on a number of distinct bases; he is a member of a minority clan, a returnee from the West, a person with a previous history of criminal offending and drug use, an internally displaced person and a homeless person. The criteria for the revocation of his refugee status have not been satisfied. His appeal should be allowed on protection grounds.

Article 8

82. Addressing the statutory exceptions to deportation contained in section 117C of the 2002 Act, Mr Toal submits that the appellant's likely circumstances upon being deported, combined with the country conditions in Somalia, the appellant's age upon departure from Somalia (5) and his residence in the UK since the age of 15, cumulatively amount to "very compelling circumstances" over and above the exceptions. The appellant's offending has been linked to his drug use, and his offences are at the lower end of the scale. His deportation would deprive him of the methadone script he currently has access to. Without it, the consequences would be grave. The appellant's deportation would not be in the public interest.

Gatekeepers: trafficking and Article 4 ECHR

83. Mr Toal advanced a range of submissions contending that the treatment the appellant is likely to receive from the gatekeepers amounts to "trafficking", thereby engaging the protection of Article 4 ECHR. As we set out at paragraph 16 above, we declined to grant the appellant permission to rely on amended grounds of appeal at the late stage at which he sought to do so. Accordingly, we do not summarise Mr Toal's legal submissions in this regard. They do

not relate to the grounds of appeal advanced against the Secretary of State's decision. Where relevant we do, of course, consider the gatekeeper-based submissions to the extent they are within the scope of the grounds of appeal.

Criticism of the Secretary of State's approach

84. Mr Toal submitted that the Secretary of State should have monitored the return of the 200 or so forced returns to Somalia from the United Kingdom, working with the British Embassy in Mogadishu. As such, the Secretary of State should have provided evidence concerning the returnees' experience in relation to matters such as employment and accommodation, as well as their post-return experiences.

THE SECRETARY OF STATE: SUBMISSIONS ON THE LAW

85. Mr Hansen commenced his submissions on Article 3 ECHR by underlining the primary obligation imposed on High Contracting Parties to the Convention, which is a negative obligation to refrain from inflicting serious harm on persons within their jurisdiction. The present matter does not fall within that paradigm; it does not entail a real risk of the intentional infliction of serious harm by state agents. The Convention is concerned with civil and political rights in the territories of the states parties to it, and is not concerned with alleviating disparities in conditions and treatment in third countries, and nor is it a means of imposing convention standards on non-convention states. The test in "living condition" cases is the *N* test, applied in an "unvarnished" manner. Pursuant to *Said*, *MA (Somalia)* and *MS (Somalia)*, this tribunal is bound to apply the *N* test to the appellant's prospective circumstances upon his return to Somalia. *Paposhvili*, as adopted and explained by the Supreme Court in *AM (Zimbabwe)* modifies the strict *N* test in medical cases (but only in medical cases). While the ECHR is to be interpreted as a "living instrument", it must not be interpreted so as to impose upon states obligations which they did not agree to, and would not have agreed to. Living conditions cases are subject to the *N* test. To the extent *Ainte* held otherwise, it was incorrectly decided and should not be followed. This tribunal is bound by *Said*, *MA (Somalia)* and *MS (Somalia)* to apply the test in *N*. To the extent that this tribunal held otherwise in *KAM (Nuba - return) Sudan CG* [2020] UKUT 269 (IAC), it is not clear whether it heard full argument on the point (see [52]: "by analogy *we assume* in 'living condition' cases", emphasis added), and it provides no reasoning to support its extension of the *N* approach.

86. In relation to the import of *MOJ* in light of *Said*, Mr Hansen submits that the Court of Appeal authoritatively set out the position concerning Article 3 living condition cases, in light of the situation in Somalia at the time. So much is clear from what Burnett LJ said at [28]:

> "I am unable to accept that if a Somali national were able to bring himself within the rubric of para 408 [of *MOJ*], he would have established that his removal to Somalia would breach Article 3 of the Convention. Such an approach would be inconsistent with the domestic and Convention jurisprudence which at para 34 UTIAC expressly understood itself to be following."

87. Mr Hansen submits that the circumstances of the present case do not engage the *MSS* approach. Somalia's ratification of the Kampala Convention in relation to IDPs does not render the situation analogous to that of a signatory to the ECHR, such as Greece's obligations to asylum seekers under EU law and its own domestic law. Nor can it be said that the conflict in Somalia is the preponderant cause of the humanitarian situation there. Somalia's compliance with its own international legal obligations is not an issue that is justiciable before

this tribunal. Only a constitutional court in Somalia could make findings on those issues. What Somalia's ratification of the Kampala Convention *does* show, however, when taken with the various policy initiatives adopted by the FGS such as the National Durable Solutions Strategy, and the National Eviction Guidelines, is that Somalia is serious about dealing with the problems faced by IDPs. As for Mr Toal's reliance upon *Selçuk and Asker v Turkey*, *Moldovan and Others v Romania No. 2* and the other Strasbourg authorities concerning the Article 3 ECHR implications of certain forced evictions, it is clear that the facts of those matters were extreme, involving actors of the state engaging in what the Strasbourg Court described as contemptuous action (see *Selçuk* at [77]) and the degradation of the victims. In the *Moldovan* case, a mob which included the local chief of police descended upon the home of the applicants, set it alight, leading to the applicants' deaths. Mr Hansen submits that the facts of those matters are so far removed from those before this tribunal as to be of no precedential value at all.

88. Responding to Mr Toal's submission that the Secretary of State's access to the British Embassy in Mogadishu to conduct research into the experiences of the significant number of Somali returnees in recent years, Mr Hansen stated that his instructions were that the embassy's purpose was to maintain and develop relations between the UK and Somalia, and to support Somalia in becoming a stable, secure and prosperous state. Its purpose is not to provide fact finding assistance to the Home Office. There is no post-return monitoring of returnees because returns only take place when it is safe to do so, pursuant to a process which is subject to independent judicial oversight. It would be inappropriate for the UK to assume the role of monitoring a foreign national in their own country. The act of monitoring itself could draw attention to the individual, and expose them to a risk they would not otherwise face.

THE LAW: DISCUSSION

89. We approach our discussion of the law as follows:

    a. Whether the findings in *AMM* concerning the Article 3 implications of residence in an IDP camp remain applicable country guidance;

    b. To what extent are Somalia's international legal obligations under the ICESCR and the Kampala Convention to be taken into account when considering whether the appellant's removal would violate the United Kingdom's obligations under Article 3 ECHR;

    c. What is the impact of *Paposhvili, AM (Zimbabwe)* and *Ainte* on the threshold for a violation of Article 3 in a living conditions case.

The applicability of AMM

90. In order to address Mr Toal's submissions concerning *AMM*, we must first return to *Said*. In *Said*, the Court of Appeal allowed an appeal by the Secretary of State against a decision of this tribunal to allow the appeal of a Somali national facing deportation on Article 3 grounds, in which the Upper Tribunal judge had understood the guidance in *MOJ* to be to the effect that residence in an IDP camp would entail a breach of Article 3, as a proposition of cause and effect. At [19], Burnett LJ held that the circumstances of Mr Said fell "far short" of being able to meet the threshold to satisfy an Article 3 claim under the *D* and *N* cases, and the other relevant ECHR jurisprudence. Mr Said would have been able to work, and would have enjoyed financial aid from his large and supportive family in this country, quite apart from

the support from his clan in Somalia. There was no medical evidence that he would not be able to receive the "relatively commonplace" treatment he currently enjoyed upon his return to Somalia. The court concluded its scrutiny of *Said's* case against the ECHR jurisprudence in these terms:

> "It is clear that this combination of features is so far removed from the nature of exceptional and compelling circumstances envisaged by the Strasbourg cases as to make it clear that AS's deportation would not breach Article 3 of the Convention."

91. Against that background, the court then considered an argument advanced by counsel for Mr Said that the findings of *MOJ* essentially went further than the minimum requirements of the Strasbourg cases. The submission contended that, for domestic purposes, a finding that a returnee might through economic deprivation end up in an IDP camp pursuant to the country guidance in *MOJ* would be sufficient to "scale the Article 3 threshold": see [20] of *MOJ*.

92. To consider that submission, it was necessary for the Court of Appeal to conduct an exegesis of the operative reasoning in *MOJ* to consider whether, properly understood, this tribunal had purported to find that where a returnee would be returned to reside in an IDP camp, the deprived conditions of which the panel had outlined at length, would automatically amount to an infringement of Article 3. At the heart of its analysis, the Court of Appeal had to determine what the panel meant at [408], when it held that a person without the support listed in [407(h)] and [408] would be subject to "circumstances falling below that which is acceptable in *humanitarian protection terms*." *Said* was concerned with resolving the crucial ambiguity which lay in the phrase "humanitarian protection terms", and it is in that context that *Said* must be considered.

93. At [26], Burnett LJ observed that it was not clear whether paragraph 408's use of the term "humanitarian protection", was a reference to the use of that term by the Immigration Rules to refer to those who meet the criteria for a grant of "subsidiary protection" under the Qualification Directive 2004/83/EC, as reflected by paragraph 339C of the rules, often known as a "grant of humanitarian protection". Burnett LJ held that the paragraph 408 criteria could not have been referring to the Article 15(c) of the Qualification Directive, which concerned a serious and individual threat to the life of a civilian by reason of indiscriminate violence in situations of international or internal armed conflict. Nor could it have been a reference to Article 15(b) of the Qualification Directive, which, for the reasons given by Burnett LJ at [27], correspond to Article 3 ECHR. That was because the fact that a person would be returned to very deprived living conditions could not "save in extreme cases lead to a conclusion that removal would violate Article 3."

94. At [28] the court found that paragraphs 407(h) and 408 were likely to have been introduced in connection with internal flight or internal relocation arguments, such matters being within the scope of the country guidance identified at paragraph 1 of *MOJ*. Although those factors may be of "some relevance" when determining whether removal to Somalia would breach Article 3 of the Convention:

> "…they cannot be understood as a surrogate for an examination of the circumstances to determine whether such a breach would occur…"

Burnett LJ continued in the same paragraph:

> "I am unable to accept that if a Somali national were able to bring himself within the rubric of para 408, he would have established that his removal to Somalia would breach Article 3 of the Convention. Such an approach would be inconsistent with the domestic and Convention jurisprudence which at para 34 UTIAC expressly understood itself to be following."

95. There were other reasons why *MOJ* lacked clarity: at [30] the Court of Appeal highlighted that elements of the panel's discussion had conflated the *N* approach to a violation of Article 3, where the predominant cause of the harm is attributable to natural causes, and the *Sufi and Elmi* and *MSS* cases, where the deprived living conditions were attributable to the consequences of conflict or a state party to the Convention's failure to comply with its own domestic obligations, adopted pursuant to EU law. That analysis led to the conclusion at [31] that the panel in *MOJ* could not have intended to conclude that living conditions falling below what "is acceptable in humanitarian protection terms" were to be treated as being coterminous with a breach of Article 3 ECHR, because:

> "…such a stark proposition of cause and effect would be inconsistent with the jurisprudence of the Strasbourg Court and the binding authority of the domestic courts."

96. The correct position, held the Court of Appeal, was that stated at [422] of *MOJ*:

> "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."

97. We therefore find that the import of *Said* is that, on the state of the Convention jurisprudence at the time, this tribunal in *MOJ* did not and could not have purported to conclude that the humanitarian implications of residence in an IDP camp would automatically and without more amount to a violation of Article 3 of the Convention. Such a stark proposition of cause and effect would be inconsistent with the jurisprudence of the Strasbourg Court and binding domestic authority, even if, as Burnett LJ accepted at [31], some of the observations in *MOJ* "may be taken to suggest" that if a returning Somali can establish that he is likely to end up having to establish himself in an IDP camp, that would be sufficient to engage the protection of Article 3. The reference to the factors listed in paragraphs 407(h) and 408 to living conditions falling below "*that which is acceptable in humanitarian terms*" was likely to have been introduced in connection with determining the reasonableness of Mogadishu as an internal flight alternative. While *Said* found that *MOJ* lacked clarity, including through its conflation of humanitarian conditions attributable to natural phenomena, on the one hand, and *MSS* causes, on the other (see [30], addressing [412] of *MOJ*), it also found that the operative findings in *MOJ* did not include any finding that a person who finds themselves in an IDP camp is automatically likely to face Article 3 mistreatment. *Said* held that it would be an error of law to read *MOJ*'s findings in that way. That is not to say that a person caused to resort to an IDP camp in consequence to a removal decision by the Secretary of State could never demonstrate that their removal would violate Article 3, but rather that there will need to be a careful assessment of all the circumstances of a particular individual's removal, as the panel held at [422].

98. In *MA (Somalia) v Secretary of State for the Home Department,* Arden LJ (as she then was) summarised the operative findings of *Said* concerning the Article 3 threshold in living condition cases in the following succinct terms, at [63]:

> "The analysis in *Said's* case, by which this court is bound, is that there is no violation of article 3 by reason only of a person being returned to a country which for economic reasons cannot provide him with basic living standards."

99. We turn now to Mr Toal's arguments that *AMM's* findings concerning the Article 3 implications of residence in an IDP camp were preserved by *MOJ*, and remain good to this day. We consider this submission to be bound up with his submission that *SB* was wrongly decided on this point, and should not be followed. We reject both submissions, for the following reasons.

100. First, it is clear that the country guidance in *AMM* was context-specific and anchored to the circumstances of the prevailing drought in Somalia at the time, as found by the tribunal. At [477], the panel in *AMM* underlined that the predominant cause of the humanitarian crisis was not, as the Strasbourg Court had found in *Sufi and Elmi*, the direct and indirect actions of the parties to the conflict, but rather the worst drought there had been for 60 years. The actions of the parties to the conflict did, however, go to the issue of whether the circumstances in Somalia rendered it to be one of those "very exceptional cases" in which humanitarian conditions triggered Article 3. At [486], the tribunal underlined that its findings concerned "a return to southern and central Somalia *at the present time*" (emphasis added). Then at [487] addressing the position of a hypothetical Somali returning to a village which was unaffected by the conflict, the impact of the drought was such that "*at present* and as a general matter" (emphasis added) it should be assumed that the individual would face the desperate consequences of drought, thereby engaging a generalised Article 3 risk. The panel added at [490], again with emphasis added:

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

101. Mr Toal relies on the final sentence of [490] of *AMM*; the panel found that regardless of whether the famine had come to an end, residence in an IDP camp would entail a real risk of Article 3 being violated. This submission is flawed. The final sentence of [490] of *AMM* applies only "absent some more fundamental change in the picture", which must have been a reference to the conflict at the time. The conflict was a factor which went to the exceptionality requirement of the *N* test: see [480]. The conflict was a significant feature of the in-country conditions when *AMM* was heard, albeit not the predominant cause of the prevailing humanitarian conditions. The conflict was also addressed in the penultimate sentence of [490], further demonstrating the context in which the final sentence of [490] sits. It was in that

specific context that the panel in *AMM* held that the end of the drought would not necessarily place all residents of IDP camps beyond the risk of Article 3 mistreatment. The findings in *AMM* were very much conditional upon the circumstances in Somalia at the time. Taken at their highest, *AMM's* findings were only ever intended to be temporary and context-specific. There has, of course, been a "fundamental change in the picture" by virtue of the sustained withdrawal of Al-Shabaab and the diminution of the Article 15(c) risk, the cessation of inter-clan hostilities, the economic boom, and the other changes documented by *MOJ*.

102. Secondly, in common with Burnett LJ at [31] of *Said*, we "entirely accept" that some passages in *MOJ* "may be taken" to suggest that if a returning Somali is able to demonstrate that he or she would end up in an IDP camp, a breach of Article 3 would ensue. Mr Toal relies on such passages to underline his submission that the findings reached by *AMM* were, in effect, perpetuated by *MOJ*. As a matter of law, if that is what the panel in *MOJ* intended, it would have been incorrect, for one does not follow the other; and *Said* held that that was *not* what *MOJ* found. As we have set out above, in *Said* the Court of Appeal held that the reference to "that which is acceptable in humanitarian protection terms" in the operative reasoning of the decision was likely to be a reference to the reasonableness of relocating to Mogadishu as an internal flight alternative, when considering claims under the Refugee Convention.

103. Mr Toal's reliance on *MOJ* to establish this limb of his submission is based on precisely the same misreading of *MOJ* that characterised the judgment under appeal in *Said* itself. As we have set out above, the import of *Said* is that it clarified how *MOJ* was *not* to be read and applied. So much is clear from two further post-*Said* authorities. See [23] of *MI (Palestine) v Secretary of State for the Home Department*, where Flaux LJ held that the conclusions of the court in *Said* related to a proper understanding of the findings reached by *MOJ*:

> "This Court evidently considered that the Country Guidance case [*MOJ*] showed that the conditions in Somalia, although harsh, could no longer be attributed to the direct and indirect actions of the parties to the former conflict so that the *N* test applied to the applicant's case and he could not satisfy that test, hence the Secretary of State's appeal succeeded."

104. Similarly, *MS (Somalia) v Secretary of State for the Home Department* [2019] EWCA Civ 1345 held that the First-tier Tribunal in the decision under challenge in those proceedings had erred by relying on paragraphs 407(h) and 408 of *MOJ* to determine whether the appellant's return to Somalia would violate Article 3 ECHR. The court held at [76]:

> "By relying upon and applying para 408 of the *MOJ* decision in determining whether there would be a breach of article 3 of the ECHR the FTT accordingly applied the wrong legal test, as *Secretary of State for the Home Department v Said* makes clear."

The errors as described in the decisions under appeal in *MI (Palestine)* and *MS (Somalia)* were not so much with *MOJ* itself, but with an erroneous reading of the guidance given in *MOJ*.

105. Mr Toal's reliance on *AMM* and *MOJ* in these respects is therefore flawed. The submission is founded on findings of fact that were expressly confined to the circumstances prevailing in Somalia at the time, and it relies on a misreading of *MOJ* that was expressly disavowed in four Court of Appeal judgments: *Said*, *MA (Somalia)*, *MI (Palestine)*, and *MS (Somalia)*. We find that, properly understood, neither *AMM* nor *MOJ* reached findings that bind us to the effect that mere residence in an IDP camp in Somalia is sufficient to violate Article 3 ECHR. It follows

that there is no good reason not to follow *SB*. It accurately represents the findings reached in *AMM*, and places them in their historical context, in light of the significant changes documented in *MOJ*. We are fortified in this conclusion by the refusal of permission to appeal to the Court of Appeal in *SB* by Davis LJ.

Somalia's international legal obligations under the ICESCR and the Kampala Convention

106. We consider Mr Toal's reliance on the ICESCR and the Kampala Convention to be misplaced, and reject it for the reasons set out below:

a. First, the extent to which the obligations assumed by Somalia pursuant to these international instruments are binding on Somalia and have effect as a matter of domestic Somali law is a matter of foreign law to be established by evidence, of which there is none. Allied to that concern, there are considerable interpretative and practical difficulties inherent to the notion that a tribunal or court in this jurisdiction could purport to rule on whether or not an African state is in breach of a regional treaty, which may be subject to very different interpretative principles to those applicable to interpreting and applying the ECHR. It is not for this tribunal to rule on whether Somalia has breached its obligations under the instruments in question. Mr Hansen's submission that only a constitutional court in Somalia should be seized of that task is attractive, although we have no evidence as to whether there even is such a court in Somalia, or whether the matter would even be justiciable under Somali law, a reality that underlines the broader point being advanced by Mr Hansen. The fact that this tribunal is unable to offer even a tentative view as to the correct Somali court or other regional forum (assuming there is one) for the examination of Somalia's compliance with its obligations under the ICESCR or the Kampala Convention underlines the jurisdictional and competence-based flaws to this submission.

b. Secondly, even assuming the obligations assumed by Somalia under each instrument have the binding effect in Somalia for which Mr Toal contends, to accede to this submission would amount to a very significant extension in the principles enunciated in both *N* and *MSS*. It would amount to the imposition on the United Kingdom of international legal obligations assumed by Somalia, which are wholly within the gift and responsibility of Somalia to implement and comply with, in consequence to the United Kingdom being a State party to a European regional human rights treaty. This would not so much amount to the European Convention being construed as a living instrument, but would rather be to allow it to develop a life of its own.

c. Thirdly, *MSS* involved the conditions in Greece, which is a contracting party to the ECHR, and its failure to comply with the binding requirements of EU law relating to reception conditions for asylum seekers. There was evidence before the court that Greece had failed to comply with the positive obligations imposed by its own legislation, which had been adopted to comply with EU law. The deliberate actions or omissions of the Greek authorities had made it impossible for the applicant to obtain the assistance he required, and to which he was legally entitled, as an asylum seeker in Greece: see *MSS* at [250]. By contrast, the appellant's submission in these proceedings rests on assumptions about international obligations apparently assumed by a third country. The distinction between the circumstances in *MSS* and the present proceedings is analogous to that highlighted by the Strasbourg Court in *SSH*, concerning the removal of a disabled man to Afghanistan. See *SHH* at [90]:

> "…the Court considers that the present case can be distinguished from *M.S.S.* In that case, a fellow Contracting State, Greece, was found to be in violation of Article 3 of the Convention through its own inaction and its failure to comply with its positive obligations under both European and domestic legislation to provide reception facilities to asylum seekers. Central to the Court's conclusion was its finding that the destitution of which the applicant in that case complained was linked to his status as an asylum seeker and to the fact that his asylum application had not yet been examined by the Greek authorities. The Court was also of the opinion that, had they examined the applicant's asylum request promptly, the Greek authorities could have substantially alleviated his suffering (see paragraph 262 of the judgment). By contrast, the present application concerns the living conditions and humanitarian situation in Afghanistan, a non-Contracting State, which has no such similar positive obligations under European legislation and cannot be held accountable under the Convention for failures to provide adequate welfare assistance to persons with disabilities…"

d. Fourthly, the submission offends the principle that the ECHR is not a means of requiring States parties to it to impose Convention standards on third states: see *SHH* at [90], quoting from *Al-Skeini v United Kingdom* (2011) 53 EHRR 18 at [141]:

> "The Convention is a constitutional instrument of European public order. It does not govern the actions of states not parties to it, nor does it purport to be a means of requiring the contracting states to impose Convention standards on other states."

e. Fifthly, when the court in *MSS* attached "considerable importance to the applicant's status as an asylum seeker and, as such, a member of particularly underprivileged and vulnerable population group in need of special protection", it was not establishing a new class of persons ("particularly underprivileged and vulnerable…") in relation to which there would be a lower threshold for the satisfaction of Article 3 ECHR claims. As an asylum seeker, MSS was unable to return to Afghanistan until his claim for international protection had been examined, and was protected by the prohibition against *refoulement* in the Refugee Convention. As the Strasbourg Court highlighted at [56] in its discussion of the UNHCR's *Note on international protection* A/AC.96/951, "The duty not to *refoule* is also recognised as applying to refugees irrespective of their formal recognition, thus obviously including asylum-seekers whose status has not yet been determined." MSS had nowhere else to go pending the examination of his claim for international protection; as Laws LJ put it in *GS (India)*, "the court attached particular importance to the fact that the applicant was an asylum-seeker". The significance of the applicant's vulnerability in *MSS* lay in his status as a claimant for international protection, rather than simply due to his social-economic or other vulnerability. By contrast, this appellant will be returning to Somalia, as a Somali national, with language skills and the benefit of other matters we set out in our findings in relation to his individual appeal, below. If the *MSS* approach were to be extended to other vulnerable persons absent the conduct complained of taking part on the territory of a State party to the Convention, due to the deliberate actions or omissions of the state, and the individual

concerned being an asylum-seeker benefiting from the principle of *non-refoulement*, it would amount to a material dilution of the *N* threshold.

f. Finally, the minority dissenting opinion of the Privy Council in *Matthew* does not assist the appellant (see paragraph 73, above). It was in the specific context of seeking to resolve what the minority considered to be an ambiguity in the construction of the constitution of Trinidad and Tobago that the Board took into account the international legal obligations assumed by that state. Not only did the majority *not* consider there to be any such ambiguity, it is clear that, in contrast to this tribunal's lack of jurisdiction *vis a vis* any international legal obligations that may have been assumed by Somalia, the Judicial Committee of the Privy Council was pre-eminently competent to make findings concerning the constitution of Trinidad and Tobago, and the import of any of that state's international legal obligations. The contrast between *Matthew* and the present proceedings could not be more stark.

107. For these reasons, we conclude that the *MSS* threshold is not applicable to the applicant's Article 3 living conditions claim by virtue of the Kampala Convention or the ICESCR.

Paposhvili and "living conditions" cases

108. Paragraph (ii) of the Headnote to *Ainte* provides:

> "In cases where the material deprivation is not intentionally caused the threshold is the modified N test set out in *AM (Zimbabwe)* [2020] UKSC 17. The question will be whether conditions are such that there is a real risk that the individual concerned will be exposed to intense suffering or a significant reduction in life expectancy."

109. We decline to accede to Mr Hansen's submissions to find that *KAM* (quoted at paragraph 77, above, and below) and *Ainte* were wrongly decided. However, in our judgment it is important to underline the distinction between the substantive requirements of the *Paposhvili* Article 3 threshold of "intense suffering", on the one hand, and the broader question of the parameters of when the returning State is properly to be regarded as responsible for such intense suffering, on the other.

"Intense suffering" and Article 3 orthodoxy

110. We accept that *Paposhvili* broadened the category of 'exceptional' cases falling within Article 3 threshold, in that the *D* and *N* requirement for the applicants in health cases to be at imminent risk of dying is no longer present. However, the requirement that "ill-treatment that attains a minimum level of severity and involves… **intense physical or mental suffering**" has always fallen within the scope of Article 3: see *Pretty* at [52], and the caselaw there cited (emphasis added). The prohibition against a State party to the Convention inflicting "ill-treatment" that entails "intense suffering" is an established feature of Convention jurisprudence. *Paposhvili* articulated a modified threshold for what amounts to "intense suffering" in medical cases, removing the former *D* and *N* requirement for Article 3 medical cases to involve the prospect of imminent death.

111. The modified test remains rigorous, and must attain a minimum level of severity. See *KAM* at [52]:

> "Whilst the case of *N v UK* (2008) 47 EHRR 39 has recently been reconsidered by the Strasbourg Court in *Paposhvili v Belgium* [2017] Imm AR 867 and adopted by the Supreme Court in *AM (Zimbabwe) v SSHD* [2020] UKSC 17 so as to broaden the category of 'exceptional case' falling within Art 3 in medical/health cases (and here by analogy we assume in 'living condition' cases), **it remains a rigorous test requiring serious and immediate suffering reaching the high Art 3 threshold or a significant diminution in life expectancy** (see [27]-[31] per Lord Wilson in *AM*)." (Emphasis added)

112. The test is demanding. The living conditions must be so dire so as to fall within the 'other very exceptional cases' criterion. The level below which such conditions must fall is to be calibrated by reference to the *Paposhvili* requirement that the returnee must be 'seriously ill'. They must face immediate, serious and intense suffering that reaches the Article 3 threshold.

Causal link required between expulsion and Article 3 mistreatment

113. But even where the modified Article 3 test is capable of being met on account of a returnee's living conditions and material deprivation, there must be a causal link between the real risk of the returnee being exposed to those conditions, and the Secretary of State's action in removing the individual to the country concerned. Adopting established Convention terminology (see, e.g., *Vilvarajah* at paragraph 115; *Salah Sheekh v The Netherlands* (2007) 45 EHRR 50 at paragraph 148; *Sufi and Elmi* at paragraph 271), this tribunal in *Ainte* expressed the causal link requirement as being questions of whether the returnee (i) "upon return"; (ii) "will be exposed to"; (iii) "conditions resulting" in intense suffering: see paragraph 68. "Upon return", "be exposed to" and "conditions resulting" convey the need for a link between the actions of the expelling state and the subsequent ill-treatment.

114. On the facts of *Ainte*, it was not necessary for the tribunal to determine *when* upon return the exposure to conditions resulting in intense suffering must take place in order to render the expelling state responsible, although its use of the term "upon return" reflects the Strasbourg jurisprudence emphasis that that there must be a temporal proximity to the causal link. *KAM* spoke of the need for there to be "serious *and immediate* suffering", and as we set out below, the Strasbourg cases require what the court has termed a "rapidity" of suffering linked to the individual's return (in *N*) or a "serious, *rapid* and irreversible decline" (in *Paposhvili*).

115. We observe that in *D* and *Paposhvili*, the pre-existing health conditions of the applicants were such that the mere fact of their removal to territories where they would not receive the appropriate palliative care or other treatment would directly, and within a short time, result in their direct exposure to Article 3 ill-treatment. In *D* the operative reasoning was at [52] and [53]:

> "52. The *abrupt withdrawal* of these [medical] facilities will *entail the most dramatic consequences* for him. It is not disputed that his removal will hasten his death. There is a serious danger that the conditions of adversity *which await* him in St Kitts will further reduce his already limited life expectancy and subject him to acute mental and physical suffering…
>
> 53. In view of these exceptional circumstances and bearing in mind the critical stage now reached in the applicant's fatal illness, the implementation of the decision to remove him would amount to inhuman treatment by the respondent State in violation of Article 3… his *removal would expose him to a real risk of dying*

> under the most distressing circumstances and would thus amount to inhuman treatment." (Emphasis added)

116. *D* and *Paposhvili* are united in their requirement for the applicant to be suffering from serious pre-existing health conditions and the need for removal to have an immediate (c.f. "dramatic" in *D*; "serious, *rapid* and irreversible decline" in *Paposhvili*) and significant impact on their health. In each case, the causal link between removal and the serious deterioration in the applicant's pre-existing health conditions is a central requirement to the removing State being held responsible under Article 3. *D* and *Paposhvili* may be contrasted with the *N* case, where the applicant's "quality of life, and her life expectancy, would be *affected* if she were returned to Uganda" (see [50]), but she was not critically ill at the time. Significantly for present purposes, the court found that making findings concerning the "*rapidity* of the deterioration which she would suffer… must involve a certain degree of speculation…" *N* lacked the rapid and direct causal link between her removal and prospective deterioration such that there was no Article 3 breach on the part of the expelling State, the United Kingdom. While *Paposhvili* materially lowered the threshold for what amounts to Article 3 harm, it maintained the established *N* requirement for there to be a "*rapidity*" of deterioration linked to removal.

117. The requirement for temporal proximity is an additional key facet of holding the expelling State responsible for any intense suffering experienced by a returnee on account of material deprivation. A returnee whose health may deteriorate at some unknown future point cannot hold the returning state responsible for a non-rapid, anticipated prospective decline in their health. In the same way, a returnee fearing "intense suffering" on account of their prospective living conditions at some unknown point in the future generally cannot attribute responsibility for those living conditions to the Secretary of State.

118. The requirement for a causal link between expulsion and the ill-treatment is not confined to health cases. In *Soering v United Kingdom* (1989) 11 EHRR 439, the Strasbourg court considered the Article 3 implications of extraditing a suspect to face trial, and the possible death penalty in Virginia, which would entail the ensuing agony of potentially lengthy periods awaiting execution upon conviction on death row, known as "death row phenomenon".

119. In *J v Secretary of State for the Home Department* [2005] EWCA Civ 629, a case concerning suicide risk on removal, the Court of Appeal addressed *Soering* in the following terms, at [29]:

> "…a causal link must be shown to exist between the act or threatened act of removal or expulsion and the inhuman treatment relied on as violating the applicant's article 3 rights. Thus in *Soering* at para [91], the court said:
>
> > 'In so far as any liability under the Convention is or may be incurred, it is liability incurred by the extraditing Contracting State by reason of its having taken action which *has as a direct consequence the exposure of an individual to proscribed ill-treatment.*'" (emphasis added by the Court of Appeal)

120. Drawing this analysis together, the Strasbourg health cases demonstrate that there must be a causal link between the implementation of the removal decision and the intense suffering or other Article 3 mistreatment to be experienced by the returnee in order for the expelling State to be held responsible.

121. Where the circumstances of a returnee are such that there are substantial grounds for believing that the returnee will be at a real risk of being subjected to intense suffering to the Article 3

standard *as a result of their expulsion*, the expelling State will be responsible for that suffering, such that Article 3 would be breached as a result.

122. However, there must come a point on the chronology of a returnee's narrative following their initial arrival in Mogadishu at which the United Kingdom, as the expelling State, is no longer "properly to be regarded as responsible for the harm inflicted (or threatened) upon the victim" (*R (ex parte Adam) v Secretary of State for the Home Department* [2005] UKHL 66, [2006] 1 AC 396 at [92], per Lord Brown of Eaton-under-Heywood). In addition to this point being clear from the requirement for a temporal and causal link highlighted in the authorities discussed above, there are other features of Convention jurisprudence which militate in favour of this conclusion.

123. First, it is trite Convention law that nothing in the Convention obliges Contracting Parties indefinitely to provide medical care to aliens: see *N v Secretary of State for the Home Department* [2005] UKHL 51 at [15], per Lord Nicholls of Birkenhead:

> "…article 3 does not require contracting states to undertake the obligation of providing aliens indefinitely with medical treatment lacking in their home countries… in principle aliens subject to expulsion cannot claim any entitlement to remain in the territory of a contracting state in order to continue to benefit from medical, social and other forms of assistance provided by the expelling state."

By the same token, it must follow that Article 3 does not require contracting states to undertake the obligation of providing accommodation indefinitely in a returnee's home state.

124. Secondly, the Convention does not entitle a returnee expelled to their (third) country of nationality to more preferential treatment then their fellow citizens, merely on account of having been expelled by a Convention State. As emphasised by Mr Hansen in his closing submissions, *Vilvarajah* states at [111]:

> "The evidence before the Court concerning the background of the applicants, as well as the general situation, does not establish that their personal position was any worse than the generality of other members of the Tamil community or other young male Tamils who were returning to their country. Since the situation was still unsettled there existed the possibility that they might be detained and ill-treated as appears to have occurred previously in the cases of some of the applicants... A mere possibility of ill-treatment, however, in such circumstances, is not in itself sufficient to give rise to a breach of Article 3."

125. Thirdly, the Convention is not a means by which to impose Convention standards upon non-Convention countries: see the authorities quoted in paragraph 106(d), above.

126. Finally, we observe that, by definition, deprived living conditions are not capable of being "irreversible" in the same way as *Paposhvili* health conditions must be. Living conditions are fluid and can change. The 'economic boom' has lifted many out of poverty: see the extract from the *African Arguments* article at paragraph 270, below, for an account of the remarkable transformation experienced by many Somalis in recent years. The potentially fluctuating reality of living conditions in Somalia is a further reason to adopt a cautious approach to attributing responsibility for a returnee's onward life in Somalia to the Secretary of State. A returnee fearing or facing the worse may improve their living conditions through securing work, remittances, establishing a network and so on; the longer a returnee is present in

Somalia, the stronger their chances of improving their situation. Holding the Secretary of State responsible for longer term prospective deterioration in a returnee's living conditions would be speculative.

127. To summarise, in an Article 3 "living conditions" case, there must be a causal link between the Secretary of State's removal decision and any "intense suffering" feared by the returnee. This includes a requirement for temporal proximity between the removal decision and any "intense suffering" of which the returnee claims to be at real risk. This reflects the requirement in *Paposhvili* for intense suffering to be "serious, *rapid* and irreversible" in order to engage the returning State's obligations under Article 3 ECHR. A returnee fearing "intense suffering" on account of their prospective living conditions at some unknown point in the future is unlikely to be able to attribute responsibility for those living conditions to the Secretary of State, for to do so would be speculative.

Role of the British Embassy in Mogadishu

128. We can deal with this point shortly. Nothing in Mr Toal's submissions demonstrated any legal obligation that imposed an ongoing responsibility on the part of the Secretary of State to engage in post-return monitoring of returnees, or secure some form of additional support and re-integration package. That the Secretary of State may have chosen to do in certain cases does not mandate her to do so in all cases. Pursuant to the procedure applicable to Article 3 cases in light of *Paposhvili* and *AM (Zimbabwe)*, the Secretary of State is only obliged to take steps to dispel any doubts concerning the alleged risk faced by the returnee, etc., once a prima facie Article 3 case has been raised.

129. Similarly, it is not the role of this tribunal to dictate to the Secretary of State what, if any, steps she should take to secure the services of the British Embassy in Mogadishu to provide post-return monitoring or support, in the absence of any legal obligation compelling the Secretary of State to do so.

ANALYSIS OF THE EVIDENCE

130. We will commence our analysis with the background materials, before addressing the appellant's evidence, and his case specifically, below.

Approach to existing country guidance

131. We take the existing country guidance as our starting point, pursuant to the approach outlined in *TK (Tamils – LP updated) Sri Lanka CG* [2009] UKAIT 00049 at paragraph 13. We must follow the existing guidance unless there are very strong grounds, supported by cogent evidence, justifying our not doing so: see *SG (Iraq) v Secretary of State for the Home Department* [2012] EWCA Civ 940 at paragraph 47.

BACKGROUND MATERIALS

132. Both parties relied on significant quantities of background materials, comprising reports from well known and regional human rights NGOs, academic materials, news reports and similar documents. A full list of the materials relied upon by each party may be found in Annex 2.

133. The appellant also relied on two country witnesses, Mary Harper and Sarah El Grew, the details of which we set out below.

134. The materials collated for this appeal exceed 11,000 pages, by a considerable margin. While we have considered all the materials placed before us, for reasons of brevity we do not propose to summarise those materials, or the submissions made based upon them, in their entirety. Our summaries will outline the salient parts of the evidence on a thematic basis, with some accompanying commentary to reflect the submissions made by each party, where convenient.

135. Naturally, we did not reach our decision in the appeal, nor conclusions as to country guidance, before we had considered the entirety of the evidence, in the round, to the lower standard of proof.

COUNTRY EVIDENCE

136. In this part, we summarise the written and oral submissions made by each party, primarily as they relate to the background materials and the expert evidence. Where necessary, we have grouped the submissions thematically. We have not referred to every source document relied upon by the parties, particularly where the proposition for which it was relied upon had already been established by the materials expressly referred to in our summary.

SUBMISSIONS ON THE COUNTRY EVIDENCE: THE APPELLANT

137. As with the background materials in these proceedings, the written and oral submissions were lengthy and detailed. What follows is necessarily a summary of each party's position in relation to the country conditions in Mogadishu, sufficient to contextualise our analysis and country guidance findings, below. We deal with the submissions insofar as they relate to the appellant's case separately, at paragraph 357 and following. Naturally, we have considered all materials and submissions, in the round. We recognise that the parties were primarily concerned with the appellant's appeal, rather than the broader task of giving country guidance, and are mindful of the need not to isolate any of the submissions artificially.

138. While Mr Toal did not seek to persuade us to depart from the findings in *MOJ* that there is no risk of indiscriminate violence for the purposes of paragraph 339C of the Immigration Rules or Article 3 ECHR, he submitted that there is evidence that those who are forcibly returned from Western countries are at risk of torture and similar mistreatment upon their return on account of their status as returnees. Government security forces, as well as non-state actors, pose a risk to those with the profile of this appellant. There are reports of returnees being intercepted immediately upon arrival at Mogadishu International Airport. The risks from robbery and street violence are high, and increasing. Western returnees, especially those with funds provided by the Secretary of State, will attract attention. This appellant will be perceived as westernised "*fish and chips*"(a derogatory term said by the appellant to be used by some Somalis to describe a fellow Somali perceived to be too acclimatised to British culture) as he will so obviously not be accustomed to Somali culture.

139. Without a support network or guarantor, a returnee, especially a single male with a criminal background, will be in a very difficult, if not dangerous position. The clan network will be unlikely to be able to offer much assistance, even in the unlikely event it was inclined to do so in the case of a single man returning alone. Many minority clan members are themselves living in difficult circumstances, and have little by way of assistance to offer. Securing accommodation and employment without a guarantor is very difficult. Unemployment is high, as the population growth has outstripped that of the economy. Extreme poverty is a real phenomenon in Mogadishu, especially as the effects of climate change have led more people to the cities, away from traditional agricultural subsistence farming.

140. For those unable to secure accommodation, it is likely that they will have to resort to IDP camps or makeshift accommodation. The gatekeepers who control IDP camps are exploitative, and can be violent, often with their own militia forces. The gatekeepers appropriate humanitarian aid intended for their residence. Some restrict the freedom of movement of residents, and subject them to their control in many areas of their lives. In any event, those residing in IDP camps, even with the permission or ostensible protection of a gatekeeper, are at risk of forced eviction, a practice that takes place on a massive scale.

141. Mr Toal accepted that not all gatekeepers were the same. But the Camp Coordination and Camp Management ("CCCM") *Household Satisfaction Survey* (see paragraph 320 and following, below) which painted gatekeepers in a more positive light, represented a minority of the total number of gatekeepers. Even then, there were reports of the "good" gatekeepers acting in an exploitative way.

142. Addressing the need for a support network upon return to Mogadishu, Mr Toal relied on the guidance given in *MOJ*, and Ms Harper's evidence on that occasion, which was to the effect that a returnee could hope for, but could not expect, clan assistance. That remains the position, according to the Danish Immigration Service's July 2020 report *South and Central Somalia: Security situation, forced recruitment and conditions for returnees*, which considered networks upon return to be of the "utmost importance", as members of the broader clan network often live difficult lives themselves, and are unable to offer much assistance. Those without networks upon their return would have to resort to IDP camps or squatting, and even then only if they were able to afford the gatekeeper's fee. Returnees are particularly vulnerable to the consequences of insecurity conflict, climate shocks, and the Covid-19 pandemic. Destitution is likely. Individual returnees, especially young men, are viewed with suspicion and will face the greatest risk. By contrast, having a guarantor who could vouch for a returnee would assist greatly with securing accommodation and work.

143. Mr Toal also submitted that the "economic boom" which *MOJ* found to be underway in Mogadishu has been outstripped by the pace of the city's expansion. There has been no "trickle down" effect from the wealth experienced by those at the top of the economic hierarchy. The Federal Government of Somalia's own figures in its *Somalia National Development Plan, 2020 to 2024* record that the "modest" annual growth in gross domestic product ("GDP") of 2.5 per cent lags behind the annual 2.9 per cent population growth. The same report records even higher growth in urban areas, and very high rates of youth unemployment. According to a November 2018 report by the Internal Displacement Monitoring Centre, returning IDPs are also said to have pushed up food prices, and increased competition for wage labour; the trend has continued since the publication of the report.

144. In relation to the general position in Mogadishu for those with the claimed profile and circumstances of this appellant, Mr Toal began by addressing the provision of treatment for drug addiction in Mogadishu. Contemporary reports concerning health provision in Somalia, such as the Danish Immigration Service's November 2020 report, *Somalia – Health System*, make no references to addiction services being provided by any hospitals in Mogadishu. Methadone is not available anywhere in Somalia.

Medical facilities in Mogadishu

145. Relying upon the November 2020 Danish Immigration Service COI report *Somalia – Health system*, Mr Toal submits that there is no provision for drug addiction treatment in Mogadishu. While Olanzapine, prescribed to treat symptoms of schizophrenia, is available at some

hospitals, as is mirtazapine, methadone is not listed as being one of the available drugs. That is consistent with the research conducted by Ms El Grew, which concluded that treatment for drug addiction, including opiate-based treatment, is not available in Somalia. This appellant is addicted to heroin, and would be exposed to a real risk of intense suffering upon his return to Mogadishu, as an addict without the prospect of adequate treatment. It is inconceivable that a person returning as this appellant would return to Mogadishu, that is as an addict, with no family or other support, would receive any support or assistance of any form within the country. The appellant's pariah status as a social outcast would augment the suffering he will experience from his harsh, sudden and unmitigated withdrawal from his opiate treatment, or heroin use.

146. Mr Toal did not accept that it was impossible to obtain heroin in Mogadishu, relying on [67] of Ms El Grew's first report, in which she states that one of her interlocutors, Abdifatah Hassan Ali, is recorded as saying that he thought it was possible to access heroin there.

The situation in-country: drought, famine and poverty

147. Mr Toal submitted that drought of the sort that featured in *AMM* is not confined to history; the *Common Country Analysis 2020* United Nations Somalia at page 14 summarises the impact of severe drought and famine in the country in the years following the 2011 drought. Other background materials merit the same findings; for example, the *Somalia 2019 Drought Impact Response Plan*, published by the FGS Ministry of Humanitarian Affairs and Disaster Management and UNOCHA, notes the prolonged drought in 2016/17, and considers that "severe climatic conditions" were again pushing Somalia towards a major humanitarian emergency. In the Benadir region within which Mogadishu is located, delayed *Gu'* rains and the prolonged *Jilaal* season led to increased water shortage for most IDPs in 2019. The cost of water rose by 50%, and many IDPs have to queue for up to four hours each day to obtain water, with some giving up due to hunger.

148. The Federal Government of Somalia's own assessment in the *Somalia National Development Plan, 2020 to 2024* underlines the bleak poverty situation. Page 85 of the report highlights the vulnerability of many Somalis to being forced into a position where they simply do not have the means to survive, with many living below the "international poverty line" of 1.90USD, and unable to afford food even when spending the entirety of their income on it.

149. The UNOCHA January 2021 report, *Humanitarian Needs Overview 2021* describes the drivers of needs of IDPs as being "intersectoral in nature"; the health and nutritional wellbeing of IDPs is strongly linked to their access to safe water and proper sanitation. In turn, that leads to disease and severe nutrition problems. A significant proportion of IDPs face moderate to large food gaps, which in large measure are attributable to the diversionary tactics of the gatekeepers. Disease is prevalent in IDP camps. The population density of camps is a key factor in the transmissibility of communicable diseases. Movement restrictions imposed on IDPs limit their ability to engage in livelihood and income generating activities outside the camps, in turn exacerbating the disease and poverty situation within the camps: see the *Somalia 2019 Drought Impact Response Plan*.

150. Mr Toal submits that the above materials demonstrate that many IDPs face extreme poverty of a kind that does real harm to those experiencing it, who are left unable to cater for even their most basic needs.

The experience of returnees

151. A 2019 report published by Cornell University Law School, *Removals to Somalia in Light of the Convention Against Torture: Recent Evidence from Somali Bantu Deportees* records that a number of Bantu deportees from the US were tortured upon their return. The paper outlines research concerning the removal of Somali Bantu from the United States between 2016 and 2018. Eighteen returnees were interviewed by the project, and information concerning a further two returnees was obtained by the authors; internal page 371, records that 55 per cent were tortured or similarly mistreated upon their return by Somali government security personnel. Ms Harper considered that the experience of such returnees was a reliable indicator of the risk a deportee from this country, and in particular this appellant, would be likely to face.

152. Mr Toal emphasised upon the importance of a returnee having access to a network upon their return, relying on the Danish Immigration Service ("DIS") July 2020 report which underlined the "utmost importance" of network for a returnee to Somalia: see [1]. However, not all returnees benefit from networks upon their return; either they do not have any networks to return to, or the networks they do have may be unable to provide support, as outlined in a January 2017 article in *Espace populations sociétés* by Nassim Majidi, *Uninformed Decisions and Missing Neworks: The Return of Refugee from Kenya to Somalia* at [41]. The July 2020 DIS report also addresses the position of failed asylum seekers returning from Europe, at [13] and following, in these terms:

> "The challenges faced by returnees are many including destitution, violence from state and non-state actors, extortion, unemployment and being shunned by the community. If they have close family to help them they are much more likely to establish themselves… Members of the same clan will look favourably on the returnees, but they seldom have the financial capacity to help returned fellow clan members resettle into society."

153. The April 2016 Landinfo report *Somalia: Relevant social and economic conditions upon return to Mogadishu* underlines the importance of a returnee having the means to obtain a residence and live outside the IDP camps. While a family network in Somalia can be important, it is not the sole factor. Many Somalis are very poor and so are unable to help, even if they were inclined to do so. A source interviewed by Landinfo reported that even those affiliated with the dominant Hawiye clan have been known to resort to the settlements. That being so, members of the Reer Hamar are at a real risk of being forced to seek shelter in an IDP camp; if even the dominant Hawiye are unable to avoid living in the settlements, it follows that no one is not at risk from living in a settlement on account of their clan status.

The "Economic Boom"

154. Mr Toal submitted that the significance of the country guidance given at [407(h)] of MOJ concerning the 'economic boom' ("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'") has been called into question by the Court of Appeal in *Said*. The pace of economic growth has been overtaken by the speed of population growth, with the effect that the economy has fallen behind, as the FGS recognises at page 45 of the *Somalia National Development Plan*, 2020 to 2024, which records a 2.9% population growth rate, against the estimated GDP growth in 2018 of 2.8%. Other estimates place growth figures higher; in his August 2017 report *Dadaab Returnee Conflict Assessment* at page 17, Professor Ken Menkhaus opines that annual growth is 4%. The January 2019 TANA report *Accessing land*

and shelter in Mogadishu: a city governed by an uneven mix of formal and informal practices records that one estimate placed population growth as high as 6.9% (TANA is an international research consultancy based in Copenhagen). In a 2018 report, *City of Flight: New and Secondary Displacements in Mogadishu, Somalia*, the Internal Displacement Monitoring Centre said that the arrival of new IDPs had pushed up food prices and increased competition for wage labour. That accords with the conclusions of a report by the World Bank, *Improving Access to Jobs for the Poor and Vulnerable in Somalia* at page 14, which states that the growing urban population in Mogadishu attributable to large-scale forced displacement and economic migration can make it harder to find employment in urban areas if job-growth fails to keep pace; "those looking for work find it hard to secure employment and many have stopped searching." Displaced household face "fierce competition" from the non-displaced urban poor: see the January 2021 UNOCHA report, *Humanitarian Needs Overview 2021*.

Accommodation

155. Addressing the appellant's ability to secure accommodation upon his return, Mr Toal relied on Ms Harper's evidence and the January 2019 Tana *Accessing Land and Shelter in Mogadishu* report, to submit that having appropriate identification documentation is usually a prerequisite for land and housing transactions, thereby presenting a significant barrier for those returning to Mogadishu without such documentation. The same TANA report highlights particular difficulties experienced by lone young men, due to the negative perceptions they will encounter. For such persons, finding a guarantor when seeking shelter in a settlement can be difficult, as the guarantor is regarded as responsible for the person they are guaranteeing. For a young man, obtaining a place in a settlement as an IDP or without existing family ties in the settlement can be very difficult.

Significance of clan membership

156. Mr Toal submitted that this tribunal in *MOJ* accepted Ms Harper's evidence, quoted at [342] of that decision, that a person returning to Mogadishu who did not know anyone at all, may attempt to secure assistance from fellow clan members. While that person's clan may provide more assistance than others, nothing could be *expected* from the clan.

Violence to IDPs and the security situation

157. While Mr Toal confirmed that he did not invite us to depart from the findings in *MOJ* that ordinary civilians were not at risk for the purposes of Article 339C of the Immigration Rules, or Article 3 of the ECHR, he nevertheless submitted that the atmosphere of violence and the general security situation in Mogadishu was relevant to the fear the appellant would be operating under. One facet of cruel, inhuman and degrading treatment under Article 3 EHCR is being placed in permanent fear of indiscriminate violence. The underlying fear and ongoing risk of violence that featured in *MSS v Belgium and Greece* (2011) 53 EHRR 2 would be present in Mogadishu for this appellant. In his April 2016 report, *Non-State Security Providers and Political Formation in Somalia*, Professor Ken Menkhaus reported that despite improvements since 2012, Mogadishu remained a "highly insecure setting", based both on empirical data, and the perception of residents. In his August 2017 report *Dadaab Returnee Conflict Assessment*, Ken Menkhaus wrote, at page 24:

> "Armed criminality, ranging from armed robbery to assault to assassination, is a major source of insecurity in much of Mogadishu. Some of these crimes are committed by security forces. Vulnerability to this type of violence depends in large part on social status – residents from strong clans, and with enough assets

> to provide private security for themselves, are generally more secure. Poor residents from weak clans are much more susceptible to armed robbery and assault; if they are female, they are even more vulnerable."

158. Other reports consider that economic hardship has led to increased criminality, with gang violence linked to young men viewed as a contributor to the conflict and insecurity: see *The missing link: Access to justice and community security in Somalia*, August 2020, Saferworld, at page 5.

159. A feature of the security landscape in Mogadishu is what has been termed "the commoditisation of security", whereby there are a number of actors in the security field, and protection is available only to those who can afford it. These include clan militia and clan paramilitaries. The latter answer to clan leaders, but are ostensibly part of the formal state security apparatus. The FGS has attempted to bring clan paramilitaries under conventional chains of command, but has been unable to do so. In turn, submits Mr Toal, that presents a risk to those living in settlements close to areas with a military presence. Not only does the proximity to military targets raise the prospect of collateral damage, but the proximity of clan paramilitaries and militia leads to the risk of malevolent attention from military personnel. Relying on the March 2020 Finnish Immigration Service ("FIS") report, *Somalia: Fact-finding Mission to Mogadishu in March 2020, Security situation and humanitarian conditions in Mogadishu* March 2020 ("the March 2020 FIS Report"), Mr Toal submits that IDP camp residents have no access to legal protection. There are no police officers at camps or in the vicinity.

Gatekeepers

160. A significant proportion of Mr Toal's submissions focussed on the malevolent role of gatekeepers at IDP camps. Mr Toal relied on the description of gatekeepers in the UN document S/2012/544 *Letter dated 27 June 2012 from the members of the Monitoring Group on Somalia and Eritrea addressed to the Chair of the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia an Eritrea* at Annex 6.2 which describes gatekeepers in the following terms:

> "The withdrawal of Al-Shabaab forces from Mogadishu on 2 August 2011 should, in principle, have improved access throughout the capital for aid agencies, and facilitated the direct provision of humanitarian assistance to vulnerable Somalis. The reality, however, was quite different: UN agencies, INGOs [international non-governmental organisations] and their national counterparts were confronted instead with pervasive and sophisticated networks of interference: individuals and organizations who positioned themselves to harness humanitarian assistance flows for their own personal or political advantage. These "gatekeepers" often exercised control over the location of IDP camps; the delivery, distribution and management of assistance; and even physical access to IDP camps and feeding centres, through their influence over the "security" forces deployed to such sites."

161. A 2013 Human Rights Watch report *Hostages of the Gatekeepers* outlines the range of conditions to which IDPs are subject by the gatekeepers, including restrictions on movement, reprisals for complaints or protesting their mistreatment, risks of sexual violence, risks from the camp security militia, and forced eviction. Many gatekeepers are linked to the powerful district commissioners and other local officials who emerged in the period following Al-Shabaab's withdrawal in August 2011.

162. Gatekeepers are unaccountable and use IDPs as bait to secure humanitarian aid, which they then divert for their own benefit. World Food Programme aid is often diverted from the intended beneficiaries, who can be forced to buy it back at vastly inflated prices. Even where aid reaches the intended recipient, inhabitants will be reprimanded by the gatekeepers for damaging hard goods (such as tents), for doing so reduces the re-sale value of the items in question. Gatekeepers present a "tax challenge", whereby the proportion of aid that they subtract from that which reaches the intended beneficiaries has to be factored in to the initial provision of aid, according to *Protecting internally displaced communities in Somalia: Experience from the Benadir region*, a December 2017 working paper published by the International Institute for Environment and Development ("the IIED"). See also the March 2020 FIS report, to similar effect. Mr Toal also relies on *Land Matters in Mogadishu: Settlement, ownership and displacement in a contested city*, a 2017 report of the Rift Valley Institute to highlight how the gatekeepers have been able to position themselves to perform an indispensable intermediary role; continuing insecurity in Mogadishu means that international humanitarian agencies are forced to rely on gatekeepers and their associates for delivery of the aid they provide, leaving them unable effectively to monitor the aid provided. Even where aid is provided directly to the intended beneficiary under the supervision of the humanitarian agency, there are reports that significant proportions are recovered by the gatekeepers once the aid officials have departed. Where IPDs refuse, there are reports of forced evictions at gunpoint. An article in *The New Humanitarian*, *Somalia's displacement camp 'gatekeepers' – 'parasites' or aid partners?* Dated 18 July 2019 quotes a deputy director for IDP protection at the National Commission for Refugees and IDPs as describing gatekeepers as "little more than a criminal syndicate." The March 2019 Tana working paper *Shelter Provision in Mogadishu* says that the Benadir Regional Administration ("the BRA") has refused to engage with gatekeepers due to their predatory and exploitative behaviour.

163. Mr Toal accepted that some of the background materials "ostensibly" adopt a more favourable approach to gatekeepers. However, in relation to the CCCM report to which Ms Harper was taken in cross-examination, he submitted that "by design", the report was intended to produce an outcome favourable to those who run the camps examined by the authors of that report. The camps in question operated under the auspices of the CCCM programme, and only 36% of IDP camps in Somalia are managed by CCCM partners, according to the UNOCHA *Humanitarian Needs Overview 2021*. Relying on a March 2017 report by Erik Bryld, the lead TANA researcher, *Engaging the Gatekeepers: Using informal governance resources in Mogadishu*, Mr Toal submits that there has been no recent material change, and highlights Mr Bryld's description of gatekeepers as the "elephant in the room". In any event, the Bryld report was based on a very small evidence base, and, read as a whole is not support for the contention that gatekeepers are no longer exploitative. Benevolent gatekeepers are few and far between; the hallmark of an IDP-gatekeeper relationship is exploitation, submits Mr Toal.

Evictions

164. Mr Toal placed considerable emphasis on the risk of IDPs, and therefore this appellant, being evicted from IDP camps in an arbitrary manner. He highlighted the huge demand for land in Mogadishu following the withdrawal of Al-Shabaab, coupled with the formation of state institutions, the return of former residents of Mogadishu, and the "economic boom" documented in *MOJ*. The demand for land is such that state and non-state actors have "grabbed" much of the land in and around the city that was previously occupied by IDPs on an informal basis. Evictions generally take place with little or no notice, and those affected have no legal or other protections. Somali security agencies and African Union peacekeepers are known to provide force to assist in the process, and the nature of evictions is often such

that the evictees' homes and shelters are destroyed in the process. Between 2017 and February 2019, an estimated 365,000 people were evicted, amounting to around 60 percent of the 600,000-strong IDP population. The Secretary of State's CPIN, *Somalia (South and Central): Security and Humanitarian Situation*, November 2020, accepts at [2.4.13] that "IDPs remain at risk of eviction."

165. Forced eviction has a spectrum of detrimental consequences. The UNOCHA *Humanitarian Needs Overview 2021* states that evictions represent a constant risk for vulnerable communities and the urban poor. It entails a loss of possessions and livelihood, and any coping mechanisms that the individual concerned has managed to establish. Those who are evicted are forced to the outskirts of the city, to even less suitable locations, augmenting the many difficulties ordinarily encountered in IDP camps.

166. Mr Toal submits that forced eviction is contrary to a number of international legal instruments: Article 17(1) of the ICCPR; the UN Committee on Economic and Social Rights' General Comment ("GC") No. 4 on Article 11 of the ICESCR concerning the right to adequate housing; GC No. 7, on the obligations of states to ensure legislative and other measures sufficient to prevent forced evictions carried out by private persons, and the procedural protections that are required. Mr Toal also relies on the FGS's *National Policy on Refugee-Returnee and Internally Displaced Persons*, which adopts the definition of "forced eviction" contained in GC No. 7, acknowledges that "forced eviction" contravenes national and international law, and commits the FGS to protecting its people from displacement, as far as possible.

167. Mr Toal relies on a range of international materials to place the above submissions on a legal foundation. The UN Committee on Economic, Social and Cultural Rights adopted views under the Optional Protocol to the ICESCR, concerning communication No. 52/2018, *Rosario Gómez-Limón Pardo v. Spain,* in relation to the eviction of a female victim of gender-based violence from the family home her late parents had first rented in 1963. Praying the views of the Committee in aid, Mr Toal submits that the evidence demonstrates that Somalia regularly breaches its own international obligations towards evictees, on account of their forced and arbitrary nature, with inadequate legal supervision, absences of suitable alternative accommodation, and by pursuing evictions when it is not proportionate to do so.

168. In *Selçuk and Asker v Turkey* (1998) 26 EHRR 477, at [77] to [80], and *Bilgin v Turkey* (2003) 36 EHRR 50, *Dulas v Turkey* (Application no. 25801/94) and *Moldovan and Others v Romania No. 2* (2007) EHRR 16, the European Court of Human Rights has held that the destruction of people's homes by the authorities may amount to inhuman treatment contrary to Article 3 of the ECHR. The African Commission on Human Rights made similar findings in *Sudan Human Rights Organisation, Centre on Housing Rights and Evictions v Sudan* [2009] ACHPR 100 at [159]. In *Hijrizi v Yugoslavia* (2002) Communication No. 161/200, UN Doc CAT/C/29/D/161/2000 the UN Committee Against Torture held that the police's failure to prevent forced evictions amount to cruel, inhuman or degrading treatment or punishment.

169. Accordingly, Mr Toal submits that the risk of forced eviction faced by IDPs in Somalia gives rise to a real risk of a breach of the rights guaranteed by Article 3 ECHR and the international instruments outlined above, in light of (i) the willingness of the FGS to engage in forced evictions; (ii) the provision by the FGS of its own security forces to conduct forced evictions on its own behalf, and on behalf of private actors; (iii) the FGS' failure to protect IDPs against forced evictions; (iv) the FGS' failure to provide procedural and remedial protections from forced eviction; (v) the FGS' failure to provide adequate alternative accommodation for those

forcibly evicted; and (vi) the failure to ensure that evictions are only conducted when it is proportionate to do so.

Clan discrimination

170. Mr Toal submits that the assessment in *MOJ* of clan violence (see, for example, paragraph (viii) of the Headnote) no longer reflects the reality in Mogadishu. Clan militia have resurfaced and now operate on a freelance basis, performing various private functions.

171. Relying on paragraph 2.4.5 of the 2019 CPIN, Mr Toal highlights the Secretary of State's assessment that members of minority groups in south and central Somalia can be at a "particular disadvantage" in comparison to majority clans. This includes exclusion from effective participation in governing institutions, and being subjected to discrimination in obtaining employment and participating in judicial proceedings, and in their access to public services. Minority clans lack the support networks enjoyed by majority clan members.

Submissions: applied to the appellant's circumstances

172. Mr Toal submits that it is obvious that this appellant would be unable to obtain a guarantor to secure accommodation and employment. It would be fanciful to suggest that he could conceal his criminal and drug-taking history; the people of Mogadishu will not have the wool pulled over their eyes so easily. The appellant will face "extreme difficulty" in obtaining accommodation, submits Mr Toal. Far from being *fish and chips*, he would be a "fish out of water", returning disorientated and severely ill, without having addressed the consequences of his withdrawal from drugs, and vulnerable to the risks of gangs and crime. Even if he were admitted to an IDP camp, he would face a real risk of violence within the camp itself.

SUBMISSIONS ON THE COUNTRY EVIDENCE: THE SECRETARY OF STATE

173. Mr Hansen submits that the starting point for our analysis of the country conditions is the decision of this tribunal in *MOJ*, subject to the observations of the Court of Appeal in *Said* in relation to [407] and [408] of the decision. We should only depart from the findings of *MOJ* if we conclude that the material circumstances have changed, and that such changes are well established evidentially, and are durable.

174. The overall thrust of the Secretary of State's position is that the circumstances in Mogadishu are broadly similar to those prevailing when *MOJ* was decided. She relies on her recent CPINs, in particular *Somalia (South and Central): Security and humanitarian situation* (November 2020), and *Somalia: Al-Shabaab*. Despite the clarification to [407(h)] and [408] of *MOJ* in *Said*, the Secretary of State highlights that [422] of *MOJ* called for an individual, case-specific assessment in any event:

> "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."

175. Mr Hansen submits that *SB's* approach to the changes since *AMM* is sound, and relies on the analysis in *Said* at [20] to [32], and the endorsement of that approach in *MA (Somalia)* and *MS (Somalia)*. In *Said*, Burnett LJ (as he then was) had in mind the submission that residence in an

IDP camp was sufficient to breach Article 3 ECHR, but rejected the proposition in the knowledge of what *MOJ* had said about *AMM*: see *Said* at [20] and [25]. The reasons given in *SB* itself are dispositive of the issue. In any event, the tribunal in *AMM* had always acknowledged that the situation at the time was "likely to be temporary in duration" ([490]), and the factors which had led to the country guidance being given in *AMM* no longer pertained when *MOJ* was decided. Addressing the import of *MOJ* as amplified by *Said*, in *MI (Palestine)* Flaux LJ held that *Said*:

> "…considered that the Country Guidance case showed that the conditions in Somalia, although harsh, could no longer be attributed to the direct and indirect actions of the parties to the former conflict, so that the N test applied to the applicant's case and he could not satisfy that test, hence the Secretary of State's appeal succeeded."

176. This tribunal should follow *SB*, submits Mr Hansen. It is not clearly wrong; rather, it is clearly right.

177. The findings in *MOJ* concerning indiscriminate violence remain good today. The respondent's *Response to an information request Country: Somalia*, 8 April 2021, concerning violence levels in Mogadishu demonstrates that, save for a spike in casualties in 2017 caused by a large truck bomb, casualty figures today are broadly comparable to those pertaining when *MOJ* was heard.

Reer Hamar

178. Mr Hansen's skeleton argument features an Annex setting out background materials concerning the historical and contemporary position of the Reer Hamar in Mogadishu, and those who identify as "Benadiri", a broad term sometimes used to denote the coastal population of Somalia roughly between Somalia and Kismayo, who share an urban culture and who are of mixed ethnic and cultural origins, comprising Persian, Portuguese, Arabian, Swahili and Somali heritage. Many of the materials concerning the historical position of the Reer Hamar are not disputed by the appellant, so we do not set them out here, but will do so in the substantive decision to the extent necessary to contextualise and give reasons for our findings.

179. The Secretary of State relies on the "unique" position of the Reer Hamar to submit that their position is not analogous to many of the minority clans. The Reer Hamar are in a strategic position, arising from their ancient historical prominence in the city, and contemporary adjustments to retain influence. Through so-called "black cat" strategic marriages, they have married into more dominant clans, and now occupy a unique position at the top of the minority clan hierarchy. The phenomenon of intermarriage having that effect was recognised in *KS (Minority Clans - Bajuni - ability to speak Kibajuni) Somalia CG* [2004] UKIAT 00271 at [38]. Moreover, this tribunal found in *MOJ* that there was no inter-clan violence, and nor was there serious discriminatory treatment on the basis of clan membership. The background materials since then are of very similar character to that which was before this tribunal in *MOJ*, and it "paints a similar picture".

Drug treatment in Somalia

180. Mr Hansen accepted that there was no evidence that methadone is available in Somalia, but, for the reasons outlined under our case-specific discussion of this appellant's personal circumstances, maintained that there was no reason why he should need to access methadone

upon his return. However, treatment and medication for mental health conditions is available in Mogadishu. Anti-depressants and anti-psychotic drugs are available. The evidence for that is consistent, and demonstrates that adequate medication is both available and accessible. For example, see the July and September 2020 findings outlined in the TANA *Medical Region of Origin Information for Somalia: Mogadishu*, which outlines the provision available at the Forlanini Hospital, which is available free of charge to those of limited means.

181. Further, the balance of evidence demonstrates that Class A drugs of the sort readily accessible to the appellant in the United Kingdom would not be available in Somalia. There is no evidence of a drug trade of the sort that is so prevalent here.

182. Relying on the *Somalia (South and Central) Security and Humanitarian Situation* CPIN, version 5, Mr Hansen submits that the general in-country conditions have continued to improve since *MOJ* was heard. At [2.4.8], the CPIN states that there remains wide international humanitarian funding and support, and the FGS has made efforts to improve the lives of its citizens, through taking steps such as clearing its debt with the Word Bank, thereby allowing it to access further financial support. The security situation is volatile, but a person is not at general risk of a breach of the standards encapsulated by Article 15(b) of the Qualification Directive or Article 3 ECHR. The authorities have taken further steps to mitigate the impact of famine and other naturally occurring phenomena: see Foreword to the UNOCHA *2018 Humanitarian Response Plan - Revised*.

183. In his 2009 lecture *Clans in Somalia*, Dr Joakim Gundel, a respected academic commentator on Somalia, is reported to have said:

> "It is a traditional code in Somali culture that when a person comes to your house and seeks protection, one is obliged to protect this person. Thus failing to protect a person is considered dishonourable, signifying that one did not live up to his obligations."

184. The Somali cultural obligation to support poorer relatives was underlined by the 2013 report *Family Ties: Remittances and Livelihoods Support in Puntland and Somaliland* by the Food Security and Nutrition Analysis Unit, a project managed by the Food and Agriculture Organization of the United Nations,. The background materials since then demonstrate that social ties both inside and outside Somalia continue to play an important and prevalent role in life in the country. The clan is a latent resource that can be mobilised as and when needed. Such support is not dependent upon having made prior remittances ahead of returning to the country. Even though some clan members may be unable to assist even if they would be willing to do so, it is rare that a returnee would be ousted by the clan upon their return. Ms El Grew's notes of her conversations with her consultees suggest that if a returnee were to explain to a member of their clan that they have mental health conditions, and that they seek rehabilitation, they will be permitted to live in their house, and to eat and sleep at their home. The picture is positive even for those with mental health conditions.

185. Mr Hansen submits that the background materials demonstrate that the economic recovery described in *MOJ* continues to progress. For example, a 2016 Landinfo report, *Report on Somalia: Relevant social and economic conditions upon return to Mogadishu* records the importance of the day labour market, particularly for men, in roles such as docking at the port, or labourers at a construction site. In its April 2016 report *Internal Displacement Profiling in Mogadishu*, the Joint IDP Profiling Service reports that 34% of the IDP camp population aged between 15 to 75 reported to have worked at least one hour in the previous seven days, when asked. 13% of

those who had not worked in the previous seven days had spent time looking for a job. The overall unemployment rate was assessed at 20%, but the rate for unemployed men was lower. There has been a "sharp demand" for unskilled labour in Mogadishu. Unskilled labourers can earn around USD 200 monthly. The economy has had a sustained period of single digit growth and the rate of unemployment is relatively low. While Somalia is a poor country with poor living conditions, the economic data suggests reasonable growth in difficult circumstances. Covid has had an impact on the economy, but it has been relatively muted. Overall, the image of Mogadishu as a place of poverty and conflict is out of date.

IDP camps

186. Mr Hansen accepts that it is difficult to estimate the number of IDP camp inhabitants there are in Mogadishu; according to figures quoted by Ms Harper, the UNHCR estimates that 497,000 IDPs live in 145 camps in the city. While other estimates are higher, the UNHCR is an authoritative report. That places IDPs in Mogadishu at around 25% of the overall population of 2.2 million. Mr Hansen emphasised that, under cross examination, Ms Harper did not dissent from his suggestion that only around 1% of IDP camp residents are returnees, a figure taken from a 2016 Land Info report, *Query response – Somalia: The Settlements in Mogadishu*. That is a general figure which has not been adjusted to account for the distinct position of the Reer Hamar, as accepted by Ms Harper in her evidence, that in her experience the Reer Hamar do not have to resort to IDP camps. The majority of internally displaced people in the settlements originate from the traditional home areas of the Digil and Rahanweyn clans. The Land Info May 2019 report, *Query response – Somalia: Rer Hamar population in Mogadishu* states, at internal page 2:

> "There is no information indicating that the Rer Hamar population lives in settlements for IDPs in and around Mogadishu. Nor did any of the Rer Hamar representatives we met in Mogadishu in February 2019 know that Rer Hamar people live in such settlements. The above is supported by the fact that the settlement pattern of the Rer Hamar population is in stark contrast to that which applies to those who live in the settlements. The vast majority of those who live in the settlements are internally displaced, who lack the means to settle outside the settlements (Landinfo 2016)… The Rer Hamar population, on the other hand, live where they have always lived. Most live in the old town of Hamar Wayne, but some families also live in other central districts… the Rer Hamar population survive through money transfers from relatives in the USA, Great Britain, Sweden, Norway and other countries."

187. In relation to gatekeepers, Mr Hansen submitted that the picture is nuanced and complex, rather than black and white. The primary evidence as to the gatekeepers' malevolence relied upon by Mr Toal was from 2012 and 2013; the *Letter dated 27 June 2012 from the members of the Monitoring Group on Somalia and Eritrea addressed to the Chair of the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009)* he relied upon was considered by this tribunal in *MOJ* (document 527 in Appendix A), and since then more nuanced and contemporary evidence is available. See the undated TANA report *Informal Settlement Managers: Perception and reality in informal IDP camps in Mogadishu*, based on field research conducted in November 2016 and January 2017; for example, at internal page six, the report states that the fact that the gatekeeper, or informal settlement manager, system is not formalised or regulated by official, bureaucratic norms, does not mean that they operate completely arbitrarily. In *War and city-making in Somalia: Property, power and disposable lives*, Bakonyi and others state at page 88:

> "Most interviewees were rather positive about the role of gatekeepers/ leaders and referred to their continuous efforts, their responsibilities, and the high costs of daily camp management. Leaders advocate for hygiene and cleanliness, support people in distress, mediate disputes, and provide rules for behaviour. They also provide (rudimentary) security as the protection of the leader's clan extends to his/her property (including businesses) and therefore to the camp. While leaders' daily engagement is visible to the camp inhabitants, aid organisations were regularly criticized for their failure to provide support:
>
> > 'In fact, they [the leaders/gatekeepers] help us by building us pit latrines, they were cooking food for us in the beginning, and because we were new, they welcomed us very nicely. I've never seen an organisation in Mogadishu help us…'"

188. Mr Hansen submits that the background materials he relies upon, as set out in his detailed schedule, are based on field research conducted through interviewing IDP residents. That methodology, he submitted, meant that the product of the research attracted weight greater than that which should be ascribed to research conducted by "experts surrounded by bodyguards on the odd hour long visit years ago". Much of Ms Harper's evidence, he added, was based on anonymous sources, in relation to whom this tribunal does not know their history, nor how long they visited the camps of which they spoke for. Ms Harper visited a single camp for an hour in 2020.

189. Mr Hansen advanced several criticisms of Ms Harper. He submitted that she had "repeatedly" given evidence in Somali cases, and that her evidence had "repeatedly" been rejected and criticised: see [166] to [175] of *MOJ*, and also *AAW (expert evidence – weight) Somalia* [2015] UKUT 673 (IAC). Ms Harper placed extensive reliance on anonymous sources; in *Sufi and Elmi v UK* (8319/07 and 11449/07), the Strasbourg Court observed at [233] that it was "virtually impossible" for it to assess the reliability of anonymous witnesses.

190. In relation to the weight Ms El Grew's evidence was to attract, she had accepted in her answer to question 18 posed by the Secretary of State that she did not purport to give expert opinion evidence of her own. Mr Hansen submits that she has merely reported the opinions of others, whom the Secretary of State will not be able to cross-examine. Her interlocutors were not provided with formal instructions, and only one had the opportunity to review the notes she took of their conversations.

FINDINGS OF FACT: COUNTRY MATERIALS

191. In order to prevent this judgment from being any longer than it already is, our summaries of the evidence and submissions have necessarily been selective, although we have sought to ensure that our summaries are representative of the position of each party, and the evidence relied upon by each. Naturally, we have considered the entirety of the evidence relied upon by the parties, and did not reach our findings until having considered all matters in this appeal, in the round, to the lower standard of proof applicable to protection appeals. We remind ourselves that, although these proceedings have been selected to give country guidance, that at their heart lies OA's individual appeal against the Secretary of State's decision to revoke his protection status and refuse his human rights claim, and it is in relation to the issues inherent to determining his appeal that we have focussed our findings.

192. We also observe that, although we have sought to address the conditions in Mogadishu thematically for ease of reference, in reality many issues are interconnected. For example, an individual's exposure to the potentially harsh humanitarian conditions in Mogadishu will be tempered by a range of factors, such as their clan connections, access to remittances, employment prospects, access to accommodation, and so on. The same individual's employment prospects may be influenced by their network and clan connections, which in turn may be linked to their accommodation. For example, for an individual living with a family (such as the individual Ms Harper once encountered while *en route* to Somalia: see para 15 of Annex 1), that family may also perform the role of guarantor, or otherwise pave the way for local openings. In other respects, where there is no local host family, remittances may provide an initial foundation upon which to base the beginnings of a developing private life in Mogadishu until employment and in-country clan links are established. In most cases, the security situation augments the difficulties that an individual will face, perhaps from the regular disruption caused by frequent terror attacks. It follows that our analysis should be read with that linkage in mind.

General observations on the expert evidence

Mary Harper

193. Mary Harper is a journalist, author and research consultant specialising in Somalia and other parts of Africa. She has studied at the University of Cambridge and the School of Oriental and African Studies, and is a fellow at the Rift Valley Institute, which specialises in the Horn of Africa and East Africa, and of the Heritage Institute of Policy Studies, an organisation based in Mogadishu focussing on Somali issues. Ms Harper is currently the Africa Editor for BBC News, covering the continent for BBC radio, television, online and social media. Ms Harper emphasises that, as a BBC journalist, all of her work must adhere to strict standards of objectivity, impartiality, accuracy and fairness, whether it is for the BBC or not. She is the author of two books on Somalia, having visited Somalia on many occasions since 1994. Ms Harper has an extensive and impressive portfolio of former and present roles relating to the Horn of Africa with international organisations including the UN, the EU and NATO, as well as NGOs and human rights organisations focussing on, or operating in, Somalia and the Horn of Africa. She has a range of high-level contacts in Somalia, as well as with diplomatic and intelligence officials of a number of states. Ms Harper was one of the experts in MOJ and has given evidence before this tribunal in non-country guidance cases and before the First-tier Tribunal.

194. In general, we found many parts of Ms Harper's evidence to be helpful. She speaks with a degree of authority as a relatively frequent visitor to Somalia and as an experienced commentator on the country and the region. Aspects of her evidence painted a picture which contrasted with that advanced by Mr Toal on behalf of the appellant; her willingness to do so is a mark of her credibility as an expert. However, there were limitations to Ms Harper's evidence, although we do not go so far as to adopt the criticism made of her in *AAW (expert evidence - weight) Somalia* [2015] UKUT 673 (IAC).

195. The protective security measures Ms Harper understandably takes when visiting Somalia will necessarily have impacted her ability to assess the full spectrum of normal people's lives in the country, as she realistically accepted under cross-examination. Most of her IDP camp visits took place between 2012 and 2018, the sole exception being an unnamed camp, for an hour, during her March 2020 visit, of which she cannot remember the name, which was conducted

in the company of her own armed guards. She drove through, but did not stop in, Hamar Wayne.

196. Ms Harper respected her sources' requests for anonymity, made on security grounds. Many of the background materials to which we were taken also featured anonymous or unattributed sources. The Strasbourg Court in *Sufi and Elmi* had to confront a range of anonymous sources. We adopt its observations, at paragraph 233:

> "The Court recognises that where there are legitimate security concerns, sources may wish to remain anonymous. However, in the absence of any information about the nature of the sources' operations in the relevant area, it will be virtually impossible for the Court to assess the reliability. Consequently, the approach taken by the Court will depend on the consistency of the sources' conclusions with the remainder of the available information. Where the sources' conclusions are consistent with other country information, their evidence may be of corroborative weight. However, the court will generally exercise caution when considering reports from anonymous sources which are inconsistent with the remainder of the information before it."

197. See also paragraph 234 concerning the lesser weight attracted by the anonymous references to "an international NGO", "a diplomatic source" or a "security advisor" in circumstances where it had not been possible to assess the reliability of those sources. We approach the evidence of Ms Harper, and the other materials, with a corresponding degree of caution where it relies on anonymous sources. Some, as Mr Hansen put to Ms Harper during cross-examination, appear to be members of the Mogadishu elite (such as "journalist", who was accepted by Ms Harper to be so categorised), and the extent to which their roles require them to engage with people living in the conditions addressed by Ms Harper's report is not clear.

198. It was also not clear to what extent Ms Harper's anonymous NGO sources had expertise in or knowledge of the contemporary conditions in the full spectrum of IDP camp conditions. Ms Harper confirmed under cross-examination that she had not queried with those sources how long they had been working with IDPs, and she accepted that it would have been better to have confirmed with those sources the extent of their expertise to address the matters raised in her report.

199. There were some background materials of which Ms Harper was not aware which appeared to us to go directly to the questions upon which she was asked to advise, and which we would have expected her to have considered. For example, a key theme of *MOJ* was the 'economic boom' and the employment prospects open to returnees, a topic Ms Harper dealt with at paragraphs 9.3 to 9.7 of her report, in pessimistic terms. Yet she was not aware of material published by the UN Food and Agriculture Organisation ("UNFAO"), such as its March 2021 *Market Update*, which recorded upward trends in wage increases for unskilled work in the Southern and Central regions of Somalia when compared to five-year averages, in terms to which we will return. *Market Update* is a monthly UNFAO publication. Ms Harper's preference for anonymous sources, or older reports, such as her reliance on 2015 news reports (footnote 87), a 2017 article concerning Mogadishu (footnote 88), or the FGS's Somalia-wide *National Development Plan* or other country-wide, non-Mogadishu specific materials at the expense of contemporary reports from the UN to support her evidence concerning the claimed diminution of the economic boom causes us to place less weight on some aspects of her evidence. Ms Harper accepted under cross-examination that her expertise did not lie in a sector-specific analysis of labour and wage rates in Mogadishu, but nevertheless opined that

the *Market Update*'s summary of wage rises may only be accurate in relation to construction work and roles at the port in Mogadishu. We consider there to be a tension between those two positions, which, combined with her lack of knowledge concerning this area of work by the UNFAO, goes to the broader weight attracted by this aspect of her evidence.

200. It was also of some surprise to us that Ms Harper was unaware of the details of CCCM (see paragraph 320, below), or its impact, when cross-examined about the CCCM methodology, particularly given, at [7.6] of her report, she quotes a review of effectiveness of the CCCM approach, drawing on the fact that the impact of some gatekeepers had been to "curtail effective service delivery to IDPs" (see paragraph 27 in the Annex, below). Ms Harper did not know who the CCCM partners are, nor that the International Organisation for Migration and the UNHCR are partners in the methodology. She was not aware of the March 2021 *CCCM Household Satisfaction Survey*, which made a number of observations about IDP camps and gatekeepers, to which we will return, below. Given 36% of the country's IDP camps are part of the CCCM methodology, this was a surprising omission from her evidence.

Sarah El Grew

201. Sarah El Grew is a senior researcher for One World Research ("OWR"). She provided two reports addressing the likely position of OA upon his return to Mogadishu, dated 20 March 2018 (prepared ahead of the original appeal in the First-tier Tribunal), and 5 February 2020 (ahead of the error of law hearing in the Upper Tribunal before McGowan J and UTJ Kebede), and on 14 May 2021 responded to a number of questions posed by the Secretary of State. Ms El Grew gave evidence before us and was cross examined by Mr Hansen.

202. Ms El Grew describes OWR in these terms, at [2] and [3] of both reports:

> "OWR utilizes a network of professional investigators and researchers with extensive experience in countries around the world. We obtain affidavits, documents, and other evidence from foreign countries, draft up-to-date country and issue-specific reports, and locate expert witnesses. We have worked on numerous asylum cases in the United Kingdom and the United States, providing assessments and documents for clients from many different parts of the world: Africa, South Asia, and Central America, among other locations.
>
> OWR has worked in East Africa since 2009. We have a number of established contacts in the region and have carried out numerous research projects in Somalia. In addition to desktop and background research we have also worked on a number of projects with local consultants carrying out interviews on the ground. In 2014 we interviewed Somali refugees returned from Kenya for a report presented at the 57th Ordinary Session of the African Commission (4-18 November 2015) 'Dignity denied: Somali refugees expelled from Kenya in 2014'. Subsequent to this report we carried out follow up interviews in 2015 and 2016 with these same returnees living in Mogadishu about their living conditions and situation a year later. In June 2016 we carried out research into rehabilitation centres for 'Westernised' youth where young people are being detained at the request of their families. In 2017 we also carried out some initial research interviewing Western returnees from Europe and the US."

203. At the outset, it is important to be clear about what Ms El Grew's reports are and what they are not. Ms El Grew is not, and does not claim to be, an expert in Somalia; her role is perhaps

best categorised as that of researcher. She compiled her two reports on the basis of background, or "desktop", research, and through interviews with those her background research suggested were experts in the field. She confirmed under cross examination that her undergraduate degree did not feature any modules on research methodology, although she was given support and guidance on those issues. She was not taught about research concerning qualitative methods, interview technique, or the means by which different interview techniques could be selected. She confirmed that those representing the appellant were aware that neither she nor more senior staff at OWS were country experts in Somalia.

204. Against that background, Ms El Grew said that her role was to identify and "instruct" a number of experts in the field, a task which she performed without any pre-existing knowledge or expertise concerning Somalia. She readily accepted both in her answers to the written questions posed by the Secretary of State and under cross-examination before us that she has no expertise in matters related to Somalia itself, and that she was not able to answer questions on the content of the responses her interviewees had given to her individual questions, nor concerning the contents of the background materials she identified, or the general consistency of the answers given in the interviews with those materials.

205. As demonstrated by the initial letters of instruction to OWR dated 4 July 2017 and 2 February 2020, the premise upon which those representing the appellant requested this research to be conducted was on the basis that the appellant had no remaining family in Mogadishu. The specific questions posed to OWR, and in turn by Ms El Grew to her interviewees, assumed certain disputed elements of the appellant's case to be uncontroversial. Ms El Grew confirmed in cross-examination that she did not ask her interviewees to opine on the basis of an alternative version of the facts. Nor was it part of Ms El Grew's instructions to invite the interviewees to address the possible relevance of remittances for the purposes of the appellant being able to establish himself upon his return. By way of an example, see the first question to OWR in the letter dated 4 July 2017 (which, of course, pre-dated the hearing before Judge Beach on 5 April 2018, and so was prepared ahead of the first opportunity for any judicial consideration of the evidence):

> "i) Please comment on any risks our client may face on return to Mogadishu, in answering this question please address the following:
>
> (a) Risks as someone returning without family/clan associations;
>
> (b) Risks as someone returning without access to financial resources;
>
> (c) Risks as someone who left Mogadishu aged 4/5 and has no recent experience of living in Somalia…"

206. While there is no dispute in relation to (c), as the appellant plainly has not lived in Mogadishu since he was that age, as will be seen, the basis upon which sub-questions (a) and (b) were posed to OWR was by no means common ground between the parties. Ms El Grew was clearly aware of the disputed issues between the parties, as she was provided with the key documents issued by the Secretary of State, which set out the contrasting position of the respondent, yet did not address the competing case advanced by the respondent. Similar observations apply in relation to Ms El Grew's interviewees, who, as far as we are able to tell, were each asked to opine on the basis of the appellant's claimed narrative, rather than addressing his prospective situation on a broader basis.

207. A further weakness in Ms El Grew's research lies in the fact she was not aware of the qualifications the appellant had earned while in prison; her instructions, and the basis upon which she conducted her research, was on the premise that the appellant had no work experience.

208. There are no records of the initial contact Ms El Grew made with each of her interviewees; OWR's email server had not retained records of the initial email contact. While Ms El Grew was clear in responses to questions from the tribunal that she had stressed to each the importance of complying with their duties to the court as expert witnesses, we have no copies of her correspondence with each of her interviewees. There is certainly nothing to suggest that they were provided with as comprehensive details concerning the background context of the case, including the essential documents, or written details concerning the duties of experts, as OWR had been, and as would ordinarily be expected of any expert. The details provided in relation to the expertise of each interviewee are light compared to the detail that normally features in expert reports. The interviewees were not paid for their time; Ms El Grew said that she was relying on the generosity of those who were willing to speak to her.

209. Ms El Grew's reports feature remarks that appear to be attributed as direct quotes, or detailed reported speech. However, in the notes she kept while conducting the interviews, it could be difficult to find records as detailed as the remarks that Ms El Grew was later to attribute to her interviewees in her substantive reports. In her answer to question 30 posed by the Secretary of State, Ms El Grew said that it was not OWR's practice to offer interviewees the opportunity to review the notes taken during interviews with them. Dr Chonka did, in fact, ask to review the remarks that were to be attributed to him by Ms El Grew, and she provided him with that opportunity. But he was the only interviewee who sought to verify his contribution to the reports.

210. Elsewhere, details may be found in Ms El Grew's handwritten notes which did not feature in her substantive report. For example, at page c1505 of the bundle, Ms El Grew's handwritten notes of her conversation with Roger Middleton record that, in the context of discussing what he considered to be high unemployment, he considered there to be some labouring jobs, including painting and construction, which Ms El Grew did not include in her summary of Mr Middleton's opinion.

211. There were features of the correspondents' views in the El Grew reports that were at odds with the remaining evidence, or failed to take into account established background materials addressing the same topic. For example, at paragraph 37 of her first report, when addressing the appellant's risk of being forced to resort to an IDP camp, Ms El Grew's interviewees do not address the specific position of the Reer Hamar, despite doing so elsewhere, in light of their unique position within Mogadishu. Ms Harper was clear that she had never encountered reports of any Reer Hamar living in IDP camps, yet for some of Ms El Grew's interviewees, that was a possibility. We accept that elsewhere in the report the poor quality of Reer Hamar housing is covered, but that does not address the specific inconsistencies regarding the Reer Hamar and IDP camps. The figures quoted by Ms El Grew's correspondents for the likely cost of hotel accommodation were at odds with the lower figures suggested by Ms Harper.

212. We should also note that, as Ms El Grew accepted under cross-examination, her first report is now three years old, and its contents relate to the position at that time only.

DISCUSSION

General position in Mogadishu

213. Somalia is a country that has been characterised by conflict, political instability and a challenging climate. It has suffered the ravages of war, drought and famine. Yet it is a country that has demonstrated considerable resilience. The global Somali diaspora has not turned its back on its home country, with many returning, in particular to Mogadishu. The city's pace of growth is remarkable, especially given its recent history, and the difficulties that continue to characterise much of daily life within the city, as noted by both Ms Harper in her report at paragraph 6.3, and the respondent's November 2020 *Country Policy and Information Note – Somalia (South and Central): security and humanitarian situation,* version 5.0, November 2020. The international community has rallied around Somalia. The provision of aid has been extensive, and many international organisations have a significant presence in the country, and in Mogadishu specifically.

214. Life in Mogadishu is replete with challenges and, in some cases, danger. Corruption mars the distribution of aid. Terrorism is an ever-present threat, and attacks regularly target what may loosely be termed members of the elite, security forces and the ruling class. Security has been commoditised, just as have been many basic essentials of daily life, such as water and sanitation. The harsh climatic conditions throughout the country have thrown traditional agro-pastoralist livelihoods into sharp relief, triggering internal movements to urban areas, in particular Mogadishu. The risk of violent street crime can be high, especially at night, when police patrols are infrequent, and cover only a small fraction of districts, focussing entirely on main roads.

215. Many of the materials relied upon by the appellant to demonstrate the claimed dire conditions in the country, and in Mogadishu in particular, do not address the contemporary situation, and so provide less assistance to our assessment of the current conditions in the city. For example, Professor Menkhaus' 2017 *Dadaab Returnee Conflict Assessment*, relied upon by the appellant, addresses the anticipated impact of the expected expulsion from Kenya of large numbers of Somali IDPs resulting from the anticipated closure of the Dadaab IDP camps. It was based on research undertaken between December 2016 and January 2017. Professor Menkhaus' emphasis on the then impact of the drought, and what was thought "at the time of this writing" to be the potential for it to evolve into a famine (see internal page 13), is therefore of minimal relevance for the purposes of our contemporary assessment, which concerns the position in Mogadishu at the date of the hearing. To the extent the report addresses the historical position, we accept it is reliable, and will return to it where necessary; see for example Professor Menkhaus' summary of clan loyalties, and their cultural significance, which we quote at paragraph 238, below.

216. Similarly, Professor Menkhaus' summary of corruption and aid diversion in the years following the civil war until the *Dadaab Returnee Conflict Assessment* report was drafted (see internal page 14) appears to us accurately to capture the historical position. But the historical position is of limited relevance for the purposes of our current findings; we prefer the contemporary reports (and the evidence of Ms Harper, based on her recent visits, insofar as it goes) to which we will turn shortly. For that reason, while we are grateful to the parties for their lengthy and detailed schedules which feature many, many references to individual quotes across thousands of pages of background materials, we do not propose to deal with each in turn, although we have considered all the materials to which we have been referred.

217. Similar observations apply in relation to the weight attracted by Ms El Grew's research; putting to one side the fact that Ms El Grew is not a country expert and the other weaknesses in her report (which we address where relevant), her research concerning the general in-country conditions set out in her first report, dated 20 March 2018, was three years old by the time of the hearing before us. Her second report, dated 5 February 2020, seeks to capture a more contemporary representation of the drugs-related provision in Mogadishu, but, as we shall set out below, was prepared without the benefit of her own expertise in the field, and lacked some of the structural features which many reliable expert reports would be expected to have, such as ensuring that interviewees verify remarks that will be attributed to them.

218. Our focus will, therefore, be on the contemporary materials and evidence which demonstrate durable change since the findings reached in *MOJ*.

The humanitarian situation

219. It is important to be realistic about the difficulties faced by those living in Mogadishu. The contemporary background materials are broadly united in their description of Somalia facing a prolonged humanitarian crisis. While the droughts of 2011 and 2016 to 2017 represented peaks at the time, humanitarian challenges in the country persist, albeit with reduced intensity than was the case during the past conflict and at the heights of drought in the past. Extreme weather fluctuations, communicable disease outbreaks, conflict in some areas, and what the UNOCHA *Humanitarian Needs Overview 2021* describes as "weak social protection mechanisms" combine to lead to a spectrum of very challenging humanitarian needs. The 2021 UNOCHA report records that flooding in 2020 displaced over 900,000 people, and destroyed essential infrastructure, property and many thousands of hectares of agricultural land, attributing the causes of these extreme weather events to climate change. Covid-19 has exacerbated the challenges further, although the evidence before us was that the impact of the pandemic had been relatively muted, and that infection and death figures were lower than in many other parts of the world. The European Commission's July 2020 *Somalia Factsheet* (quoted at paragraph 3.2.2 of the *Somalia (South and Central): Security and humanitarian situation* CPIN, version 5.0, November 2020) records that the country had seen the worst desert locust infestation for 25 years.

220. We have no reason to question the following summary of the Federal Government of Somali's *Somalia National Development Plan, 2020 to 2024* which addresses the poverty that characterises the lives of many Somalis in these terms, at page 85:

> "Such extreme poverty represents great vulnerability among the majority of Somalis to the shocks – drought, displacement, poor health, loss of income or assets – to which they are repeatedly exposed. Put simply, it takes very little perturbation in the lives of the very poor to get them to a point where they just do not have the means to survive. Meagre livelihoods fail, food consumption drops still lower, malnutrition rates suddenly rise, and resistance to infectious disease falls and disaster ensues."

Although we note what follows, concerning the fact that large numbers of Somalis reside *above* the poverty line:

> "…it is also important to point out that a large part of the population is understood to have consumption levels just above the poverty line; they are

> 'nearly poor', which makes them also vulnerable to recurrent shocks, if not to the extent of the extremely poor."

The *National Development Plan* continues by emphasising the importance of remittances to reduce vulnerability and increase resilience. Remittances are a facet of daily life in Somalia, as universally acknowledged across the background materials, previous country guidance decisions and the evidence of Ms Harper; they are a significant factor in the mitigation of the otherwise harsh in-country conditions. Remittances are one facet of a number of different coping mechanisms relied upon by returnees to Somalia, of which clan membership, family connections, accommodation, health and employment also form a part, which we address below.

221. It is not possible to divorce analysis of the general humanitarian conditions in Mogadishu from an analysis of the security situation. The FIS fact-finding mission to Mogadishu in March 2020 describes the humanitarian conditions in the capital as "severe", with the security conditions hindering access to assistance and services for those who need them most (page 30), and notes UNHCR reporting that education, healthcare and accommodation present particular challenges.

222. There are no very strong grounds, supported by cogent evidence, not to follow the assessment of *MOJ* concerning the security situation in Mogadishu. While the security situation remains volatile, in Somali terms there has been relative stability over the last seven years. The withdrawal of Al-Shabaab remains complete, and the city is under the control of government forces and security officials. Terrorism and targeted bomb attacks continue to form a significant part of the security landscape and daily life, and so impact on humanitarian and other conditions accordingly, but it remains the case that, as held in *MOJ*, an ordinary civilian does not face a real risk of a serious and individual threat to their person by reason of indiscriminate violence for the purposes of paragraph 339CA(iv) of the Immigration Rules (that is, the threshold contained in Article 15(c) of the Qualification Directive).

223. In its *Response to an information request: Somalia, Security situation in Mogadishu with specific reference to risk to civilians*, 8 April 2021, the Secretary of State's Country Policy and Information Team summarised data from sources including *Jane's Intelligence Review*, plus non-profit organisations, academic data and a charity, concerning the levels of casualties, including civilian casualties, in Mogadishu. While the data as summarised suggests that Al-Shabaab and other unidentified armed actors continue to have an active disruptive presence in the city, civilian casualties are now, if anything, at a marginally lower level than when *MOJ* was heard. As the *Response* notes at [3.2.1], fatality data are typically inaccurate, as there can be vested interests in either over reporting or under reporting. In addition, some datasets do not capture the incidents which led to the fatalities in the same way. But there does appear to be consistency across the datasets to support the conclusion that there was a peak in civilian casualties in 2017, which is reported to be attributable to a truck-bombing incident from which 587 fatalities were recorded among an annual total for that year of 1,000. See also [3.5.2], which compares the fatality reports from the main datasets reviewed, demonstrating the 2017 peak, and illustrating the overall 2014 to 2020 trend in a manner which demonstrates that the levels of civilian casualties in 2020 are broadly consistent with those in 2014 when *MOJ* was heard.

224. In her answer to question 149 posed by the Secretary of State, Ms Harper said that, in general terms, the overall security situation has not changed significantly since 2014; the violence fluctuates, and the reasons for the violence can change, but overall she did not consider that the levels of violence had decreased or increased significantly since *MOJ* was heard. We accept

this evidence. As was held in *MOJ*, those terrorist attacks that continue to affect the city are focussed at the government and other security apparatus. Where civilians are caught up in such indiscriminate attacks, it is a tragic case of them being "in the wrong place, at the wrong time", to adopt the terminology of the Landinfo *Report – Somalia: Security challenges in Mogadishu*, 15 May 2018, at [7]. There is no evidence that civilians are intentionally targeted.

225. The Finnish Immigration Service's *Fact-finding Mission to Mogadishu in March 2020* reports that Al-Shabaab had not carried out a major bomb attack on the city for "a while" (page 9), and that parts of the city have known relative stability. The government had taken steps to ensure the appropriate payment of wages to security forces, which had a great impact on their efficiency and morale. Steps have been taken to minimise the potential for bribery of security officials at checkpoints, such as rotation of security personnel without notification. See pages 9 and 10 of the report. But it remains the case that Al-Shabaab continues to target those categories of individuals identified by *MOJ* at [407(c)], such as parliamentarians, security officials, and those associated with NGOs and international organisations. However, day to day life quickly resumes following terror attacks, as residents of the city press on to continue earning and living as before; "there is no alternative", concludes the *Fact-finding Mission to Mogadishu in March 2020* at 26, "[e]ither those responsible for the family stay home and starve to death with family members, or they go to the street to earn a few dollars so they can feed themselves and their children."

226. We also find that there has been no durable change to the position concerning inter-clan violence since *MOJ*. The background materials to which we were taken by both parties did not demonstrate a return to the inter-clan hostilities that characterised much of the unrest in the 1990s until the withdrawal of Al-Shabaab. In answer to written question 137, Ms Harper said that she thought that the position concerning inter-clan violence was about the same as it was at the time of *MOJ*. She added that the day-long violence surrounding disputed elections in 2021 led to a worsening of inter-clan violence at that time; under cross-examination, Ms Harper accepted that the then recent tensions were unusual. By the time of the hearing, there was progress advancing towards political agreement, she explained. We accept, as Ms Harper explained during her evidence, that the ability of violence to flare up in that way underlines the fragility of the security landscape in Mogadishu. But we do not consider that the residual potential for such violence to flare up to amount to a sufficiently durable change to the security landscape to merit a departure from *MOJ's* findings concerning the general security landscape or inter-clan violence. To the extent that rival clan factions were involved in conflict during the heightened and temporary violence surrounding the disputed elections in April 2021, the distinction was primarily between opposing political factions, namely those who supported the President, and those who did not. The political flashpoints did not fall along clan boundaries. We accept Ms Harper's evidence in that regard.

227. There is some evidence that food is more limited than usual. Much of the evidence to which we were taken by the appellant concerns the position in Somalia as a whole, rather than Mogadishu specifically, such as the *Somalia Social Protection Policy*, published by the FGS in March 2019. Other materials to which we were taken to were less likely to represent the position of a putative returnee. For example, a quote attributed to an IDP in the Refugees International December 2019 field report, *Durable Solutions in Somalia: Moving from Policies to Practice for IDPs in Mogadishu* at page 14, concerned an individual struggling to work, with no other forms of support, with no mention of remittances. In her oral evidence, Ms Harper said that the consequences of the limited food supply were increased prices. We accept that many residing in Somalia are malnourished and that food will be more expensive in light of the pandemic.

228. In *MOJ*, this tribunal found that there was no evidence that returnees would be targeted for robbery or extortion, on account of their perceived wealth: see [192] and [392]. It appears that similar submissions were advanced to the tribunal on that occasion as were advanced before us: see [278] and [308]. We accept that levels of crime in the city are high, and that some have to resort to robbery, including armed robbery, to survive, as documented in, for example, Saferworld's August 2020 briefing *The missing link – Access to justice and community security in Somalia*, at page 5. But there is no evidence that the incidence of such crimes gives rise to a real risk that a person's mere presence in the city gives rise to a substantial likelihood that they will fall victim to such crime. As in many major cities, it will be possible for a returnee to take steps to minimise their exposure to risk of this sort, such as avoiding certain areas at night while alone. There has been no durable change to the findings reached in *MOJ* that returnees are not targeted on account of that status. Those who fall victim to street crime in Mogadishu will do so on account of being in the wrong place, at the wrong time. We have been taken to no evidence to demonstrate that targeting an ordinary civilian for crime will take place for other grounds, for example because of a reason listed in the 1951 Refugee Convention.

229. We accept Ms Harper's evidence that conditions in Mogadishu for returnees are difficult; her assessment was consistent with the broad thrust of the background materials to which we were referred. We accept that many returnees will face considerable practical challenges when seeking to establish themselves in a city to which hundreds of thousands have been, and continue to be, displaced. The cumulative impact of extreme weather, drought, conflict, the mass displacement of people into the city, and the fragile security situation presents significant challenges for many returnees, albeit not at the levels documented in *AMM*, and not at levels below those in *MOJ*. Drawing this analysis together, we return to [421] of *MOJ* where this tribunal held that, other than for those in IDP camps (a matter to which we shall return):

> "…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…"

230. We find that there has been no durable change since those findings were reached. There have been temporary changes, for example the drought of 2016 and 2017, but those changes were not of a magnitude or durability to justify a departure from the country guidance given in *MOJ* insofar as it related to the humanitarian situation in Mogadishu. We accept that conditions elsewhere in Somalia have been characterised by the cycle of extreme weather events, of which flooding and locust infestations have recently been a more prominent feature than drought, but the direct impact of such naturally occurring phenomena is limited in Mogadishu, where their impact is less acute. There has been no durable change in the overall security situation. In short, it remains the case that the overall humanitarian position in Mogadishu has continued to improve since the country guidance in *AMM* was published.

Ability of a returnee to establish themselves in Mogadishu

231. We find that there is no evidence that it is reasonably likely that forced returnees will be questioned at the border. *MOJ* found at paragraph 407(a) that "an ordinary civilian" returning to Mogadishu would not be viewed with suspicion either by the authorities or by Al-Shabaab. Given two of the substantive appeals in *MOJ*, MOJ and SSM, were deportation appeals that were dismissed, "an ordinary civilian" must have included deportees. As such, we must consider whether there are very strong grounds, supported by cogent evidence, justifying not following *MOJ* in relation to a returning deportee.

232. For the reasons set out in paragraph 250, below, *Removals to Somalia in light of the Convention Against Torture: Recent Evidence from Somali Bantu Deportees*, Lehman and McKee, Georgetown Immigration Law Journal [Vol. 33:357 2019] did not shed significant light on the general risk profile of returnees arriving in Mogadishu. Ms El Grew's interviewees painted a mixed picture of what is likely to take place at the border, with Mr Ali saying that the appellant would be identified for questioning if he was acting suspiciously, and Dr Hammond stating that he would not be of interest to the police: see [33] and [34]. Further, Mr Ali's opinion addressed the scenario in which a returnee would be "hanging around alone at the airport" with "nobody to collect him". There is no reason for a returnee, even with no connections, to loiter at the airport in that manner; we have seen no evidence that suggests it would not be possible to book or hire a taxi. Certainly, there appears to be a thriving taxi industry in Mogadishu; there are references to returnees having secured work in the sector in *MOJ* (see [225] and [349]). The Danish Immigration Service's 2012 report *Security and Human Rights Issues in South-Central Somalia, including Mogadishu* states at internal page 86 that, once a traveller has passed through the immigration and border controls at Mogadishu International Airport, "the traveller may be picked up by a relative or a friend, *or the traveller will hire a taxi at the airport to go to his or her final destination*" (emphasis added). We have been taken to no evidence suggesting that the taxi sector in Mogadishu would no longer make provision for such journeys; on the contrary, the continuing evidence regarding the "economic boom" suggests that such the sector must still exist.

233. We have seen no evidence that would suggest that a returnee would be unable to book a hotel in Mogadishu prior to their arrival, and arrange to be collected, thereby neutralising any suspicion which would otherwise attach to someone "loitering". While Ms Harper had been "unable to verify" the DFAT report quoted in the December 2020 CPIN which, to paraphrase, states that a failed asylum seeker would not necessarily be identified at the border (see paragraph 12 of Annex 1), we see no reason to treat it as anything other than an accurate description of what happens at the border.

234. A theme that runs through the background materials and the previous country guidance authorities is the importance of some form of in-country support, network or provision in order to become established in Mogadishu. In *MOJ*, this tribunal emphasised the importance of an individual's "nuclear family", if they have one, to an individual seeking to re-establish themselves in the city: see [407(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."

235. In *MOJ* at [342], this tribunal said:

> "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.'"

That analysis led to the following country guidance concerning clans, at paragraph 407(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 [longer] clan militias in Mogadishu, no clan violence, and no clan based discriminatory treatment, even for minority clan members."

236. The evidence before us demonstrates no durable change concerning the role of the nuclear family. If a returnee has an immediate, 'nuclear' family in Mogadishu, the returnee will be able to call upon the family for essential assistance: accommodation, food, and assistance securing work.

237. In relation to the willingness and ability of minority clans to assist, the evidence before us establishes a broadly similar position, although we have had the benefit of detailed evidence and submissions on the contemporary assistance that will be required and may be requested from a minority clan, which we set out below.

238. We observed earlier that Professor Menkhaus' 2017 report, *Dadaab Returnee Conflict Assessment*, is of assistance insofar as it addresses matters pertaining at the date of the research which informed the report. We also consider that the following summary of the Somali cultural obligation of loyalty towards one's "kinsmen", a term which in this context we read as though referring to clan:

> "An important aspect of Somali society's resilience is the powerful, non-negotiable obligation to help one's kinsmen in times of need. This enables resources to flow to the most needy and constitutes a life-saving social security net. But this obligation does not extend beyond one's clan. That can matter when humanitarian or other assistance is channelled through local formal or informal authorities controlled by clans that are not the primary intended targets of the aid." (internal page 12)

239. In her evidence before us, Ms Harper confirmed that the position she described in 2014 concerning the significance and impact of clan membership and connections remains the same. Ms Harper provided a similar account to researchers for the Danish Immigration Service's COI report *South and Central Somalia – Security situation, forced recruitment and conditions for returnees*: see part 7.1, *Network*.

240. We accept Ms Harper's evidence concerning the importance of network for a returnee being able to establish themselves in Mogadishu. The February 2020 TANA report *Finding Shelter in Mogadishu: Challenges for vulnerable groups* states, at page 6

> "Having a broad personal network with connections to powerful groups is the best route to secure housing for the urban poor."

241. We also accept that, as a general rule, minority clans may struggle to offer significant levels of practical assistance (although, as we set out below, clan-specific additional considerations may apply, as may be the case with the Reer Hamar). In its February 2020 report *Finding Shelter in Mogadishu: Challenges for vulnerable groups*, TANA summarised the structural barriers faced by minority clans in the following terms at page 4, with emphasis added:

> "Somali society is governed by a combination of customary law (*Xeer*) and religious law (*Shari'a*). Both are very powerful institutions but intervene at different levels and in some instances contradict each other. As a consequence, women are significantly discriminated against in terms of access to shelter and services. Shari'a stipulates inheritance rights for women, while Xeer often circumvents these rights and gives greater credence to men's inheritance claims. The law of the land is anchored in Shari'a, but issues of integrity and a poor grasp of the law also disadvantage women caught up in inheritance disputes. **Xeer does not only put women at a disadvantage: it favours majority clans, making it difficult for minority clans and certain ethnic groups (e.g. Bantu and people of Arab origin) to assert their rights.**"

We consider the reference to 'asserting rights' to encompass situations where some form of challenge is required, for example, to access property or accommodation, or where there is a dispute as to an individual's entitlement to access it. That accords with Ms Harper's evidence that some minority clans may be willing, but not *able* to offer support. The evidence before us does not support the contention that a network or connections in a minority clan would be of no assistance at all. Rather, it may be an issue where some positive, practical or otherwise costly contribution would be required on the part of the clan. Where there is a dispute requiring resolution, or where some form of practical provision from the clan is required in order to access accommodation or services, in those circumstances, and as a general rule, the assistance provided by a minority clan may rank below that which would be provided by a majority clan in corresponding circumstances. But there is no evidence to support the view that a member of a minority clan would be *unable* to act as a guarantor, whether formal or informal, and we address the potential for a minority clan to provide such assistance, particularly in the context of accommodation and employment, below.

Minority clans: Reer Hamar

242. We do not understand the historical position concerning the Reer Hamar to be the subject of dispute. The Reer Hamar are descended from Persian and Arab peoples. They settled in Mogadishu hundreds of years ago and remain a historic community with ancient links to the city. The term *Reer Hamar* means *people of Mogadishu*. Historically, they were merchants. They lived, and continue to live, in specific parts of the city. Their areas have the appearance of an old Arab town, observed Ms Harper. Traditionally, the ancient *people of Mogadishu*, were close to power. They did not need to maintain their own militia. However, when the civil war broke out, they were left without the means of protection enjoyed by the majority clans. As such, the conflict in the 1990s and beyond has much diminished their historic position. The Reer Hamar were raped and had property stolen during the civil war. Many fled to Kenya, and settled in Mogadishu. Some remained in Mogadishu. Many have since returned.

243. Ms Harper accepted under cross-examination that, although the Reer Hamar are a minority clan, they are now at or towards the top of the minority hierarchy. Over the last two decades, the Reer Hamar have adapted and begun the journey to restoring their former significance. The evidence suggests that a number managed to remain in Mogadishu when the civil war broke out and, while there appears to be no single operative factor which enabled them to do so, some of the steps they took placed them on the trajectory back to occupying their roles of influence within Mogadishu society. It is important to be clear that the Reer Hamar have not fully returned to their pre-civil war positions of influence. They have merely begun to do so. However, it is those steps, combined with their historical role and significance, that place the Reer Hamar at the top of the minority clan structure. The measures include *black cat marriages*, where members of the Reer Hamar married into (sometimes by force) the dominant Hawiye clan, securing their own militia protection, and, in the early 2000s, paying protection money to warlords: see the *Landinfo – Response – Somalia: Reer Hamar*, 17 December 2009, pages 1 and 2.

244. While some of the following background materials concerning the Reer Hamar are of some vintage (and so are approached by us with a degree of caution insofar as reaching our operative findings concerning the contemporary, post-*MOJ* position), they nevertheless further contextualise the position of the Reer Hamar. The Austrian Red Cross, in *Clans in Somalia: Report on a Lecture by Joakim Gundel, COI Workshop Vienna, 15 May 2009 (Revised Edition)*, records Joakim Gundel, a commentator on the region whose views were discussed in *AMM* (see, for example, paragraph 266), as attributing the relatively advantageous position enjoyed by the Reer Hamar to several factors. In addition to the *black cat* practice, those other reasons included the fact that those members of the Reer Hamar who succeeded in being recognised as refugees abroad were influential in raising their profile internationally, which, in turn, contributed to a heightened profile for the Reer Hamar within Somalia itself. As a result, and combined with the passage of time, the Reer Hamar have obtained a number of key positions within the regional Benadir administration, and the local government of Mogadishu. The Netherlands' Ministry of Foreign Affairs *Country of Origin Information Repot on South and Central Somalia*, March 2019 makes similar observations: see page 43.

245. We observe that the Reer Hamar's descent from their former position of historical significance does not preclude individual members from ascending to positions of influence and power in Somali society at present. So much is clear from Ms Harper's answers to the Secretary of State's written questions; the anonymous employee of an international organisation in Mogadishu relied upon by Ms Harper is a member of the Reer Hamar. He used to hold ministerial office in Somalia, and now works in a senior role in the unspecified international organisation.

246. The historical and geographical relationship between the Reer Hamar and Mogadishu manifests itself in the rarity of members of the Reer Hamar having to resort to IDP camps. Under cross-examination, Ms Harper confirmed that she is not aware of any Reer Hamar living in IDP camps. Her evidence in that regard accords with *Landinfo – Response: Rer Hamar population in Mogadishu*, 21 May 2019, which states at internal page 2 that:

> "There is no information indicating that the Rer Hamar population lives in settlements for IDPs in and around Mogadishu. Nor did any of the Rer Hamar representatives we met in Mogadishu in February 2019 know that Rer Hamar people live in such settlements.
>
> The above is supported by the fact that the settlement pattern of the Rer Hamar population is in stark contrast to that which applies to those who live in the

> settlements. The vast majority of those who live in the settlements are internally displaced, who lack the means to settle outside the settlements (Landinfo 2016). Those living in the settlements have also been forced to move to increasingly peripheral areas as the demand and prices of property in Mogadishu have increased.
>
> The Rer Hamar population, on the other hand, live where they have always lived. Most live in the old town of Hamar Weyne, but some families also live in other central districts."

247. The remaining background materials are consistent with the evidence of Ms Harper and the May 2019 Landinfo report. We were not taken to any materials by Mr Toal to the effect that Ms Harper was mistaken in this aspect of her evidence. Indeed, few of the extensive background materials relied upon by the appellant addressed the position of the Reer Hamar specifically. We accept that FIS report, *Somalia: Fact-finding mission to Mogadishu in March 2020* suggests at page 42 that "most" members of marginal groups reside in IDP camps. However, properly understood, we do not consider that the FIS report is authority for the proposition that the Reer Hamar live in IDP camps. The report states that the majority of the estimated 450,000 to 900,000 persons living in IDP camps in the Mogadishu region, around 700,000, are *Bantu*. (Obtaining accurate estimates of the total numbers of IDPs in Mogadishu has always been the subject of some difficulty, and there is nothing before us to suggest that the task is now any easier, or more accurate: see *MOJ at [232]*). The Reer Hamar are not mentioned in this discussion. We prefer the evidence of the appellant's own expert, Ms Harper, taken with the summary in the 2019 Landinfo report, that the Reer Hamar may be distinguished from other minority clans in this respect. The Reer Hamar live in their own districts, among their own people. The evidence does not demonstrate that they are forced to resort to IDP camps. A returning member of the Reer Hamar would be highly unlikely to resort to an IDP camp; instead, they will find accommodation in one of the Reer Hamar districts.

248. We accept that the findings in *MOJ* that some "minority clans may have little to offer" (*MOJ*, [407(f)]) could be said to apply to the Reer Hamar, but as we noted above, in a city where network and connections can be as important as practical provision (especially for a returnee who enjoys initial support from the Secretary of State's Facilitated Returns Scheme, and the prospect of remittances from the diaspora), being a member of a clan such as the Reer Hamar has the potential to place an individual returnee in a relatively advantageous position upon their return when compared to other, less senior minority clans, or at least go some way to mitigating the otherwise harsh conditions they would encounter. The Reer Hamar will be better placed to exploit network links than some other minority clans in Mogadishu; they will be more familiar with the city through the concentrated residential focus of the clan, and are less likely to be residing in IDP camps. They have made some gains in placing their clan on the trajectory to resumed influence and significance.

249. Drawing this together, the assistance likely to be available to a Reer Hamar returnee will depend very much upon the individual links and network of the individual concerned, and the links they have, or through connections, could cultivate. It will be for an individual returnee to demonstrate why they will be unable to enjoy clan or network-based protection or assistance upon their return.

250. This is a convenient point to address *Removals to Somalia in light of the Convention Against Torture: Recent Evidence from Somali Bantu Deportees*. We do not consider that it provides sufficiently durable evidence to depart from the findings reached by *MOJ* concerning the

absence of clan-based discriminatory treatment, or the risk profile of those perceived to be "European" upon their return. The article focusses primarily upon Bantu returnees, none of whom appeared to have any contact or network in Mogadishu. A total of 18 Bantu returnees from the US removed between 2016 to 2018 were interviewed for the article, and a further two were "accounted for" in the survey. Of those, 20 percent were removed in 2016, namely four, which must be viewed against total US removals to Somalia of in 2016 of 157 (there are no overall US returns figures for 2017 or 2018). The details of why the returnees were removed are not clear, nor the rationale adopted by the US Immigration Courts or the Board of Immigration Appeals for dismissing any appeals against removal decisions. It is by no means clear that the Bantu returnees featured in the article would have been removed under the country guidance given in *MOJ* (or other extant country guidance concerning the removal of Bantu), and so provides an unclear reference point from which to make comparisons relevant to present purposes. We also note that the catalogue of mistreatment reported by some returnees is summarised by the authors of the article to include a spectrum of conduct, some of which would not necessarily amount to torture. For example, see page 372 stating that some returnees were orally "abused" at the airport upon arrival, with no details as to what amounted to such "abuse", whereas some others were "tortured".

Return following a period of absence to no nuclear family or close relatives

251. Paragraph 407(h) of *MOJ* addresses the considerations relevant to the required "careful assessment of all the circumstances" where it is accepted that a person facing a return to Mogadishu has no nuclear family or close relatives in the city to assist with the returnee re-establishing themselves upon their return. We have set out [407(h)] at paragraph 30, above.

252. In broad terms, there has been no durable change since the guidance on this issue in *MOJ* was given. But we are able to give additional country guidance concerning the contemporary landscape within which some of the paragraph 407(h) considerations sit, where relevant, and their legal implications, following *Said*.

Network

253. An individual's personal network is likely to sit within their clan, but is not coterminous with their clan.

254. We address the individual position of OA in further depth, below, but for present purposes we highlight one feature of Ms Harper's evidence in relation to his case, because it raises a point of general relevance to our discussion of networks and clan contacts. It is this appellant's case that his mother, who fled Somalia when she was approximately 40 years old shortly after the civil war, having lived there for her entire life, no longer has contact with any friends or family in Somalia. Ms Harper candidly accepted that she would have expected OA's mother to have retained some links with family in Somalia, despite having left the country around 30 years ago. We find that, taken alongside the cultural prevalence of remittances from the diaspora, and the importance of the obligation towards one's kinsmen, to adopt Professor Menkhaus' terminology, these factors combine to demonstrate that, in general, it will be unlikely that a returnee would be devoid of any network, or prospective network, upon their return. Culturally, family and social links are likely to be retained. The broader diaspora retain links with those in Somalia. Somali culture, even in this country, entails mutli-generational households living under one roof, often with broader members of an "extended family" (to use the term loosely) joining a household. For example, in what Ms Harper regarded as a relatively commonplace arrangement, two Somali women live with OA's mother

in this country, and help to care for her. Such connections are, Ms Harper said, likely to be clan-based. Ms Harper said under cross-examination that "information is the trade of the Somalis", suggesting that there are extensive links between, and knowledge of, different sectors of the diaspora community, and those who reside in Somalia. See also the June 2020 Landinfo report *Somalia: Clan, family, migration and assistance with (re)establishment* which states, under the heading *Communication lines* that the diaspora and those in Somalia are in frequent telephone contact "not only because relatives in Somalia are constantly asking for money, but to maintain social relationships and exchange information about big and small issues." Later, under the heading *Somalis without networks*, the report says:

> "Over the years Landinfo has repeatedly raised issues in relation to Somalis without networks. This question is met with smiles and wonder from local sources, including representatives of the Somali authorities. According to the sources, this is a theoretical problem that is difficult to imagine. The sources explain this by not only describing the clan's importance in Somalia, but also by noting that the Somali family networks are very extensive and that the social ties between different generations and branches of the family are very tight."

255. Of course, as the Landinfo report goes on to acknowledge, contact may be lost through armed conflict and migration. In that connection, the report highlights the role of the International Committee of the Red Cross, working with the Red Crescent and sister organisations in other countries, and the BBC Somali Service, which reads out lists of missing persons to its listeners which are said to be all over the world, thereby assisting with family unification for those who need it.

256. We find that a returnee with family and diaspora links in this country will be unlikely to be more than a small number of degrees of separation away from establishing contact with a member of their clan, or extended family, in Mogadishu through friends of friends, if not through direct contact.

257. The 2020 Landinfo report (page 800, respondent's bundle) states that sending remittances establishes credibility and respect within the clan. The report continued:

> "Not living up to expectations about sending money can compromise relationships and be a source of great shame, both with regard to relatives in Somalia and in the diaspora. According to Landinfo's understanding, however, the result of not sending money to Somalia does not necessarily mean that [the returnee] will be refused assistance to (re) establish there. In this context, it is important to emphasise that it is not a prerequisite to have helped other to get assistance from the clan. The system is based on distribution, i.e.. that members give according to their ability if they are in a position to do so. If you do not have the opportunity you are not expected to contribute."

258. We recall that in *Dadaab Returnee Conflict Assessment*, Professor Menkhaus described an "important aspect" of the resilience of Somali society is the "*non-negotiable* obligation to help one's kinsmen in times of need". That cultural imperative lies behind the flow of remittances into Somalia, but it also provides a culturally compelling reason for those still or already in Somalia to provide assistance to returnees.

259. It follows that even a minority clan would, in principle, be able to provide some assistance to a returnee seeking accommodation, primarily in the form of vouching for the individual

concerned. It is likely that the links within the clan necessary to establish assistance of this nature would be identified through an individual's network within Somalia, in light of the role of network in Somali culture. Providing assurance of this sort to a prospective landlord does not require extensive resources, or the ability to engage with the formal guarantor process which lies at the heart of some land transactions: see our discussion concerning accommodation at paragraphs 273 and following, below. If a returnee seeks to establish accommodation for themselves, it is likely that they would do so in an area that features other members of their clan, just as members of the same clans and networks tend to congregate in and around each other. That organic process is not dependent upon new residents to the area having access to a guarantor who would need to rely on majority clan status or otherwise draw on extensive resources of the sort only available to a majority clan in order to provide assistance.

260. Given the extensive links between the diaspora and Somalis in Mogadishu, it will be for the returnee to demonstrate why they will not be able to draw on clan or network assistance upon their return, bearing in mind the well-documented Somali cultural imperative to help others from one's own clan. Ms Harper's evidence was that in-country support for a returning member of the diaspora would be conditional upon that person having made remittances themselves, as an earlier member of the diaspora. We consider there to be no evidence that those receiving remittances in Somalia distinguish between the individual members who may have made remittances to Somalia from overseas. There is no stark proposition of cause and effect whereby a failure to have sent remittances prior to returning will automatically and without more lead to a situation of being shunned by the clan in Somalia, upon their return, especially if a member of the returnee's household has a history of making remittances.

261. We find that a returning criminal would not necessarily be ostracised on that account. First, we recall that *MOJ's* concept of "an ordinary Somali" must, by definition in light of the issues before the tribunal on that occasion, have included deportees. The country guidance given in *MOJ* did not include findings that returning criminals would be ostracised or face obstacles to their becoming re-established on account of their criminal past. Ms Harper's oral evidence was that, even for a person viewed as a criminal by the wider community, it would not necessarily be the case that they would face being ostracised on that account.

Remittances

262. Remittances are a well-documented and essential feature of most Somalis' strategies to mitigate the otherwise harsh in-country conditions, and they simultaneously provide a macroeconomic benefit to the economy as a whole. The role of remittances was significant in the evidence in *MOJ* and its operative findings. Nothing has changed in that respect; as the World Bank Group's 2021 report *Improving access to jobs for the poor and vulnerable in Somalia* puts it at page 5:

> **"International remittances provide a lifeline to Somalia's economy, improving its current account position and providing a safety net to millions of Somalis.**
>
> Remittances from migrants based in the United States (US), United Kingdom (UK), and Europe constitute a significant portion of Somalia's national income. Averaging about US$1.3 billion per year, remittances to Somalia match total grants and official aid and exceed foreign direct investment three-fold. When accounting for unrecorded flows, the true remittances volume may be even

> larger. Both remittances and grants have helped finance Somalia's longstanding trade deficits. For households, remittances provide some resilience against shocks and support expenditures on food, health, and education." (emphasis original)

263. Ms Harper's evidence was that remittances continue to form an important part of most individuals' finances, although she observed that younger members of the diaspora are feared by some in Somalia (in particular the money transfer companies operating in Somalia) to be less enthusiastic about the practice. She said that remittances flow in both directions, and some money leaves Somalia on a remittance basis; the focus of our analysis lies in *inward* remittances to the country.

264. The UN Security Council's report *Situation in Somalia*, 13 August 2020, estimates at paragraph 26 that there would be a 17% fall in remittances in 2020 as a result of the pandemic. That estimate was in the context of addressing the overall macroeconomic impact of the pandemic, the locust infestation and flooding. We find that whether an individual returnee will enjoy remittances remains very much a case-specific question, as identified by *MOJ* at [408], which will turn on the circumstances and means of those making the remittances. Despite the lack of infrastructure in Somalia, money may be transferred using mobile telephones with relative ease, and the practice is widespread: see Ms Harper's written evidence that people pay mainly with cash or via mobile telephone payments at paragraph 8.12 of her report. We find there has been no durable change to the role, importance and prevalence of remittances since *MOJ*.

265. Recalling our discussion, above, concerning the prevalence of links within all parts of the Somali community, the strength of such links in an individual case are, in our judgment, highly relevant to the issue of whether the returnee will receive remittances, bearing in mind the prevalence of the practice, and the Somali cultural obligation to go to the aid of one's own people: see Professor Menkhaus, quoted at paragraph 236, above. The extent to which a prospective returnee has been financially supported by members of their community while in this country will also be relevant to that assessment, for support enjoyed by a returnee while living here will, absent good reasons to conclude to the contrary, be strong evidence of such support being continued in the future.

The 'economic boom' and employment

266. The background materials do not demonstrate that there are strong grounds supported by cogent evidence to depart from the findings concerning the 'economic boom' which existed at the time of *MOJ*.

267. We accept that according to some estimates Somalia's population growth has marginally exceeded the growth of the economy. In our judgment, any lag in growth is not significant when assessed in the context of whether there has been durable change since *MOJ*. The *Somalia National Development Plan* records the annual GDP rate of growth as being 2.5 per cent, while its population growth is estimated to be 2.9%. Other estimates place both figures at higher levels. It is important to recall the *National Development Plan* growth figures to which we were taken in the context of addressing this issue relate to Somalia as a whole, rather than Mogadishu specifically. In any event, we understand there to be no real dispute concerning the year-on-year single digit growth in Somalia's economy; the economy has continued to grow in the years that have passed since *MOJ* was heard. Equally, there is no dispute as to the challenging in-country conditions, and the poverty in which a majority of Somalis live. The question is whether there has been a durable change since *MOJ*. We do not consider the

relative pace of population growth compared to the economic growth to be capable of demonstrating such a change in relation to conditions in Mogadishu.

268. The remaining evidence does not demonstrate a durable change in the employment market in Mogadishu. The city's rapid expansion has continued to give rise to economic growth, which itself has given rise to economic opportunities. See *Shelter Provision in Mogadishu* at page 14:

> "The arrival of large numbers of IDPs in a locale also means the development of a largely informal economy in the form of shops and services such as water trucking or suppliers, local artisans and so on — services that eventually lead to the growth, albeit unplanned, of the area."

The context for this extract is the impact of the economic growth on land prices and availability, which, as we set out below, we accept is a challenge. Casual and manual labour jobs are available: see *Shelter Provision in Mogadishu*, page 24. Ms Harper accepted in her evidence that manual, unskilled jobs are available, particularly in the diaspora-funded construction boom. Some work in an NGO or international organisation is highly competitive, requiring specialised skills and experience, qualifications and language skills.

269. Mr Toal's submissions that the wealth has not "trickled down" to those who need it most is based on the premise that it would be appropriate for this tribunal to opine on not only the mechanisms adopted by the FGS for the internal redistribution of wealth, but whether those measures sufficiently achieve that objective. We consider the redistribution of Somalia's internal wealth to be a topic wholly outside the competence of this tribunal. Our jurisdiction is confined to matters relating to the Refugee Convention and under the ECHR. Where, as here, there is no evidence linking Somalia's monetary and fiscal policy to the appellant's claim of being persecuted for a Convention reason, the former is of no relevance. In relation to the latter, we recall that the ECHR is not to be used as a means of imposing ECHR standards on non-contracting states. In any event, we consider Somalia's internal monetary and fiscal policy to be the paradigm example of matters of "high policy" in relation to which the tribunals and courts would ordinarily defer to the institutional competence of the executive, even in this jurisdiction, assuming the subject matter was justiciable. This tribunal is not competent to make findings concerning the steps taken by an African nation to ensure the "trickle down" of its internal wealth, especially not under the auspices of a European human rights instrument which is ordinarily applicable only within the territories of the states parties to it.

270. *African Arguments* describes itself as a "pan-African platform for news". In an article dated 2 February 2021 entitled *Somalia's prosperity can only be driven through local knowhow*, the economic growth in the country is described in these terms:

> "Since the outbreak of civil war in 1991, Somalia has been seen by many as a place of bloody internecine fighting and mass poverty. That portrait is far from today's reality. In recent years, much of Somalia has lifted itself out of the ruins of conflict and gone through a period of economic growth. Yet many international partners continue to see Somalia through an outdated lens and believe they have the answers to its problems."

The general thesis of the article is that Somali knowledge and expertise is necessary for the country's recovery to continue, and that the Biden Presidency should be utilised as an opportunity for Somalia's development. It cites the example of the adoption of "mobile money", which it described as a "homegrown solution". Ms Harper's evidence, of course,

addressed the prevalence of mobile telephone-based banking. Over 70% of Somalis over the age of 16 use the technology, suggests the article:

> "One upshot of this development has been far greater economic stability… This period of robust economic growth, which to many would have seemed impossible just a few years ago, has lifted many Somalis out of the depths of poverty and, with them, entire communities almost broken by years of hardship."

We should observe that the article is realistic about the challenges that continue to face the country; it makes no attempt to gloss over the hardship faced by many, and is candid about the fact "there is a long way to go."

271. Of course, the *African Arguments* article represents the opinion of only the journalists who wrote it, in relation to whom we have no details (although we observe that the article is written by a Somali). However, its conclusions chime with the findings of *MOJ* concerning the economic boom, the subsequent, contemporary evidence concerning the economy's continued year on year growth, and the forecasts for future growth. It is also consistent with Ms Harper's evidence concerning the prevalence of mobile telephone payments.

272. Some background materials highlight the necessity of a guarantor to secure work. We note that the FIS report *Fact-finding to Mogadishu in March 2020* states at page 39 that starting a small-scale or medium sized business does not require a network, and that the focus of Ms Harper's evidence concerning the need for a guarantor was in relation to obtaining employed work, rather than self-employed positions. Personal relationships and clan connections are required for the better roles. We find that there remain opportunities for informal work, and construction day work, as submitted by Mr Hansen, on the basis of the materials we summarise at paragraph 185, and in light of the materials we summarise at paragraph 276.

Accommodation: availability and accessibility

273. When conducting a "careful assessment of all the circumstances" of a returnee's prospective situation in Mogadishu, the accommodation situation of the individual concerned is central.

274. Upon arrival in the city, a returnee would be able to use funds from the Secretary of State's Facilitated Returns Scheme to fund a hotel room for the initial period of their stay, in light of Ms Harper's evidence that guarantors are not required for hotel accommodation (see paragraph 8.3 of her report). As Ms Harper writes, such initial accommodation would enable a returnee to build links with potential guarantors in the city. Nightly hotel prices range from 25USD to 40USD for basic, adequate accommodation, not including meals, to around 250USD for a fortified hotel in a compound. Given many Somalis live on less than 1.90USD daily, it should be possible to purchase food in the city for considerably less, rather than having to resort to paying for the considerably more expensive in-house catering at a budget hotel, which Ms Harper estimated to cost around 25USD daily. A source of Ms Harper estimated that eating at restaurants in the city would cost around 15-25USD daily; elsewhere her report (at [8.7]), another of Ms Harper's sources suggested that a monthly food budget would be in the region of 180USD, which is closer to 6USD daily. The initial FRS grant of 750GBP amounts to approximately 1000USD at current rates. It will accordingly be sufficient to secure a returnee's accommodation and subsistence for two weeks (assuming all food is purchased at the hotel) and up to four weeks (assuming cheaper food is purchased elsewhere, or some work is secured to provide an additional income in the meantime).

275. For longer-term accommodation, a returnee would require a guarantor. Mr Toal submitted that the country evidence demonstrates that the appellant would be unable to secure accommodation as he would not have a guarantor. In our judgment, it is necessary to qualify what is meant by the term "guarantor" in this context. The position presented by the background materials suggests that the term "guarantor" is a broad concept, and can refer to a spectrum of informal to formal roles. For example, Ms Harper relied on the 2019 TANA working paper, *Shelter provision in Mogadishu*, page 18, as authority for the proposition that a guarantor is required to secure accommodation and housing finance. However, we consider that it is important to place the extract of the TANA report relied upon by Ms Harper in context; the requirement for a guarantor was highlighted at part 2.3 of the report, which primarily addresses the need for a guarantor in relation to formal land transactions; when seeking a housing loan, negotiating transactions requiring the local chieftaincy's agreement, purchasing land, as well as accessing formal rental opportunities. It was not addressing less formal guarantor arrangements, whereby an established resident of the city vouches for a prospective tenant (or employee: see below). At part 3.2, the TANA report also draws a distinction between access to shelter and services by the "urban poor" and more formal transactions of the sort involving a guarantor, thereby underlining the need to understand the concept of a "guarantor" in context.

276. We accept, however, as the 2019 TANA report makes clear at page 14, that having clan or family links in an area is likely to be a significant factor in choosing to locate to that area, and consequently being accepted and settling in the area. We find that the term guarantor also refers to a person who is able to make informal connections and introductions to pave the way for a returnee finding accommodation and work (as with the Reer Hamar returnee encountered by Ms Harper on a plane to Mogadishu: see paragraph 15 of Annex 1), and not simply to an individual willing to assume a more formal role, as we set out above. At part 4.1 on page 30 and following, the 2019 TANA report outlines the typical processes involved in seeking accommodation in an IDP camp: "referrals and word of mouth are strong determinants of where IDPs settle…" The FIS *Fact-finding mission to Mogadishu in March 2020* report speaks of the need to obtain a "local person who can *vouch* for the tenant" when seeking accommodation, without addressing the clan status of that individual (page 32, our emphasis). These materials demonstrate that the term "guarantor" is capable of having a less formal meaning, and a correspondingly lower threshold than its formal equivalent.

277. As to the prospects of obtaining a suitable guarantor, even for a less formal property transaction, certain factors are relevant. Ms Harper's evidence, based upon *Shelter Provision in Mogadishu*, was that certain categories of prospective tenants may encounter discrimination and obstacles to obtaining a guarantor, and in turn, accommodation in the rental market. The indicative categories are female-headed households and women, people with disabilities and other vulnerable health conditions, and young single men (see page 35).

278. We consider that it is important to place this aspect of Ms Harper's evidence in the context of the broader topics under consideration in *Shelter Provision in Mogadishu*, especially in relation to young single men. The context for the working paper's discussion of the vulnerability factors highlighted by Ms Harper was the mass internal migration that Somalia has witnessed in recent years; "the displaced community, who often lost their livelihoods when they left their place of origin and whose savings (if they had any) dwindled as they made their way to Mogadishu to find a new home" (page 35). *Shelter Provision in Mogadishu* was not addressing the position of returnees from the West, who, of course, are significantly underrepresented in IDP camps and informal settlements. Nor is there any indication that the vast numbers of urban poor and internally displaced would be in receipt of remittances; indeed, in a passage

not addressed by Ms Harper, those who "combine one or several jobs with receiving remittances from abroad that allow them to have a sufficient income" are specifically highlighted as "those who have sufficient wealth to house themselves decently". The experience of such persons is consistent with those who, as *MOJ* held in findings we have not disturbed, will be able to benefit from the "economic boom" and, at least initially, return with the benefit of the Secretary of State's Facilitated Returns Scheme.

279. In addition, *Shelter Provision in Mogadishu* does not define what is meant by "young" when addressing the position of single young men who have migrated internally within Somalia to Mogadishu. Ms Harper's evidence under cross-examination was that this meant *unmarried*, as Somali culture does not consider people to be adults until they are married with children. We observe that, despite mentioning "young single men" several times, *Shelter Provision in Mogadishu* does not define the term in that way. In any event, this categorisation is of less relevance to returnees from the UK, who are likely to be in a significantly better financial position than those who have merely migrated within Somalia, with no remittances or initial financial assistance from the Secretary of State, and so will not necessarily fall into the cross-sectional categories of vulnerable people identified by the TANA paper.

280. In her report at paragraph 7.2, Ms Harper said that, in her opinion, this appellant's criminal history and record of drug use would deter potential guarantors and members of his clan from assisting him. While Ms Harper relies on a number of sources in that part of her report, many of which we have outlined in this part of our analysis, none address the specific position of a person with criminal convictions accrued while being a member of the diaspora. We agree with Mr Hansen's submissions that that part of her evidence was speculative; the materials Ms Harper relied upon for this proposition address a different situation, namely the general position of those returning to Mogadishu, not criminals specifically. We accept that where a young man returns to Mogadishu, particularly when returning from within Somalia or elsewhere in Africa, there may be concerns that he has Al-Shabaab associations, sympathies or connections. But we do not accept that a criminal record or drugs problem in the United Kingdom places a returnee at an enhanced degree of risk of societal or clan-based rejection. On this point, we note that one of Ms El Grew's interviewees is recorded as having said that a person returning openly seeking help would be offered assistance. Ms El Grew wrote of her conversation with Abdirisak Warsame, a project manager of an NGO based in Puntland and Somaliland with 22 years of working on mental health and social issues in Somalia, that Mr Warsame said of the appellant's prospects of securing assistance upon his return:

> "*If they* [the clan] *know he has a* [drugs] *problem, will help*
>
> *If he explains that he has mental health issues + is here for their rehab, may help, live in their house, eat, sleep, with them*…"

While under cross-examination Ms El Grew sought to explain the above extract (which she had not reflected or referred to in the rather more ominous assessment of the appellant's prospects in her substantive report) as referring to a "cultural rehabilitation centre", we see no basis to read her notes as being subject to that caveat. As Ms Harper explained in the annex to her written answers to the Secretary of State's questions, cultural rehabilitation centres are privately-run Islamic centres, where families can send younger members thought to be in need of instruction or rehabilitation, for a fee. There are reports of these establishments being akin to detention centres, with dire conditions, especially for those with mental health conditions.

281. We address cultural rehabilitation centres in further depth below, but at this stage we reject Ms El Grew's evidence under cross-examination that Mr Warsame must have been referring to cultural rehabilitation centres when providing his relatively benevolent summary of the in-country assistance that a member of a clan can expect. It is not what the notes say, and it is clear from the remainder of the passage within which the notes feature, that Mr Warsame was addressing the appellant's prospects on the basis that he had no family links within Mogadishu. As we set out below, the limited evidence we were taken to concerning so-called cultural rehabilitation centres was that the families of those sent there would have to pay considerable sums, ranging from USD150 to 300, on Ms Harper's evidence, up to USD400 on Ms El Grew's own evidence. We therefore reject the suggestion that Mr Warsame was addressing cultural rehabilitation centres, and find that his evidence was consistent with the broader thrust of the background materials that the Somali cultural obligation towards members of the clan has a more benevolent dimension than this aspect of the evidence of Ms El Grew and Ms Harper reflected. We recall that a returnee known to Ms Harper had an experience similar to that described by Mr Warsame: see paragraph 15 of Annex 1.

282. Turning to the accommodation available, Ms Harper's evidence was that modest accommodation would be available, near but not in an IDP camp, for around $40 to $50 monthly: see her answer to written question 100 posed by the Secretary of State. An informal guarantor who could vouch for the prospective returnee would be sufficient to secure accommodation for a returnee at that relatively affordable level. We have been taken to no evidence that the informal guarantor's membership of a minority clan would amount to an insurmountable obstacle in the search for suitably priced accommodation.

283. It is necessary to address a caveat to Ms Harper's evidence in this regard. Ms Harper opined that an area with accommodation priced at the 40USD to 50USD level would be unsafe due to the absence of security forces and a more concentrated presence of Al-Shabaab. While it may well be the case that such areas have fewer government security forces (we were not taken to any evidence of specific accommodation offerings in individual districts of Mogadishu to establish this point, one way or the other), the background materials demonstrate that the focus of Al-Shabaab activity lies in those areas where there are a concentration of government troops and similar targets. See the July 2020 DIS report, which demonstrates the determined focus of Al-Shabaab on government security forces and other 'official' targets (Graph 1, page 11). The FIS March 2020 fact-finding report records that some sources held the view that areas under the strongest influence of Al-Shabaab may be the safest; areas such as Daynille district were not the focus of Al-Shabaab's terror campaigns, the report noted, and the chance of being collateral damage in an attack was much lower, for the simple reason that there were far fewer attacks there, given the focus of Al-Shabaab on government and other high profile targets.

284. In any event, as we have already found, there is no durable evidence to displace the findings reached in *MOJ* that the levels of casualties in Mogadishu do not amount to a sufficient risk to ordinary civilians such as to represent an Article 15(c) risk. *MOJ* found that an 'ordinary citizen' is able to reduce the risk of 'collateral damage' by avoiding areas that are "clearly identifiable as Al-Shabaab *targets*" (emphasis added). The evidence is that Al-Shabaab targets government installations, security forces, and areas where there is a concentration of NGOs and international organisations, in relation to which *MOJ* found that it would not be unreasonable to expect a returnee to avoid (see paragraph 407(d)). There was no support in *MOJ*, and nor is there evidence of a durable change before us, that other parts of Mogadishu should also be avoided in order to avoid attacks. From Ms Harper's evidence, districts where there are fewer Al-Shaabab and other terror attacks near to IDP camps are precisely the sort of areas where modestly-priced accommodation may be found.

285. Many of the materials to which we were taken underline the limited availability of accommodation in the city in light of its growth, and inward movements of IDPs. We accept that accommodation can be scarce, and that prices have increased. In this respect, however, a distinction must be drawn between IDP camps and informal settlement accommodation, on the one hand, and other accommodation available on the rental market, on the other. We consider that the pressures on accommodation are most acutely felt by IDPs residing in informal settlements, where the risk of forced eviction and the corresponding insecurity of tenure are greater, as we set out below. It is to IDP camps that those displaced within Somalia first turn upon their arrival in Mogadishu.

IDP camps

286. In this part, we consider:

    a. The general conditions in IDP camps;

    b. The risk of human rights abuses in IDP camps;

    c. Gatekeepers;

    d. Evictions.

IDP camps: general conditions

287. The term "IDP" is a broad concept, as observed in *MOJ* at paragraph 46(d). Some IDPs may be relatively wealthy and well connected, and may enjoy the means to secure satisfactory accommodation for themselves without having to live in an IDP camp. Others, by contrast, are more closely aligned to the conventional use of the term. In cross examination, Ms Harper explained that there are many reasons why people end up as IDPs. Some have fled violence, locust infestations, or floods. Others are searching for economic opportunities, having been unsuccessful when seeking to do so in the rural areas. Some have been resident in IDP camps for over 20 years.

288. Against that background, we observe that a returnee would not necessarily be "internally displaced" in the usual understanding of the term (although, of course, some returnees may have been displaced by the conflict some time before their arrival in the UK), but may share many of the characteristics of an IDP concerning, for example, their lack of resources and general vulnerability.

289. The evidence suggests that only a very small minority of incoming IDP camp residents to Mogadishu are failed asylum seekers; the estimate is around 1%. Around 85% are internally displaced from within Somalia; around 6% are economic migrants from within the country, and 5% have lived there their entire lives. A further 1% are estimated to be refugees from Ethiopia, Yemen and other countries. See the Landinfo Query Response: *Somalia: The settlements in Mogadishu*, November 2016; we were taken to no more contemporary figures. Some clans, such as the Reer Hamar, are not known to live in IDP camps at all.

290. Against that background, it is important to be clear about what is meant by the term "IDP", or "internally displaced person". At [410] of *MOJ*, the position was summarised in these terms:

> "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 [IDP] 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."

291. The panel in *MOJ* continued at [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…"

292. The above extract continues by quoting from the 2013 report of the *Internal Displacement Monitoring Centre* of the Norwegian Refugee Council concerning reported humanitarian law and human rights abuses being committed by "all parties", involving widespread sexual and other gender-based violence, forcibly recruited IDP children, in the context of the critical health and security situation, and forced evictions. The panel quoted from an expert witness in the proceedings, Dr Mullen, who described the conditions in the camps as "dire", referring to overcrowding and the prevalence of human rights abuses. That led to the panel in *MOJ* stating at [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"

And later at [417]:

> "We accept… that many thousands of people are reduced to living in circumstances of destitution."

See also [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."

293. The Article 3 implications of the panel's findings in *MOJ* must be read in light of the discussion in *Said*, as summarised above. However, the findings of fact reached in *MOJ* have not been impugned. Those findings, properly understood through the lens of *Said*, represent our starting point.

294. By way of a preliminary observation on this issue, we consider that some of the materials relied upon by Mr Toal to establish the poor conditions in IDP camps and the malevolence of gatekeepers pre-date *MOJ* and are incapable of adding to, or shedding significant light upon, the contemporary position. Human Rights Watch's 2013 report *Hostages of the Gatekeepers* documents a number of abuses against IDPs in Mogadishu. It was relied upon by the appellants in *MOJ* itself, and appears to represent the high point of criticism of the conduct of gatekeepers. For present purposes, taken at its highest, it represents a historical snapshot of the position in 2013, rather than the conditions some eight years later; much of the field research informing the contents of the report was conducted in 2011 and 2012 (see page 11). The same may be said of the *Letter dated 27 June 2012 from the members of the Monitoring Group on Somalia and Eritrea addressed to the Chair of the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea*. While that document does not appear to have been referred to the panel in *MOJ*, subsequent correspondence sent pursuant to the same UN resolutions does appear to have been before the panel: see document 527 in the appellants' list of documents in *MOJ*, which was a letter sent pursuant to the same resolutions dated 11 July 2012. Our focus lies in relation to the post-*MOJ*, contemporary position: a letter dated 27 June 2012 provides little assistance.

295. We consider Ms Harper's evidence concerning her experience of the contemporary conditions in IDP camps to be limited in its scope. She visited a single IDP camp for an hour in March 2020, and did not visit any IDP camps during her November 2020 visit. Her sole 2020 visit was only possible with her own heavy security presence, which necessarily would have affected her ability to roam freely within the camp itself. It follows that we are necessarily most reliant on the more recent reports.

296. We accept that, in broad terms, the lowest point on the spectrum of conditions in IDP camps is largely consistent with the findings reached in *MOJ* concerning the poor conditions in the camps. We find there is no evidence of durable change in relation to the poorest conditions in IDP camps. The conditions in some camps remain dire. Specifically, some camps are overcrowded, unsanitary, and disease ridden. We set out below a representative sample of the background materials upon which those findings are based.

297. The September 2019 TANA paper *Shelter provision in Mogadishu – Understanding politics for a more inclusive city* addressed the then current position in these terms, at page 12:

> "…the situation has improved considerably over the last few years. Businesses are opening, markets are bustling, the tourism industry is developing, and local residents can walk freely on the streets within the limits of the curfew imposed by AMISOM. However, insecurity in informal settlements is rife — not due to car bombings and armed attacks so much, but because local police forces are struggling to protect residents from robbery, theft, assault, gender-based violence, trafficking and murder."

298. Page 13 addresses the growth of "informal settlements" in 2017, with emphasis added:

> "In 2017, there were over 480 of these informal settlements spread across Mogadishu (Bryld et al. 2017). This number includes both planned and spontaneous sites. Most of them are located in the north western part of the city (eg Hodan, Daynile), though some also exist in the city centre (eg Shangani) and to the southwest (eg Kaxda). **Living conditions in these settlements are dire, as housing predominantly consists of corrugated metal sheet shacks or *buuls***

> **(temporary shelters made out of sticks, plastic and fabric).** The settlements are often referred to as IDP settlements, as the population mostly consists of displaced people arriving from other Somali regions (mostly Lower and Middle Shabelle). There are various reasons why people are forced or choose to move to Mogadishu and other major cities in Somalia. Aside from fleeing conflict and the control of al-Shabaab — which is stronger in rural Somalia — economic migration is also an important driver, especially among the youth…"

Later on the same page:

> "…these settlements often lack the most basic services (electricity, access to water and sanitation, proper buildings) and, most of all, they offer no tenure security to their residents. Forced evictions are a huge threat to Mogadishu's IDPs and urban poor."

299. The FIS report of its March 2020 fact-finding visit states at part 4.1:

> "From the perspective of humanitarian conditions, the people in the absolute worst position in Mogadishu are internally displaced persons who have come to the capital city due to, e.g., weather conditions, general instability, insecurity arising from al-Shabaab's operations, or due to the swarms of locusts that destroy agricultural crops."

The same section continues:

> "Generally speaking, the conditions of internally displaced people living in camps are harsh. Camps often lack basic necessities of life, such as toilets. Conditions at camps vary a great deal depending on how new the camp is. Camps that have been in operation longer are more organised and provide some basic services. Established camps may have plastic covers for huts donated by the UNHCR or some other organisation, water is delivered by tank trucks, and they usually have basic sanitation, health and education services. People who have recently arrived in the capital city may have to live in absolutely rudimentary conditions."

300. We accept that the above evidence is characteristic of the living conditions in IDP camps at the poor quality end of the spectrum.

301. None of the evidence we have heard demonstrates that residence in even a poorer quality IDP camp would lead to a real risk of being denied food altogether; aid is available, and even if the gatekeepers take a portion, there is no real risk that the remaining allocation of food will be insufficient to cater for basic needs. An individual may be able to work, or access remittances, or both, and so be able to secure for themselves additional provisions over and above that likely to be provided by the aid community.

IDP camps: human rights abuses

302. We accept that IDP camps can be dangerous places. Many of the background materials state that human rights abuses can take place in the camps. The FIS *Fact-finding Mission to Mogadishu in March 2020* report states at page 36 that:

> "People who have been forced to flee internally due to security circumstances are in a vulnerable position. At camps and in huts alongside roads, they are at risk of being victims of different violations of rights and bomb attacks by al-Shabaab. Armed forces, such as government soldiers, AMISOM and al-Shabaab have been guilty of sexual violence and robbery against women and girls. Some people have been injured or killed as a result of violence used during a robbery. People living in camps have no access to legal protection, and there are no police officers at camps or in the vicinity who could be contacted in the case of an emergency. As far as security circumstances are concerned, the situation is the worst for camps on the outskirts and outside of the city. There is slightly more security within the city, but not enough."

303. The above summary of the position in the FIS report paints a grave picture, and is representative of many high level accounts of the worst excesses of the conditions in IDP camps. Insofar as indiscriminate violence is concerned, we recall the findings at paragraph 420 of *MOJ* (quoted at paragraph 291, above) that the indiscriminate violence in Mogadishu was not at levels sufficient to give rise to an enhanced Article 15(c) risk. Those findings concerned the risk of indiscriminate violence within IDP camps, as well as elsewhere in the city. To the extent that the materials to which we have been taken address the risk of indiscriminate violence, we do not consider there to have been a durable change such that we may depart from the findings in *MOJ*. Indeed, as we have already set out, the evidence suggests that the ongoing terrorist activity of Al Shabaab is *not* targeted at civilians.

304. In relation to targeted human rights abuses and crime, we accept that there is *a* risk of some camp residents becoming victims of such human rights violations. The background materials highlight the vulnerability of IDP camp and informal settlement residents to criminal activity, for example, the commoditisation of security has rendered effective protection unaffordable for the most vulnerable: see the *Dadaab Returnee Conflict Assessment* at page 10. Some government and AMISOM troops will have been guilty of committing very serious criminal offences and human rights abuses against some IDP residents, including sexual offences. Such conduct would be the paradigm example of an Article 3 violation; it would entail the intentional infliction of serious harm by a state or non-state actor. The question, however, for our consideration is whether there are *substantial grounds* for believing that, if a returnee were removed to reside in an IDP camp, he or she would be at real risk of being subject to such mistreatment.

305. It is necessary to deal with some of the materials relied upon by Mr Toal to support his submissions concerning the prevalence of crime and human rights abuses, particularly in relation to IDPs. In our judgment, the materials do not support the propositions for which Mr Toal places reliance upon them. We address a representative selection of those materials here.

306. Mr Toal relies on Professor Menkhaus' April 2016 paper for the Centre for Security Governance, *Non-State Security Provisions and Political Formation in Somalia*. It is a lengthy and comprehensive paper by a respected author in the field. But its utility to our contemporary assessment is necessarily limited; it was based on field research conducted in 2014, the year *MOJ* was heard, and the author's prior 30 years' of experience (page 8). It relies on reports and other background materials from the years preceding *MOJ*. The report's conclusions are of little relevance to our assessment seven years later. Similarly, Professor Menkhaus' August 2017 *Dadaab Returnee Conflict Assessment* is based on fieldwork conducted between December 2016 and January 2017, and additionally relies on background materials that pre-date that period, including materials that pre-date *MOJ*, or research that is not relevant. For example,

in support of its summary of the incidence of high levels of criminal violence in Somalia, it cites a 2012 UNDP report concerning youth unemployment, which of course pre-dated *MOJ*'s findings concerning the economic boom: see footnote 81. Elsewhere, the report's prediction that "it is possible that some returnee youth could turn to violent crime and gang formation" does little to address the prevalence, in 2021, of such crime in IDP camps. Most significantly, the *Dabaab Returnee Conflict Assessment* summarises the general security situation in terms that are consistent with the findings reached by *MOJ* concerning the general levels of indiscriminate violence not exceeding Article 15(c) of the Qualification Directive: see paragraph 420.

307. Mr Toal's schedule of country materials highlights the US State Department 2019 Human Rights Report on Somalia at page 22:

> "Women and children living in IDP settlements were particularly vulnerable to rape by armed men, including government soldiers and militia members. Gatekeepers in control of some IDP camps reportedly forced girls and women to provide sex in exchange for food and services within the settlements."

At page 30, the report continues:

> "Somali NGOs documented patterns of rape perpetrated with impunity, particularly of female IDPs and members of minority clans…
>
> Dominant patterns included the abduction of women and girls for forced marriage and rape, perpetrated primarily by nonstate armed groups, and incidents of rape and gang rape committed by state agents, militias associated with clans and unidentified armed men."

308. We readily accept that these are concerning extracts, and representative of the worst conditions and human rights abuses in some IDP settlements, and of the gatekeepers. But they provide little by way of supporting data to merit broader findings that there are substantial grounds for concluding that most women and children will be at real risk of being subject to such mistreatment in an IDP camp. We have not been taken to the broader reports by "Somali NGOs", or other materials demonstrating the "dominant patterns" of the abduction of women and girls for forced marriages and rape, and on the same page the report records a UN estimate of there being 462 cases of rape or attempted rape country-wide as of 31 July (2019). While that figure is said to be an underestimate, it calibrates the overall incidence of the practice, and sheds light on the prevalence of crime of this nature.

309. It follows that, although there are reports that some of the estimated 450,000 to 900,000 IDP residents in the city have been subject to intentional treatment contrary to Article 3 ECHR, that does not necessarily demonstrate substantial grounds for concluding that any returnee faced with residing in an IDP camp will be at a real risk of being subject to the same mistreatment. The most egregious concrete examples of abuse in IDP camps to which we were taken date back to the pre-*MOJ* era, rather than providing an accurate, contemporary picture. We have not been taken to any evidence that human rights abuses are sufficiently widespread to merit a finding that there are presently "substantial grounds" to conclude that such abuses continue to take place in a significant number of IDP camps, nor that such conduct takes place as the result of a policy or system, or official indifference on the part of the relevant authorities.

310. We do not consider the evidence relating to the overall prevalence of crime and human rights abuses in Mogadishu to demonstrate that there are substantial grounds for concluding that

IDPs are at a real risk of being subjected to mistreatment of this nature beyond the risk faced by an 'ordinary' citizen of Mogadishu.

311. In relation to terrorist attacks, we have been taken to no evidence that demonstrates that the general risk posed by Al-Shabaab is greater for IDPs than it is for other 'ordinary' citizens of Mogadishu. IDPs caught in an Al-Shabaab attack provide a tragic example of an individual being in the wrong place, at the wrong time; a report from the Netherlands' Ministry of Foreign Affairs, *Country of Origin Information Report on South and Central Somalia* dated March 2019 states at page 24:

> "The parts of the city where most returnees stay, such as IDP camps, are generally located in better-protected neighbourhoods. IDP camps are in any case not a target of Al-Shabaab terror attacks."

312. It follows that, absent some special factor which renders a returnee residing in an IDP camp particularly vulnerable to human rights abuses, there is no real risk of being exposed to such treatment merely over and above the risk faced by an 'ordinary citizen' of Mogadishu residing elsewhere in the city.

Gatekeepers

313. While the conditions in many camps are undoubtedly poor, and there are documented examples of abuse, including by the gatekeepers (which we address below), we find that the conditions in many camps have improved over the last seven years, such that there are a number of reports of the conditions in IDP camps, and the roles performed by gatekeepers, that cannot be reconciled with the "dire" conditions of <u>all</u> camps as held by *MOJ*, and as referred to by some of the materials to which we were taken.

314. We find that not all gatekeepers are exploitative, and in many cases the terminology of "informal settlement managers" would be more appropriate, reflecting the role that such persons assumed in the absence of state mechanisms or in-country administered aid in the years that followed the civil war (see TANA, *Informal Settlement Managers: Perception and reality in informal IDP camps in Mogadishu*, page 4; undated, based on research conducted in late 2016 and early 2017). There is now more evidence that a greater number of IDP camps and gatekeepers occupy the 'better' end of the spectrum of conditions than was the position in *MOJ*. Ms Harper accepted under cross-examination that there is not a "uniform experience" of residing in an IDP camp, and we accept that aspect of her evidence.

315. The March 2017 TANA report, *Engaging the Gatekeepers* describes what was at the time of publication a "new intervention aimed at improving the accountability of gatekeepers in Mogadishu", namely a project entitled *Making Gatekeepers Accountable*. This is a material development since *MOJ*, which did not address either steps to improve the accountability of gatekeepers, or the more positive reports of their conduct of the sort to which we have been taken. *Engaging the Gatekeepers* describes the resilience of gatekeepers, and their continued presence throughout difficult times. They are described as "ambiguous characters within the governance landscape of Somalia": see page 7. The report continues:

> "IDPs both fear and respect gatekeepers, recognising them as legitimate service providers who have often been the IDPs' only source of assistance during difficult times. This perception is not shared with anyone else."

316. *Engaging the Gatekeepers* reports that the "humanitarian community" in Mogadishu regards gatekeepers as the "elephants in the room"; many interact with the gatekeepers, but few are prepared to admit to doing so. There are few materials concerning gatekeepers, notes the report, with one of the most significant being the 2013 HRW *Hostages of the Gatekeepers* report which featured in *MOJ*. Gatekeepers can be affiliated with local militia, who perform a dual purpose; to provide security for the camp, and also to enforce the "gatekeeper's rule and settlement norms". There is an implied threat of violence to keep law and order, although it is not referred to explicitly. "Above all", notes the 2017 TANA report at page 9, "gatekeepers see themselves as service providers. Not only of land and security, but also of a range of other services, including: distributing aid; mediating conflict between the settlement's inhabitants; arranging funerals; assisting in emergency situations such as illness or births; and, in some cases, also facilitating crowd-funding of new facilities such as latrines, fencing etc." A key distinguishing feature of gatekeepers when compared to other service providers is the lack of any formalised accountability or transparency. Speaking of the influential 2013 *Hostages of the Gatekeepers* report, the 2017 TANA report states:

> "Contrary to the suggestion implicit in the report's title, these abuses were not committed by the gatekeepers themselves but by militias and security forces that, in some cases, were affiliated with the Government, and in other cases, with the gatekeepers. As such, they cannot be blamed wholly on the gatekeepers alone. The title *Hostage of the Gatekeepers* is a quote from an interview with a Somalia woman, who explains that her gatekeeper does not allow her household to move – a rule that is not unheard of, but is not enforced by all gatekeepers either – and she therefore considers herself a 'hostage' in her settlement."

317. Page 9 of report continues:

> "Although IDP settlements are often the scene of human rights abuses, this is not necessarily a product of the gatekeeper system, but a product of a collapsed state where the rule of law has broken down, and where few perpetrators are ever held to account. By the same token, gatekeepers should not solely be perceived as greedy or exploitative; they reflect a state – and aid community – that is not able to provide citizens with the most basic of services...
>
> Gatekeepers also reflect an expression of the underlying power structures of Somali society, in which the clan is the most salient source of identity, and where a democratically accountable state has not existed for decades. The complex political economy surrounding the gatekeepers explains why they have proven to be such a resilient power structure, and that – despite being shunned by NGOs, the international community and the FGS – they remain unavoidable power brokers in relation to the protection and assistance of IDPs in Mogadishu."

As to the spectrum of gatekeepers, page 10 of the report provides:

> "There are just as many profiles of gatekeepers as there are gatekeepers. Although the term is used generically, it covers a wide range of persons. At one end of the spectrum are those who are IDPs elected as leader by other IDPs, and who, therefore, care deeply about the wellbeing of the inhabitants of their settlement. At the other end is the speculative gatekeeper whose motivation to

> make money conditions their considerations of IDP wellbeing and human rights."

318. The report goes on to outline the willingness of some gatekeepers with whom the authors had spoken to enhance their accountability, in return for formal recognition of their work. The authors recognise that some "less constructive" gatekeepers may be less willing to take steps to improve the wellbeing of IDPs at personal cost to themselves: see page 16. The *Making Gatekeepers Accountable* project features interventions that include providing gatekeepers with training and mechanisms for effective camp management, protection and service delivery to IDPs; enhancing the transparency of IDP taxation, service delivery and protection levels in different camps, with the aim of promoting the most attractive camps to IDPs and aid agencies; and working towards the formalised certification of informal camp managers: see page 11.

319. By November 2018, the IDMC reported in *City of Flight – New and secondary displacements in Mogadishu, Somalia* that heightened violence, forced evictions, and the harsh climatic conditions had resulted in further inward movements to cities such as Mogadishu. That has resulted in further overcrowding in Mogadishu, poor sanitation, limited water supplies, and outbreaks of disease. The influx has resulted in a risk of "secondary displacement", as those in IDP settlements or precarious accommodation are forced by their landlords, or the landowners, to leave due to the increased value and scarcity of land. The report addresses the role of gatekeepers against the background of the in-fighting between clans which historically dominated the city (although which had ceased by the time of *MOJ*) in these terms:

> "The role of gatekeepers in this dynamic has protected IDPs in some cases, but pushed them into secondary displacement in others. In exchange for payment, they provide a plot of land on which IDPs can settle, basic services and security. They also grant humanitarian agencies access to deliver aid. There are thought to be more than 130 gatekeepers in Mogadishu.
>
> In the absence of government support, gatekeepers have acted as intermediaries between humanitarian NGOs and IDPs since the start of Somalia's conflict. They see themselves as service providers, but their actions are not free of controversy. They use both violent and non-violent means to consolidate their power and control over people, land and property, including the establishment of alliances with local militias, rent increases and the attachment of conditions to access and freedom of movement."

320. We turn to the "Camp Coordination and Camp Management" programme, or CCCM; work that is underway with some camps, under the auspices of the UNHCR and the IOM. It is a methodology of providing support and oversight to humanitarian organisations and national authorities providing aid and assistance to internally displaced persons in a coordinated and targeted manner. It works in "clusters" on a regional basis with partner organisations. The CCCM Cluster for Somalia describes its role in the country in these terms in its *CCL Cluster Somalia Strategy*:

> "To respond to the growing displacements and in acknowledgement that the coordination needs in sites and settlement could no longer be met through the other coordination mechanisms, the CCCM cluster was activated on 10 May 2017, under the co-leadership of UNHCR and IOM, in order to improve the coordination of the integrated multi-sectorial response at site level, to raise the quality of interventions and monitoring of humanitarian services in communal

> settings, by ensuring appropriate linkages with and building the capacities of national authorities and other stakeholders, with the understanding that once the life-saving drought displacement needs would be addressed, the purpose and focus of the cluster would be reviewed. The CCCM Cluster is based in Mogadishu and will develop regional coordination mechanisms (subnational clusters) as required, with dedicated focal points and committed members."

321. The mission statement of CCCM is as follows:

> "The mission of CCCM is to ensure equitable access to services and protection for displaced persons living in communal settings, to improve their quality of life and dignity during displacement, and advocate for solutions while preparing them for life after displacement."

(Taken from *What is CCCM?*, undated, at page 1319 of the Respondent's bundle of background materials.)

322. In March 2021, the Somalia CCCM Cluster conducted a "*Household Satisfaction Survey*", which entailed nine CCCM partners conducting a "survey" with 700 households residing in 77 IDP sites. Every fifth household in each participating site was interviewed at random, although those conducting the interviews report that they sought accurately to reflect the demographic composition of the IDP site in question, by capturing women, the elderly, youth and "persons with disabilities". Broadly speaking, the surveys revealed that a significant majority of participants were satisfied with the infrastructure and security at their respective sites, knew how to raise complaints with the relevant authorities, and had participated in community events held at their sites. 92% of respondents felt that their camp's community leadership advocated for them or represented their interests, although there was some variation in responses across the four different areas within which the surveys were conducted, and only 30% had participated in a camp leadership election vote. A vast majority (96%) said that it had never had been charged money or made to pay for humanitarian services. The CCCM Survey paints a markedly different picture to that of some of the other background materials, and demonstrates the presence of a significant number of camps at the more benevolent end of the IDP camp spectrum. However, according to the UNOCHA 2021 *Humanitarian Needs Overview* at page 66, only 36% of IDP camps in Somalia are managed by CCCM partners, and significant data gaps remains. We reject Mr Toal's submission that this research was intended "by design" to generate results favourable to the CCCM approach; there is no evidence to substantiate that criticism. The evidence was collated by respected international organisations, including the Danish Refugee Council, the UNHCR and the IOM. In any event, the feedback provided by respondents to the survey was not unquestioningly positive, and some participants gave negative responses. The survey was no whitewash.

323. In *War and city-making in Somalia: Property, power and disposable lives* Political Geography 73 (2019) 82-91, Peter Chonka *et al* summarise the responses provided during interviews with a number of IDP camp residents concerning the gatekeeping phenomenon. Their summaries are consistent with the CCCM *Household Satisfaction Survey*; see the following extract at page 88 (which uses the terms "gatekeeper" and "leader" synonymously):

> "Most interviewees were rather positive about the role of gatekeepers/leaders and referred to their continuous efforts, their responsibilities, and the high costs of daily camp management. Leaders advocate for hygiene and cleanliness, support people in distress, mediate disputes and provide rules for behaviour.

> They also provide (rudimentary) security as the protection of the leader's clan extends to his/her property (including businesses) and therefore to the camp…"

Gatekeepers: conclusions

324. While *MOJ* addressed the worst excesses of the gatekeepers, and considered what was, at that time, relatively recent evidence concerning human rights abuses committed by or with the apparent acquiescence of gatekeepers, we have had the benefit of a body of evidence which demonstrates that the conditions in some camps, and the conduct of some gatekeepers, have improved. Mr Toal accepted, albeit somewhat reluctantly, that some of the material concerning the gatekeepers "ostensibly" demonstrates a more favourable approach. We go further; the material to which we were taken not only *ostensibly* demonstrates that some gatekeepers operate at a level significantly above the worst excesses of the poorest conduct documented, it demonstrates that a number of gatekeepers operate in the interests of their residents, in some cases to their residents' satisfaction: see the CCCM *Satisfaction Survey*. There is no evidence that gatekeepers of the sort highlighted in the CCCM survey are responsible for the human rights abuses perpetrated by the worst gatekeepers. We do not consider the fact that some gatekeepers take a portion of aid intended for camp residents, in isolation, to be indicative of dire conditions, abuse or exploitation in itself; many of the background materials describe gatekeepers as service providers, having filled the void left by the absence of an effective state. They provide services, and take commission in response. It is a form of taxation, and has contributed to the emergence of gatekeepers as a relatively small (estimates are in the region of 140) but resilient cohort of individuals in the city.

325. The FGS has also adopted policy initiatives to address the role of gatekeepers and improve the conditions in camps: see the *National Durable Solutions Strategy*. We accept Ms Harper's instinctive concern that policy pledges are merely the starting point, and that what matters is delivery rather than aspiration. We note that in *Shelter Provision in Mogadishu*, when addressing the Benadir Regional Administration's policy for IDPs and returnees in Mogadishu, TANA opined that "effective implementation of these guidelines will still require the acceptance of the informal powerholders who remain the champions of the political settlement of Mogadishu" (page 20). That must be right; but the fact that the FGS has a national strategy to combat the difficulties faced by IDPs is a development of some significance.

326. We find that the resolve of the FGS and the BRA, combined with the CCCM approach which has been adopted in 36% of IDP camps in the city (a significant post-*MOJ* development), and the evidence outlined above, to demonstrate that a substantial number of IDP camps now feature improved conditions to those which were prevalent at the time of *MOJ*.

Evictions

327. The term "forced eviction" in the Somalia context usually refers to the enforcement of an arbitrary eviction decision in circumstances where there is no advance notice, no opportunity for independent oversight or review, and minimal regard for the rights of the evictee. The phenomenon appears to be attributable to the competing claims to land in Mogadishu, which is "one of the most difficult and sensitive issues of the capital's long process of recovery" (*Land Matters in Mogadishu,* Rift Valley Institute, 2017).

328. *Shelter Provision in Mogadishu* describes the impact of forced evictions in these terms, at page 12:

> "Forced evictions are a huge threat to Mogadishu's IDPs and urban poor. Benadir is the region most affected by evictions: in the first two months of 2019 there were 60,157 evictions in the region (UN-Habitat 2019). The vast majority of evictions are forced, with only very few lawful evictions or evictions with dignified relocations. In the majority of cases, evictions are enforced by a private citizen from his or her property in order to develop their land, where, as often happens, the residents had no formal (written) agreement in place with the landlord."

We note that a similar quote features at paragraph 3.10.1 of the *Somalia (South and Central): Security and humanitarian situation* CPIN, version 5.0, which is attributed to a TANA paper, *Shelter provision in East African Cities – Summary Report*, September 2019, published as part of a series of reports on shelter provision in the region, under the auspices of the IIED. In the extract of the Summary Report quoted by the CPIN, 95,004 evictions had been recorded in the region. A further and marginally more recent account is contained in the FIS report of its fact-finding visit in March 2020 of the practice.

329. *Shelter Provision in Mogadishu* attributes current eviction pressures to a range of factors: confusion over land ownership and entitlements, which is said to create a situation where speculation and an individual's ability to pay go to 'ownership' of the property in question; a lack of clarity over official rules governing land and property; the irregular acquisition of public land by private actors; the influx of IDPs; the increasing numbers of returnees, some of whom seek to reclaim 'their' land; and an international aid industry willing to pay high prices to access land. The lack of clarity over land ownership is a recurring theme in Somalia.

330. We consider the practice of so-called 'forced evictions' to be most prevalent in the less formal settlements which have sprung up on an ad-hoc basis, rather than in relation to more formal land transactions of the sort that require the involvement of a notary. In *Somalia: Internally displaced people surviving by the "grace of God" amidst COVID-19*, 21 July 2020, Amnesty International stated:

> "With IDP camps full to capacity, many displaced families are forced to set up informal structures on vacant private land where they are constantly forcefully evicted."

331. See also the January 2019 TANA briefing *Accessing land and shelter in Mogadishu: a city governed by an uneven mix of formal and informal practices*, at page 736 of the appellant's bundle:

> "There are no legal mechanisms regulating informal settlements or the rights of people residing in informal settlements."

And at page 738, in the context of addressing who among IDPs (to use the term broadly) would be at a heightened degree of vulnerability:

> "…female-headed households, single/widowed/divorced women, youth-headed households, and persons living with disability (PLWDs) are particularly vulnerable."

332. The business model of established gatekeepers (of whom there are estimated to be around 140, significantly lower than the 480 informal settlements said to be in Mogadishu) relies on large numbers of camp residents, which would suggest an incentive *not* to acquiesce in forced evictions. Indeed, one of the complaints against gatekeepers levied in the seminal 2013

Hostages of the Gatekeepers report was that they *prevented* residents from leaving. And we note the observations in the IDMC *City of Flight* report that some gatekeepers *protect* camp residents from evictions. We find that the practice of forced evictions most frequently occurs at less formal, improvised settlements. Established IDP camps manned by gatekeepers are not immune from the phenomenon of forced evictions, but some gatekeepers do insulate their residents from the practice. The focus of the practice does not now lie in the government's steps to reclaim its own property, but in relation to private land disputes. The *National Evictions Guidelines* adopted by the FGS in 2019 require the government to refrain from and protect against the arbitrary and forced eviction of occupiers of public and private properties, homes, encampments and land.

333. There is some evidence that a degree of notice may be given: see *Shelter Provision in Mogadishu* at page 14 ("*…the owner of the house has already informed us that she… will want the house back*"). The examples of no-notice house destruction to which we were taken took place some time ago: *Troubling trend sees evictions in Somalia double*, Norwegian Refugee Council, 28 August 2018; *City of Flight*, IDMC, November 2018. Other accommodation is available throughout the city. See *Land Matters in Mogadishu* at page 87:

> "Many of the populations evicted from settlements and buildings within the city are now repopulating the Afgooye Corridor. The area between KM-7 and KM-13 has experienced waves of IDP settlement over the past decade, as outbreaks of conflict in Mogadishu saw displacement from the city, or when periods of conflict and famine throughout southern Somalia pushed displaced people towards the city. Reliable information on land ownership in this area is difficult to find. It is clear, however, that those currently in control of the land—whether gatekeepers or legitimate land owners—have capitalized on the presence of large populations of vulnerable communities. Signboards dotted along the road between KM-7 and KM-13 advertise the availability of plots for displaced people, alongside a phone number to call to discuss terms and conditions."

334. While we accept that recently-evicted residents will be vulnerable in their search for new accommodation, alternative provision will be available throughout the city. A person with clan and network connections in the city will be returned to the position they would have found themselves in initially, albeit with the advantage of further connections forged by time and having spent some time in the city already by that stage.

335. We do not consider the prospect of insecurity of tenure, however troubling, to amount to a very exceptional case where the humanitarian considerations are sufficiently compelling such that removal to Mogadishu would breach the obligations of the United Kingdom under Article 3 ECHR. Where an eviction does take place, it is likely to be pursuant to the decision of an individual seeking to reclaim land or property they claim as their own. There is limited evidence that evictions are necessarily violent, such that as a general matter there are no substantial grounds for concluding that a person subject to a forced eviction will be at real risk of being subjected to treatment contrary to Article 3 ECHR.

336. The evidence does not demonstrate that there are substantial grounds for concluding that there is a real risk of forced eviction at the hands of the Somali government. There is no evidence that the FGS employs a policy or system of engaging in, or acquiescing in relation to, forced evictions in circumstances that would engage the United Kingdom's liability under Article 3 ECHR.

337. Those with less formal living arrangements, including those in informal settlements, have weaker security of tenure and are at a correspondingly greater risk of being evicted. The greatest risk of eviction is from those with a rival claim to the land. The evidence we have been taken to demonstrates a prevalence of the practice at the hands of private rather than public landlords, and we have not been taken to any material demonstrating that the State conducts the practice itself. The FGS is only reasonably likely to have a role in evictions where the settlement or accommodation is on public land, and should be governed by the *National Eviction Guidelines*. Where eviction is enforced in arbitrary circumstances with no-notice or legal oversight, the individual concerned will be required to search for further accommodation elsewhere. That being so, the returnee will draw on the coping mechanisms he or she relied upon in order to establish themselves in the first place, such as network, work and remittances, coupled with the possible benefit of a stronger network forged through time, and greater recent familiarity with the city.

IDP camps: legal implications

338. The legal implications of our findings concerning the conditions in IDP camps vary according to the context of the analysis. We do not consider that the *MSS* Article 3 threshold applies to an "ordinary Somali" returning to Mogadishu. The humanitarian conditions likely to be encountered by most returnees upon their return are attributable primarily to poverty and the State's lack of resources and infrastructure, meaning the *N* threshold applies (including as modified by *Paposhvili*, and as applied to living condition cases, in line with *Ainte*). Even pursuant to the clarified post-*Paposhvili* Article 3 threshold, there are a number of likely features of most returnee's circumstances which combine to take the long-term responsibility for the returnee's circumstances out of the hands of the Secretary of State. They include (i) the availability of the FRS, which provides a returnee with an initial period of up to a month to begin to establish themselves; (ii) the possibility of remittances; (iii) the economic boom; and (iv) in-country clan support. For most returnees, while the long term possibility of having to resort to accommodation in an IDP camp cannot be ruled out, the prospect of a returnee being forced to resort to an IDP camp or other informal settlement at some undefined future point is likely to be too remote, and too far removed, from the Secretary of State's removal decision to merit speculation as to whether the Secretary of State could properly be said to be responsible for the returnee's eventual (and potentially fluctuating) living conditions in such a camp or settlement. Such persons will be in the *Vilvarajah* territory of being no worse than a general member of the population.

339. If there are particular features of an individual returnee's circumstances or characteristics that mean that there are substantial grounds to conclude that there will be a real risk that, notwithstanding the availability of the FRS and the other means available to a returnee of establishing themselves in Mogadishu, residence in an IDP camp or informal settlement will be reasonably likely, a careful consideration of all the circumstances will be required in order to determine whether their return will entail a real risk of Article 3 being breached. Such cases are likely to be rare, in light of the evidence that very few, if any, returning members of the diaspora are forced to resort to IDP camps.

340. Where an individual has established that they face a well-founded fear of being persecuted such that internal relocation is a live issue, the analysis is different. Such an assessment necessarily entails an examination of the prospective, longer term, living arrangements. In those circumstances, as was the case in *MOJ* as held by *Said*, the humanitarian conditions in the IDP camps and informal settlements acquire a greater potential relevance. It is established refugee law that the "unduly harsh" test for internal relocation entails a materially lower

threshold than that necessary to establish an Article 3 ECHR claim, and to that extent it will be necessary to consider whether residence in an IDP camp or informal settlement will be unduly harsh, consistent with the guidance in *MOJ* at [408] which, as clarified by *Said*, was referring to internal relocation.

CULTURAL REHABILITATION CENTRES

341. The panel in *MOJ* did not find that an 'ordinary Somali' returning to Mogadishu would be at risk of mistreatment or otherwise being persecuted in a so-called 'cultural rehabilitation centre'. We do not consider there are very strong grounds supported by cogent evidence to depart from those findings, and nor would we find there to be substantial grounds to conclude that a returnee would be at real risk of being subjected to Article 3 mistreatment or otherwise be at a real risk of being persecuted upon their return in a cultural rehabilitation centre.

342. When answering question 74 posed by the Secretary of State (which concerned the 'counterfactual' scenario to that relied upon by the appellant, whereby he *would* return to family in Mogadishu), Ms Harper raised the prospect that the appellant might be sent to a 'rehabilitation centre' by his family. Rehabilitation centres, Ms Harper explained in an annex to her answers to the Secretary of State's questions, are a form of enforced residential 'treatment' for those suffering from mental illness or drug addiction. According to an anonymous source within the Somalia Green Crescent Society, up to 150 people are kept in a 20 square meter room, often in chains. The non-compliant are beaten. The cost of these privately-run facilities ranges from 150USD to 200USD per month, with a high of 300USD in a safer part of the city. 'Inmates' are sent by their families, and stay for six months to a year. Ms Harper also relied upon a BBC documentary concerning rehabilitation centres in a Somali district of Nairobi, but said that her 'contacts' had informed her that such centres are similar in Mogadishu: see footnote 37. Ms El Grew also touches upon the practice in her reports, highlighting research conducted by One World Research in June 2016 (which has not been provided to us).

343. We accept that there are reports of cultural rehabilitation centres operating in Somalia. However, we consider that it is significant that there are very few references to this claimed practice in the remaining background materials to which we were taken. For example, a single anonymous source relied upon by the authors of the July 2020 DIS report referring to the practice is the only passage highlighted in the appellant's 70 page schedule highlighting key extracts among the thousands of pages of country materials upon which he relies. Elsewhere in the background materials, there are references to rehabilitation centres for former Al-Shabaab fighters participating in the *Defectors' Rehabilitation Programme*. See, for example, *The hard, hot, dusty road to accountability, reconciliation and peace in Somalia*, Institute for Integrated Transitions, May 2018, at internal pages 2, and 3. The same report highlights the practice of judges being bribed by the families of some young people to send youths to prison for socially misbehaving, in a practice intended to secure the 'rehabilitation' of those concerned. The *Somalia National Development Plan* refers to the need for rehabilitation centres to be reformed, but it is not clear whether that is a reference to cultural rehabilitation centres of the sort highlighted by Ms Harper, or the formal rehabilitation programmes targeted at former Al-Shabaab fighters.

344. We observe that, in any event and taken at its highest, the evidence of Ms Harper and Ms El Grew is that cultural rehabilitation centres are reserved for those whose families are able to meet the costs ranging from $150 – 300USD (Ms Harper's evidence) or $450USD (Ms El Grew's evidence). Nothing in either report suggests that there is a real risk of a returnee being

compelled to reside in a cultural rehabilitation centre if there are no family members with the requisite substantial financial backing.

345. Drawing this analysis together, we do not consider that there is sufficient evidence for us to make our own findings concerning the prevalence of cultural rehabilitation centres of the sort that feature in the evidence of Ms Harper and Ms El Grew, even if we were unconstrained by the extant country guidance concerning the return of 'ordinary Somalis'.

MENTAL HEALTHCARE AND ILLICIT SUBSTANCES

346. Somalia consists of three different administrative zones, each with its own health administration: South Central, Somaliland and Puntland. Mogadishu sits within the South Central region. The Danish Immigration Service's November 2020 report, *Somalia: Health system* states that the country's fragile governance has led to a lack of overall, centralised health governance, with the effect that healthcare services are offered by multiple actors, including the federal state, local authorities, for-profit private entrepreneurs, international development partners and NGOs. The majority of health facilities in Somalia are located in Mogadishu. Their provision is limited; none is said to provide the full range of secondary or tertiary care. A number of private facilities offer specialised and sometimes advanced treatment, but may be out of reach of the affordability of many ordinary Somalis.

347. We do not propose to summarise the contents of the healthcare-related background materials; the detail involved would be unnecessarily unwieldy, and would be unlikely to cater for the inherently case-specific considerations likely to arise in many health-based cases, which will have to be considered on evidence specific to the proceedings. We highlight here the main themes emerging from the materials to which we were taken.

348. The TANA *Report of Study Findings, July and September 2020, Medical Region of Origin Information for Somalia: Mogadishu* outlines the provision made by six private and public medical facilities in Mogadishu. There are two main hospitals in Mogadishu. Benadir Hospital is a university hospital, and was described by the FIS in 2018 as "well equipped". It is said to undertake basic operations and to be unable to provide more advanced treatment, such as for cancer. The Somali Turkish Recep Tayyip Erdogan Training and Research Hospital, known as the "Turkish Hospital", is said to be considered by the UN to be the leading hospital in the country as far as capacity is concerned. It is co-managed by the Somali and Turkish authorities. The Ladnan Hospital is fully private, requiring patients to fund their care, save for Thursdays, when doctor consultations are free for the poor. The Forlanini Hospital treats tuberculosis, mental health and nutrition. The Wardi hospital caters for the poorest of the city, including IDPs. Pharmacies are also available in the city, although Mogadishuites are reported to prefer to visit a doctor at a hospital.

349. We accept Mr Hansen's submissions that there is limited but nonetheless meaningful provision of mental health medication in Mogadishu; the evidence demonstrates that mental health medication has been available for some time, and that some, albeit limited, provision is available for those with mental health conditions. An August 2014 Landinfo report, *Somalia: Medical treatment and medication,* records that in 2009 the World Health Organisation cited an overview of available drugs prepared by the owner of the Habeb Hospital stating that chlorpromazine was available in the country.

350. The Forlanini Hospital has a mental health centre with a staff of 32 and 100 inpatient beds. According to 2020 TANA *Medical Region of Origin Information for Somalia* report referred to

above, the staff include a specialist psychiatric doctor, a psychologist, a general practitioner, specialist nurses, a pharmacist and a lab technician. The TANA report records that questions have been raised about the prospect of physical force being used in the hospital, but that the study upon which the report is based found no sign of any rough treatments being used in the hospital. A doctor interviewed by the authors of the report said that only sedatives and medications are used to treat the patients, and that the condition of most improves immediately upon the commencement of the treatment. Elsewhere the report states that Olanzapine is available at four hospitals; chlorpromazine is available in at least three; haloperidol is available in five; risperidone in at least four; and sertraline in at least two hospitals. At Forlanini, patients who cannot afford the consultation fees are treated free of charge, including 'drug abusers' referred by the police. The hospital treats those from poor socio-economic groups, and, of those who do pay on their first visit, 60% are not charged any fees for their second visit.

351. TANA is a respected organisation. We see no reason not to accept the product of this fact-finding report. We accept its contents and make findings accordingly.

352. Ms Harper's written evidence addressed the Habeb Public Mental Hospital in Mogadishu, which provides some mental health services. Although Ms Harper dealt with the Habeb Hospital in the context of addressing 'cultural rehabilitation centres', she specifically stated that it was *not* a 'cultural rehabilitation centre' of the sort outlined in the previous section, but rather that it sought to treat mental illnesses arising from drug abuse. The manager of the Habeb Hospital, Mr Omar Ahmed, was one of Ms El Grew's interviewees in her second report. Ms Harper writes in her answer to question 74 posed by the Secretary of State that conditions in the hospital were "poor" (with no further elaboration) but that it has a "no chains" policy, and that it had prescribed Olanzapine to its patients in the past.

Availability of heroin and other illicit substances

353. We turn now to the availability of illicit substances.

354. Ms Harper, at paragraph 13.7 of her report, writes that very few people in Somalia have used heroin. Somali society takes a very dim view of the use of drugs. There are reports that heroin and cocaine are available, but users would have be in contact with "criminal elements" in order to buy or obtain them. Drugs, along with alcohol and tobacco, have been banned by Al-Shabaab, which imposes severe punishments for their use. In the annex to her answers to the Secretary of State's questions, which primarily addressed "cultural rehabilitation centres", Ms Harper quoted sources within the Somali Green Crescent Society, stating that the "main drugs" available in Mogadishu are khat, tobacco, alcohol and cannabis; her sources informed her that heroin and cocaine are "sometimes available, but not on a substantial scale." Ms El Grew's first report stated at paragraph 67 that her interviewees said that there was not a "hard drug epidemic" in Mogadishu, and that most drug users chewed khat, sniffed glue or petrol, or acquired black market alcohol. While a single interviewee, Mr Ali, thought that it was possible to access heroin in Mogadishu, no source details were provided, either by Ms El Grew in her report, or revealed in her notes, and none of the other materials to which we were taken demonstrated that the substance is readily available to those with limited means.

355. In our judgment, while we cannot rule out the possibility that heroin and cocaine are available in Mogadishu, the supply is very limited, and such substances are rare. Although Mogadishu is no longer under the active control of Al-Shabaab, the organisation retains an active criminal presence, and, as such, it is significant that Al-Shabaab itself has sought to "ban" the use of

drugs. Accordingly, while certain "criminal elements" (to adopt Ms Harper's terminology) may be able to facilitate access to hard drugs, it would be necessary to navigate that organisation's influence of the criminal underworld in order to access heroin and cocaine. The relative unpopularity of cocaine and heroin appears, at least in part, to be a testimony to the effectiveness of both the societal rejection of hard drugs, and the anti-drugs attitude of a significant player in the Mogadishu criminal underworld. It is not reasonably likely that an ordinary returnee, without significant means or pre-existing connections to criminal elements in Mogadishu, would be able to procure hard drugs in the city upon their return. A returnee may, in time, be able to secure access to such hard substances, but the circumstances are likely to be such that the temporal proximity and causal link to the Secretary of State's removal decision would be broken.

COUNTRY GUIDANCE

356. We therefore give the following country guidance:

a. The country guidance given in paragraph 407 of *MOJ* (replicated at paragraphs (*i*) to (*x*) of the headnote to *MOJ*) remains applicable.

b. We give the following additional country guidance which goes to the assessment of all the circumstances of a returnee's case, as required by *MOJ* at paragraph 407(h).

c. The Reer Hamar are a senior minority clan whose ancient heritage in Mogadishu has placed it in a comparatively advantageous position compared to other minority clans. Strategic marriage alliances into dominant clans has strengthened the overall standing and influence of the Reer Hamar. There are no reports of the Reer Hamar living in IDP camps and it would be unusual for a member of the clan to do so.

d. Somali culture is such that family and social links are, in general, retained between the diaspora and those living in Somalia. Somali family networks are very extensive and the social ties between different branches of the family are very tight. A returnee with family and diaspora links in this country will be unlikely to be more than a small number of degrees of separation away from establishing contact with a member of their clan, or extended family, in Mogadishu through friends of friends, if not through direct contact.

e. In-country assistance from a returnee's clan or network is not necessarily contingent upon the returnee having personally made remittances as a member of the diaspora. Relevant factors include whether a member of the returnee's household made remittances, and the returnee's ability to have sent remittances before their return.

f. A guarantor is not required for hotel rooms. Basic but adequate hotel accommodation is available for a nightly fee of around 25USD. The Secretary of State's Facilitated Returns Scheme will be sufficient to fund a returnee's initial reception in Mogadishu for up to several weeks, while the returnee establishes or reconnects with their network or finds a guarantor. Taxis are available to take returnees from the airport to their hotel.

g. The economic boom continues with the consequence that casual and day labour positions are available. A guarantor may be required to vouch for some employed positions, although a guarantor is not likely to be required for self-employed

positions, given the number of recent arrivals who have secured or crafted roles in the informal economy.

h. A guarantor may be required to vouch for prospective tenants in the city. In the accommodation context, the term 'guarantor' is broad, and encompasses vouching for the individual concerned, rather than assuming legal obligations as part of a formal land transaction. Adequate rooms are available to rent in the region of 40USD to 150USD per month in conditions that would not, without more, amount to a breach of Article 3 ECHR.

i. There is a spectrum of conditions across the IDP camps; some remain as they were at the time of *MOJ*, whereas there has been durable positive change in a significant number of others. Many camps now feature material conditions that are adequate by Somali standards. The living conditions in the worst IDP camps will be dire on account of their overcrowding, the prevalence of disease, the destitution of their residents, the unsanitary conditions, the lack of accessible services and the exposure to the risk of crime.

j. The extent to which the Secretary of State may properly be held to be responsible for exposing a returnee to intense suffering which may in time arise as a result of such conditions turns on factors that include whether, upon arrival in Mogadishu, the returnee would be without any prospect of initial accommodation, support or another base from which to begin to establish themselves in the city.

k. There will need to be a careful assessment of all the circumstances of the particular individual in order to ascertain the Article 3, humanitarian protection or internal relocation implications of an individual's return.

l. If there are particular features of an individual returnee's circumstances or characteristics that mean that there are substantial grounds to conclude that there will be a real risk that, notwithstanding the availability of the FRS and the other means available to a returnee of establishing themselves in Mogadishu, residence in an IDP camp or informal settlement will be reasonably likely, a careful consideration of all the circumstances will be required in order to determine whether their return will entail a real risk of Article 3 being breached. Such cases are likely to be rare, in light of the evidence that very few, if any, returning members of the diaspora are forced to resort to IDP camps.

m. It will 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 would be reasonable for internal relocation purposes.

n. There is some mental health provision in Mogadishu. Means-tested anti-psychotic medication is available.

o. Hard drugs are not readily available in Mogadishu, and the focus of substance abuse is khat, cannabis, alcohol and tobacco. It is not reasonably likely that an ordinary returnee, without significant means or pre-existing connections to criminal elements in Mogadishu, would be able to procure hard drugs, such as heroin and cocaine, upon their return.

Other country guidance given by MOJ

p. The country guidance given at paragraph 408 of *MOJ* ((*xi*) of the headnote) is replaced with the country guidance at paragraph (m), above. Paragraph 425 of *MOJ* ((*xii*) of the headnote) should be read as though the reference to "having to live in conditions that will fall below acceptable humanitarian standards" were a reference to "living in circumstances falling below that which would be reasonable for internal relocation purposes".

THE INDIVIDUAL APPEAL

OA's appeal: introduction

357. The appellant's case is that he has been addicted to heroin and crack cocaine for much of his adult life. His addiction has been managed at times through methadone scripts, but he has largely offended to fuel his heroin addiction. He claims to have no remaining family members in Somalia, and that he would be unable to draw their support, or any support from his clan, upon his return. His mother had two sisters who remained in Mogadishu; they are now dead. Even if there were family, contacts or other clan members in Mogadishu, they would not help him due to his drug addiction and extensive criminal record. His mother cannot afford to help him, and his siblings have turned her against him, as they have ostracised him. He claims he faces a real risk of inhuman or degrading treatment in Mogadishu. Without any form of support upon his return, he will be forced to attempt to live in an internally displaced persons camp ("IDP camp"), or on the streets, which, pursuant to the country guidance given in *AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia CG* [2011] UKUT 00445 (IAC), will expose him to treatment contrary to Article 3 of the European Convention on Human Rights ("the ECHR"). Even if he is successful in being granted accommodation in an IDP camp, he will be at constant risk of arbitrary and violent eviction. He will be exploited by the "gatekeepers". His dire circumstances will be augmented by his status as a returnee from the west; his Somali is poor, and his speech will cause him to stand out. He will be perceived as having wealth, or access to resources, and so will face a real risk of serious harm on account of his potential exposure to violent crime. Taken together, these factors combine to constitute an exceptional case in which the humanitarian considerations are sufficiently serious to amount to a breach of Article 3. Further, the appellant claims that he faces a real risk of being persecuted on account of his membership of a "particular social group" of minority clans, or returnees from the west, or homeless persons, or persons with criminal histories and histories of drug abuse. These factors also amount to "very significant obstacles" to his integration, for the purposes of "exception 1" to deportation, contained in section 117C(4) of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"), or "very compelling circumstances", under section 117C(6) of the 2002 Act. His appeal should be allowed.

358. We have identified the legal issues for resolution as follows:

a. Whether there has been a significant and non-temporary change in the circumstances which led OA to be recognised as a refugee, and whether there is some other basis upon which he is entitled to be recognised as a refugee?

b. Whether OA's removal to Somalia would be unlawful under section 6 of the Human Rights Act 1998 (public authority not to act contrary to the ECHR), on the basis of:

i. OA's rights under Article 8 ECHR, specifically whether either of the exceptions to the public interest in deporting foreign criminals contained in

section 117C of the 2002 Act apply, or whether there are "very compelling circumstances" over and above those exceptions; or

ii. Whether, upon return to Somalia, OA will be at a real risk of being subjected to treatment contrary to Article 3 of the ECHR on account of his health and living conditions, or on some other basis? Any case the appellant has under the Qualification Directive rests on our findings on this issue, also.

359. We reached the following findings concerning the credibility of the appellant shortly after the hearing, in light of the whole sea of evidence to which we were taken. We reiterate that we did not finalise our findings until having considered the entirety of the evidence in the case, in the round, to the lower standard of proof (in relation to the Article 3, Refugee Convention and humanitarian protection issues) and the balance of probabilities standard (in relation to our Article 8 analysis). In relation to the appellant's appeal against the revocation of his protection status, it is for the Secretary of State to demonstrate that the circumstances which justified the grant of refugee status have ceased to exist and that there are no other circumstances which would now give rise to a well founded fear of being persecuted on a ground covered by the Refugee Convention.

The hearing

360. OA gave evidence before us on the first day of the hearing, in English. He acknowledged the truth of his witness statements (which are dated 13 May 2016, 30 October 2017, 4 February 2020 and 28 April 2021), expanded on a number of matters in chief, and was cross-examined. We do not propose to recite the entirety of his evidence in this decision, but will refer to the salient parts of it to the extent necessary to reach our findings, and give reasons for them.

361. OA's mother did not attend to give evidence, despite the intention having been for her to do so and provision having been made in the agreed timetable. The report of Dr Galappathie dated 17 June 2021 addresses the reasons it is said she was unable to attend; we will address the report in due course.

FINDINGS

Agreed Facts

362. We commence our analysis of the evidence with the Agreed Schedule of Established Facts, which records facts that are not controversial between the parties.

363. The appellant was born in Mogadishu on 20 October 1986. He belongs to the Reer Hamar minority. His mother was granted indefinite leave to remain as a refugee on 8 May 2002 on the basis of her claim, as set out in paragraph 3 of the Agreed Schedule of Facts:

(a) to be from the Bafaadow Benadiri minority;

(b) that her home was attacked by government troops in 1990;

(c) that her son was shot;

(d) she was beaten many times;

(e) that her family home was attacked at the end of 1991 by the USC when her husband was beaten and she was raped;

(e) that she left Somalia for Kenya on 6 July 1992.

364. It is also agreed that the appellant lived in Mogadishu until 1992, and spent a number of years in Kenya before travelling to the United Kingdom.

365. The appellant was granted asylum and indefinite leave to remain in line with the grant of asylum to his mother, which was on the basis that she was a member of the Reer Hamar (see paragraph 5 of the Secretary of State's letter dated 10 April 2015). It is also agreed that while he lived in Kenya, it is likely that the appellant retained some ties with his clan and with Somalia, but after arriving in the UK, his life became chaotic and he lost ties even with his immediate family in Somalia.

366. It is also not in dispute that the appellant has amassed a number of convictions for multiple offences, the most serious of which (on the basis of the length of sentence) was burglary, for which he was sentenced to 16 months' imprisonment on 27 August 2014. Since serving that sentence, the appellant has been sentenced to further sentences of imprisonment on a total of six occasions for offences including theft, the possession of a bladed article in public, failing to surrender to custody at the appointed time, and burglary from a non-dwelling. In May 2021, the appellant pleaded guilty to two further charges of theft, namely shoplifting. For those offences, he received a fine, with the activation of an earlier suspended sentence of imprisonment, which had been imposed in September 2020 for burglary of a non-dwelling.

367. It is also agreed that the appellant has a minimal employment history, consisting only of work that he undertook while in prison. It is also agreed that it is established that the appellant speaks Somali, although as shall be seen, the extent to which he is able to do so is a matter of dispute in these proceedings. The appellant, the parties agree, has experienced mental health conditions in the past, and has been prescribed Olanzapine, Mirtazapine, Salbutamol and Clenil Modulite.

Medical evidence

Report of Professor Fox

368. Professor Fox, a consultant psychiatrist, conducted a "desktop assessment" of the appellant in a report dated 19 May 2021. Professor Katona, an eminent psychiatrist, provided a report dated 21 May 2021, following a 20 minute telephone call with the appellant which ended abruptly and early, and from an examination of the appellant's medical records. Dr Gallapathie, a consultant forensic psychiatrist, provided a report concerning the appellant dated 20 June 2021. We admitted the Gallapathie report concerning OA on the final day of the hearing. We provided Mr Hanson with the opportunity to consider the report in the margins of the hearing, and to reopen his submissions in order to address us on its impact.

369. Professor Fox's report was prepared on the basis of documents including the appellant's medical records, immigration and appeal papers, and a factual matrix as advised by those representing the appellant. Some features of the asserted factual matrix are matters of central dispute in these proceedings, in relation to which we must reach our own findings. The facts as advised to Professor Fox included the appellant having no family or friends in Somalia to whom he could turn to for assistance (as opposed to merely having "lost ties" with such persons, as agreed at paragraph 8 of the Agreed Schedule of Established Facts), and his mother

being unable to send "much" money to him in Somalia, and the unwillingness of his siblings to support him. Professor Fox was also informed that the appellant's Somali accent would make him recognisable as a returnee from the west.

370. Professor Fox opined on the impact of the appellant's removal to Somalia in light of his addiction to heroin, crack cocaine and use of methadone, including the impact of withdrawal and the removal of treatment, and the likely psychological effects on him, including on his ability to establish himself in an unfamiliar city, and related practical matters: see paragraph 2.9.

371. In part 4 of his report, Professor Fox states that the appellant would exhibit withdrawal symptoms if, upon his removal to Somalia, he was unable to use heroin, crack cocaine, methadone or an alternative opioid substitute, but that the extent of the impact was dependent upon the level of current consumption. Understandably, Professor Fox was unable to offer case-specific insight into the likely impact on the appellant, as his level of usage and tolerance was not clear; instead, the report outlined common withdrawal symptoms. We focus here on the impact of heroin withdrawal, as the appellant's evidence before us, which we address below, was that he had most recently used only heroin and at the time of the hearing was in receipt of a methadone script. Typical withdrawal symptoms are again impacted by the user's tolerance and usage, but include nausea and vomiting, insomnia, agitation, diarrhoea, dilated pupils, anxiety, abdominal cramping, depression, suicidal ideation. The symptoms occur within six to twelve hours, and typically last five to seven days, but the individual may experience cravings lasting for six months or more, accompanied by depression and suicidal ideation. In Professor Fox's opinion, in light of the appellant's description of his experiences when he is unable to access his preferred substances, set out in his statement of 28 April 2021, the appellant's symptoms are likely to be "severe".

372. Professor Fox also sets out research highlighting the "lifetime prevalence" of attempted suicide attempts in patients with opioid dependence. Risk factors include gender, unemployment, depression, personality order, and a high degree of aggression and impulsivity.

373. So far as the appellant's presentation is concerned, Professor Fox infers that the appellant "clearly does appear paranoid at times" (see paragraph 4.34), in light of having reported birds and flying creatures following him, suggesting hallucinations and abnormal beliefs. The professor highlights the appellant's mother's concerns about OA's perceived inability to look after himself. In an unfamiliar city, intoxication from illicit drugs would mean that he would "clearly" be unable to navigate. Withdrawal symptoms would impair his concentration and impact his cognition. "This may be temporary but would still impair his functioning for a period for as long as he [is] taking a drug or withdrawal is occurring." His planning and organisation would be impaired, thereby impacting his ability to seek accommodation and shelter, as drug-seeking behaviour is the primary driver, commonly leading to homelessness and an inability to manage accommodation and rent payments. The same would be true in relation to employment. See paragraphs 4.35 to 4.41.

374. In relation to the appellant's ability to seek mental health treatment upon his return, Professor Fox partly bases his opinion on the two reports of Ms El Grew. He observes that, even with the modern healthcare available in the UK, medical professionals would struggle to engage with the appellant, and, if he were an active user, would be likely to be referred to a substance misuse organisation such as *Change, Grow, Live*. In conclusion at paragraphs 4.46 and 4.47, Professor Fox writes that, in light of what he considered to be the minimal health provision in Somalia, the appellant would be very vulnerable, and would not be able to care for himself or

obtain employment. The appellant's history of asthma could be aggravated by acute withdrawal symptoms, with the impact that even a chest infection could cause more severe difficulties for him than with another person.

Report of Professor Katona

375. Professor Katona is a consultant psychiatrist. His report on the appellant's mental health dated 21 May 2021 is based on a 20 minute video conference with the appellant, which ended abruptly, and the appellant's medical records, and his immigration and appeal papers, including the reports of Ms El Grew and Ms Harper. Professor Katona considers the appellant's substance abuse disorder to be severe, and notes that the clinical records of the appellant's persecutory ideas and abnormal auditory and visual experiences may represent a primary psychotic illness, but may also represent a substance-induced psychotic disorder (see paragraph 3.2). Professor Katona also highlights research which suggests that prolonged immigration uncertainty has an adverse effect on mental health and quality of life.

376. Professor Katona notes the appellant's "somewhat erratic" engagement with the long-term support from the drug and alcohol services that he has enjoyed, and notes that the support he has received may have enhanced his ability to moderate his drug use, and control his cravings and withdrawal symptoms such that he no longer needs to rely exclusively on criminal activity to fund his drug use. He also noted what was, at that time, the appellant's apparent reluctance to engage with his legal team and with these proceedings, concluding, at paragraph 4.2, that his tendency towards avoidant behaviour would be likely to extend to him not attending the tribunal to give evidence. Further, if he were to attend the tribunal to give evidence, his mental state would be likely to impede him in giving evidence clearly and consistently.

377. Addressing the appellant's return to Somalia, and the likely impact on his mental health, Professor Katona opines that, if Ms El Grew and Ms Harper's reports are correct, in the absence of sustained and intensive specialist support, the appellant's use of illicit drugs is likely to increase, and his propensity to resort to crime to enable him to access the drugs he craves would also be likely to escalate. In the absence of methadone or other similar substances, the appellant would be likely to resort to whatever would be available to him "with unpredictable but potentially adverse effects on his behaviour". His persecutory delusions and hallucinations would be likely to worsen, with the effect that he would be likely to display disturbed, bizarre or violent behaviour. Any stigma he would experience on account of his mental health conditions in Somali society would itself be likely to worsen his mental distress. Drawing on the materials suggesting the appellant would be chained and confined in Somalia, the appellant's vulnerability to being subjected to such degrading ill-treatment would be likely to increase. Professor Katona stated that he was unable to comment on the appellant's employment prospects, although observed that his well-documented drug dependency and poor engagement with treatment would be likely to decrease his employability; Professor Katona also noted Ms Harper's opinion that employment opportunities in Somalia are limited, which would thereby entail a corresponding increase in the appellant's likelihood of resorting to criminality.

Report of Dr Galappathie concerning OA dated 20 June 2021

378. Dr Galappathie, a consultant forensic psychiatrist, has been the only medical expert in these proceedings to conduct a full examination of the appellant, which took place on 17 June 2021 by video link, lasting one and a half hours with no breaks. As well as a range of medical records, immigration and appeal papers relating to the appellant, Dr Galappathie also had the

benefit of the reports of professors Fox and Katona outlined above. Dr Galappathie's report commences with a lengthy recitation of the appellant's criminal and medical history, current medication, and recent progress and the then current circumstances of the appellant's life and health. At paragraph 141, Dr Galappathie addresses the matters upon which he was instructed to advise, namely the appellant's current psychiatric presentation, including any identifiable mental health condition. Dr Galappathie concluded that the appellant experiences recurrent depressive disorder, which is characterised by repeated episodes of depression, including depressed mood, loss of interest and enjoyment and reduced energy leading to fatigability and diminished activity. Dr Galappathie notes at paragraph 149 that the appellant experiences long-standing low mood, which has worsened over the last six or eight years, especially in the last few months and weeks, during which the appellant had been homeless. His recent accommodation in a hostel had led to an improvement. That diagnosis was consistent with the appellant's receipt of antidepressant prescriptions, in the form of mirtazapine. His depression was moderately severe. Dr Galappathie agreed with the conclusions of Professor Katona, outlined above.

379. In Dr Galappathie's opinion the appellant presents with a substance-induced psychotic disorder, which is likely to have been caused by his long-term use of illicit drugs. An alternative possibility was that the appellant may have a primary psychotic illness such as paranoid schizophrenia, in light of his medical records outlining a long-standing history of presenting with paranoid thoughts and psychotic symptoms which occurred after his history of substance misuse occurred. At the time of the examination, the appellant reported that he had stopped hearing voices 10 days ago, which coincided with him recommencing use of his antipsychotic medication. At paragraph 157, Dr Galappathie concludes that it is his opinion that the appellant experiences a substance-induced psychotic disorder, given his long-standing history of psychotic symptoms, and the temporal nature in which a psychosis has presented, "which is very much in keeping with a substance misuse induced psychotic disorder", rather than experiencing a primary psychotic illness. The report notes that, when the appellant is compliant with antipsychotic medication, his mental state improves, and he becomes less distressed by his psychotic symptoms. In Dr Galappathie's opinion, even were the appellant to stop using illicit drugs, it is likely that his psychosis would continue, given the severity and long-standing nature of his substance misuse.

380. Dr Galappathie states at paragraph 161 that the appellant presents with a high risk of self-harm and suicide. This is attributable to his depression, substance misuse, dependence and psychosis. He has a past history of thoughts about self-harm and suicide and reports that he previously had attempted to take his own life. Were the appellant to be returned to Somalia, he would be at a high risk of suffering from a severe deterioration in his mental health; in this country, his high risk of self-harm and suicide is, considers Dr Galappathie, controlled to a degree by way of his "recently established" support networks, including the provision of accommodation and an outreach worker, and his recent re-engagement with Change Grow Live. He would not be able to trust people in Somalia, including members of his clan.

381. Addressing the appellant's likely return to Somalia, even if he had sufficient money to cover at least his basic daily needs, the appellant would "still be likely to suffer from a severe deterioration in his mental health leading to worsening depression, psychotic symptoms and substance misuse…" He would have difficulty coping and taking care of himself in Somalia as he is unlikely to prioritise his financial needs and would spend what he had on "heroin and crack if this was available" or other substances. In a curious passage, which is worth quoting in full, Dr Galappathie writes:

> "it is notable that substance misuse has been a major feature of his life since X [*sic*] which indicates it is still likely to be a significant problems [sic] if he returns to Somalia and will impair his ability to prioritise his financial needs."

382. Dr Galappathie continues by highlighting how research has demonstrated that depressive symptoms are associated with impaired everyday problem solving. Even if the appellant had family or clan support in Mogadishu, he would still suffer from a deterioration in his mental health. It is notable, writes Dr Galappathie, that the appellant previously believed that his mother was trying to kill him and poisoned him when he had been psychotically unwell. He would be likely to experience similar delusional beliefs concerning any family members in Somalia. So far as accessing accommodation through a guarantor is concerned, Dr Galappathie noted that even with the support of his mother and mental health services in this country, the appellant has not been able to maintain stable accommodation, given his fragile mental state. He has never worked outside prison and would be unlikely to maintain employment, in light of his fragile mental state. The appellant's mental state would be likely to experience a significant deterioration upon his return to Mogadishu, given his absence from the city since he was aged five. He has an extensive subjective fear of being returned. If he were unable to access the medication he currently receives, especially olanzapine, his mental state would deteriorate further. In turn, this would place him at a high risk of returning to illicit drugs prior to his return on account of the fear that would dominate his mental state, and the likely continued paranoia he would experience.

Analysis of the medical evidence: the appellant

383. By way of preliminary observations in relation to the medical evidence, professors Fox and Katona did not have the benefit of conducting full (or in the case of Professor Fox, any) examinations of the appellant. That necessarily introduces a degree of speculation into their reports. We note that Professor Katona postulated that the experience of giving evidence before this tribunal would place the appellant at a heightened risk of his mental health conditions worsening, assuming he were able to attend at all. That opinion was, as Mr Toal realistically accepted in his closing submissions, at odds with the individual who appeared before us to give evidence. While we adopted measures during the hearing to accommodate the appellant's claimed vulnerability, including the provision of breaks when needed and giving directions to ensure sensitive and considerate cross-examination by Mr Hansen, the appellant presented as a confident individual, with extensive insight into his own circumstances, and an awareness of the strengths and weaknesses of his own case. There was a significant contrast between the predicted mental state of the appellant on the part of Professor Katona, on the one hand, and the reality of his confident and assertive evidence, on the other. This necessarily gives rise to concerns, certainly insofar as Professor Katona's report is concerned, as to the extent to which it accurately captures the appellant's true presentation. We make no criticism of Professor Katona in respect of this feature of his report; in the absence of having conducted a full examination of the appellant, it is hardly surprising that the professor was unable accurately to assess the health-based barriers to the appellant giving evidence, and the remaining aspects of his presentation. We should add that, having had the benefit of hearing the appellant give evidence over a relatively lengthy period, with breaks including the luncheon adjournment, we had no concerns whatsoever about his capacity or ability to give evidence.

384. Professor Katona and Dr Galappathie highlight the possibility of the appellant's presentation being attributable to a prior and long-standing psychotic disorder as an alternative to their primary diagnosis of his condition being drug-related. We note the overall conclusion of Dr

Galappathie at paragraph 157, that the appellant's symptoms are caused primarily by substance misuse, rather than having a genetic or other cause. Dr Galappathie notes that there is a direct correlation between the appellant reporting a deterioration in his mental health conditions and ceasing to take his medication. We find the primary cause of any psychotic conditions experienced by the appellant is his long term history of using illicit substances. We find that the appellant has largely consistently failed to engage with the medical and substance abuse services available to him in this country. But the appellant has had the benefit of some positive treatment at certain points; he was "clean" while in prison, and, at the time of the hearing, he was receiving his methadone script.

385. A structural feature of all three reports is their reliance on the reports of Ms Harper and Ms El Grew as providing an accurate description of the in-country conditions in Somalia and Mogadishu. As we have set out in our extensive analysis of those reports and the other background materials, we do not accept the conclusions of those reports in their entirety. Furthermore, the extent to which all three medical reports stray into the appellant's likely ability to establish himself in Mogadishu, including through accessing medical care (as opposed to its clinical impact, once accessed), the experts are at risk of going beyond the territory of their expertise. For example, it was not within the expertise of any of the medical experts to address the employment market in Mogadishu, nor were they able to address the prevalence and availability of medication in the city which, as we have set out above, is basic but meaningful. Professor Katona addressed the impact on the appellant's medical health from being chained in a rehabilitation centre which, as we have set out above, was not evidence that we accepted in general terms from either Ms Harper or Ms El Grew. We accept that the medical reports do not expressly purport to address the in-country conditions in Somalia, and their conclusions in this respect are stated in places to be conditional upon the Harper and El Grew reports being accurate (see, e.g., Professor Fox at paragraph 4.43, "*according to the information provided by Sarah El Grew in her two reports…*"; Professor Katona at paragraphs 5.2 and 5.3, "*The country expert reports of Ms El Grew and Ms Harper state that* [the appellant] *would not be able to access specialist support for his substance misuse/addiction… **If this is correct**, then in the absence of sustained and intensive specialist support…*", emphasis added). Put another way, the medical reports assume the worst of Somalia, and the medical conditions there, and do not engage with the possibility that, as we have found, there is limited but meaningful medical provision available.

386. It follows, therefore, that elements of the prospective assessments conducted by the authors of these reports were based on factual assumptions that we have found are not borne out by the broader background evidence in the case, considered in the round, and so the weight they attract is tempered in that respect. In addition, some parts of the three reports are based on the speculative premise that the appellant would either be under the direct influence of class A equivalent drugs in Mogadishu while seeking to establish himself there (see Professor Fox's report at paragraph 4.36), or that he would be subject to the unpredictable and adverse impact of a methadone alternative in Mogadishu (see Professor Katona's report at paragraph 5.3). As we have found in our analysis of the background materials, it is not reasonably likely that an ordinary returnee, without significant means or pre-existing connections to criminal elements in Mogadishu, would be able to procure hard drugs immediately upon their return.

387. Drawing this analysis together, we accept that the appellant experiences a number of mental health conditions. While we will address the impact of those conditions on the case he seeks to advance below, we accept that the appellant's drug use, and its consequential impact on his mental health, will have impacted his ability to give evidence. In accordance with the Joint Presidential Guidance Note No. 2 of 2010, our analysis of the credibility of the appellant's

evidence is necessarily calibrated to take into account both the impact of the appellant's credibility on our assessment of his evidence, and the sense of fear that he experiences concerning his prospective return to Somalia.

388. Our overall impression of Dr Galappathie's report concerning the appellant is that it seeks to present a more pessimistic situation than is justified by the evidence. In adopting that approach, the report's attempts to reconcile the current presentation of the appellant with its broader, long-term diagnosis do not withstand scrutiny. The appellant has consistently rejected the support that has been provided to him in this country. He has largely chosen not to benefit from support of the nature that Dr Galappathie states is now the sole factor that is currently responsible for his improved presentation when he gave evidence before Judge Beach, yet there was no medical evidence at that stage which presented the appellant's health as Dr Galappathie's report presently does. We find that the report does not attempt to create a balanced view of the appellant's medical conditions. It is based on an overly pessimistic view of the conditions in Somalia, and presents the appellant's health as being in a permanently poor condition, subject only to a temporary and recent improvement. It does not address the situation that would face the appellant if no drugs of the sort to which he is currently addicted in Somalia were available. It makes negative assumptions about the appellant's inability to trust his family members in Somalia, despite that being a theme that did not emerge elsewhere in the appellant's evidence. It is silent as to the medical impact of the appellant's return to Mogadishu if he were clean upon arrival.

389. We return to the significance of these observations below.

Dr Galappathie's report concerning the appellant's mother, AN

390. The appellant's mother, AN, was due to give evidence on the first day of the hearing on 14 June 2021. She did not attend. On 17 June 2021, Mr Toal served a report by Dr Galappathie of the same date, in order to explain her non-attendance. The report was based on a 90 minute video consultation on 15 June 2021. Dr Galappathie had access to the key papers relating to the case, including AN's previous witness statements. It recalls AN's traumatic experiences in Somalia and considers her current health presentation. It concludes that AN was suffering from a severe episode of depression (paragraph 64), generalised anxiety disorder (paragraph 69), and post-traumatic stress disorder (paragraph 74) which would have been likely to be attributable to her past experiences of trauma as outlined in her witness statements. The report concluded that AN would be unable to give evidence at the appeal, and that, if she were to do so, her mental health would be harmed further. Her physical presentation was very tired and weak. Dr Galappathie opined that, not only would AN be too weak to attend the hearing in person, giving evidence by video link would have been too distressing, in light of her fears that her son may be deported (paragraph 81). Although she had given evidence before the First-tier Tribunal, the trauma of doing so before a six day country guidance appeal, with broader implications for many other persons, combined with the deterioration in her condition since then, meant that she would be unable to do so on this occasion. AN had a genuine reason not to attend the hearing, opined Dr Galappathie, and there would be no prospect of her recovering such that she would be able to do so before the conclusion of the hearing, scheduled for 21 June 2021.

391. Although we admitted the report, we consider that aspects of it do give rise to some causes for concern. As Mr Hansen submitted, it was "unheralded"; against a background of a carefully case-managed country guidance appeal in which AN had been scheduled to give evidence for some time, it was surprising to receive this report only *after* AN was supposed to have given

evidence. There had been no prior indication that such a report may have been necessary, still less that there were enduring medical reasons preventing AN from participating in the proceedings.

392. It is also significant that AN sought a medical note from her GP to excuse her attendance, which was refused on 14 June 2021. Her relevant medical notes state:

> "declined to give sick note as not for work and nil history of anxiety
> feeling anxious about the court case
> they have discussed with the court and they advised to get a sick note from doctor
> advised that I will print off consultation for her
> …history taken from granddaughter
> she has been stressed out and anxious over the past few days – she says that she has not sleeping well
> nil history of anxiety discussed with GP
> she says that her stomach ache and a headache and does not feel well today and therefore cannot attend for her court cause [sic]
>
> Problem: **stress-related problem** *(First)*" (emphasis original)

393. In our judgment, it is significant that AN's GP notes record "nil history of anxiety"; Dr Galappathie's report suggests that AN has experienced a lengthy and enduring history of anxiety, which is at odds with her GP's observation that there is "nil history" of the condition, and the conclusion that the "stress-related" problem which the request was categorised as was annotated as "first", underlining the relatively novel nature of this new diagnosis. There is force to Mr Hansen's submission that the timing of this new diagnosis raises more questions than it answers.

394. While we note that Dr Galappathie considered AN to have manifested her conditions to him genuinely, and was not feigning her symptoms, there are a number of matters that he did not consider, or in relation to which his analysis lacks weight:

395. First, Dr Galappathie did not attempt to the reconcile the active and competent participation by AN in the medical consultation with his conclusion that she was not, and would not be, fit to give evidence before the tribunal;

396. Secondly, Dr Galappathie did not consider the extent to which the experience of this tribunal in facilitating the evidence of vulnerable witnesses would be able to overcome the resistance AN had to giving evidence. This tribunal is accustomed to witnesses with a range of medical, including mental health, conditions, and is experienced at adopting reasonable adjustments and otherwise facilitating the evidence of many vulnerable witnesses and appellants, consistent with the Joint Presidential Guidance Note No. 2 of 2010;

397. Thirdly, the reasons given by Dr Galappathie for discounting the possibility of AN giving evidence remotely do not withstand scrutiny. It would have been possible to explain to AN that, while the case is of some length with broader implications, her evidence would not have gone to the country guidance aspect of this decision, but rather to the analysis of the case-specific elements of her son's appeal, and that her attendance may have assisted her son's case. It would not have been necessary for her to be cross-examined concerning the traumatic features of her history, rather the focus would have been her narrative concerning her more

recent life in this country, and contemporary family and social links in Somalia. Those are not matters considered by Dr Galappathie;

398. Fourthly, while Dr Galappathie sought at paragraph 90 of his report to address the apparent inconsistency between his diagnosis and that of AN's GP during the 14 June 2021 consultation, Dr Galappathie merely highlights the documented history of AN's physical conditions and contends that the GP should have reached a similar conclusion concerning AN's mental health. In doing so, Dr Galappathie fails to engage with the absence – the primary concern identified by the GP – of any prior express history of anxiety. Dr Galappathie appears to contend that the GP should have extrapolated from AN's history of physical conditions, which are well documented, a corresponding impact on AN's mental health. But in doing so, Dr Galappathie makes a significant factual mistake, stating that AN "requires 17 hours worth of carer support *each day*…" The correct figure is 17 hours *each week*, as Dr Galappathie correctly identified elsewhere in his report. We do not consider this to be a mistake of form over substance, and nor is the error saved by the correct references to the true figure elsewhere. The highpoint of Dr Galappathie's conclusion that the GP had failed properly to identify AN's underlying mental health conditions was that AN was an individual in need of 17 hours of *daily* support. We agree that if 17 hours of *daily* care were in place, that may have given rise to some grounds for the GP to at least address the impact of those care needs on AN's physical ability to give evidence by attending the tribunal in person. It appears that the daily figure was operative in Dr Galappathie's mind at the point in his report where he sought to reconcile his conflicting diagnosis with that of the appellant's GP, and so his factual mistake in this regard is significant. Had Dr Galappathie approached this aspect of his analysis on the correct factual premise, his conclusions may well have been different.

399. In light of the above analysis, we ascribe less weight to Dr Galappathie's report. We are not satisfied that there was a good reason for AN not to participate in the hearing, at least remotely, with reasonable adjustments made by the tribunal to facilitate her vulnerability and put her at ease. She has given evidence before the Immigration and Asylum Chamber in the past, and the reasons given by Dr Galappathie for her not being able to do so on this occasion do not withstand scrutiny.

REVOCATION OF THE APPELLANT'S PROTECTION STATUS

400. At paragraph 5 of her letter dated 9 October 2015, the Secretary of State stated that the "objective evidence" set out in an earlier letter informing the appellant of her "proposal" to cease his refugee status demonstrated that his fear of being persecuted was "no longer applicable" on the basis that there had been a fundamental and non-temporary change in Somalia. Relying on *MOJ*, the Secretary of State considered that the appellant's circumstances upon his return would not entail him being persecuted. There was no longer a real risk of the appellant being persecuted in Mogadishu due to his membership of a minority clan, as an "ordinary civilian", he would not be targeted for terror attacks by Al-Shabaab, or otherwise be at an enhanced risk on security grounds. As an adult male in reasonable health he would be able to integrate into Somali society, relying on the skills developed during his time in the UK, and he would, in line with *MOJ*, be an attractive employment prospect upon his return.

Discussion: revocation of protection status

401. This appellant was recognised as a refugee "in line" with his mother, who had been so recognised on the basis of her membership of the Reer Hamar, who faced being persecuted by the Hawiye and Darood majority clans. We have no hesitation in concluding that there has

been a significant and non-temporary change in those circumstances, such that the original basis for recognising OA and his mother as refugees no longer applies. As held in *MOJ* in findings from which we have not been invited to depart, "[t]here are no clan militias in Mogadishu, no clan violence, and no clan based discriminatory treatment, even for minority clan members." It follows that the Secretary of State has demonstrated that the circumstances in connection with which the appellant was recognised as a refugee have ceased to exist; the required symmetry between the grant and cessation of refugee status is present, insofar as the basis for the appellant's initial recognition as a refugee is concerned.

402. It is also necessary to consider whether there is another basis upon which the appellant could be recognised as a refugee. In this respect, Mr Toal contends that the appellant faces being persecuted on the basis of his membership of the following particular social groups (see the appellant's skeleton argument, paragraph 170):

a. A minority, or minority clan. For the reasons given in *MOJ*, a returnee does not face "being persecuted" on the basis of being a member of a minority clan. The appellant is not entitled to be recognised as a refugee on this basis;

b. A "returnee from the West". In *MOJ*, this tribunal found that a person does not face being persecuted on this account; a returnee "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" (Headnote, (ii));

c. IDPs. We do not consider a person living in an IDP to possess the necessary immutable characteristic to qualify for membership of a particular social group; as we have set out above, the quality of accommodation is capable of fluctuating, and the person residing one day in an IDP camp, may reside the next in much higher quality accommodation, and vice versa. Secondly, in light of the nature of the persecution Mr Toal contends those residing in IDP camps will face, and the centrality of those experiences to their putative categorisation as members of a particular social group on that account, were we to accept this submission it would contravene the principle that the group must exist independently of the persecution. Thirdly, in any event, for the reasons we set out below, we do not consider this appellant to be at real risk of residing in an IDP camp;

d. The homeless. While we accept that this appellant has experienced periods of homelessness while residing in this country, the reality is that he has been in and out of accommodation. Further, as we set out below, he will have available to him upon his return to Somalia the possibility of initial residence in a hotel, coupled with remittances and the potential to forge links with broader members of his network and clan, such that there is no real risk of him being rendered homeless by the Secretary of State's removal decision in circumstances which may causally be connected to the removal decision itself;

e. Persons with a history of criminal offending and drug use. We do not consider there to be any evidence demonstrating that there are substantial grounds to conclude that a returnee such as this appellant would be at a real risk of being persecuted on account of his criminal history. Prior criminal offending was not a risk category

identified by *MOJ*, and nor have there been very strong grounds supported by cogent evidence justifying a different conclusion in these proceedings.

403. We find that the appellant would be returning as an "ordinary civilian", and that accordingly he falls into the category of returnees identified at paragraph 407(a) of *MOJ* as one who, in general, will not face a real risk of being persecuted, or subjected to harm so as to require protection under Article 15(c) of the Qualification Directive or Article 3 ECHR. Accordingly, we conclude that there is no additional basis upon which the appellant is entitled to the protection of the Refugee Convention. The Secretary of State has demonstrated that the requirement for there to be symmetry between the grant of refugee status and its subsequent revocation has been met. The appellant's appeal against the revocation of his protection status is dismissed.

THE APPELLANT'S HUMAN RIGHTS CLAIM

404. In this part, we consider the appellant's appeal on Article 3 and Article 8 grounds.

405. We approach our analysis of the appellant's prospective return to Mogadishu in light of the guidance given in *MOJ*, as updated by the guidance set out in this decision. Since it is common ground that the appellant will be returning to Mogadishu after a period of considerable absence with no immediate nuclear family, we must consider the matters addressed in paragraph 407(h) of *MOJ*, and those set out at paragraph 356 of this decision.

"Careful assessment of all of the circumstances" (MOJ, paragraph 407(h))

406. The appellant has a number of mental health conditions, which are inextricably linked to his use of controlled drugs and adherence to his medication. There have been few times in his life when he has been "clean" while out of custody. The appellant's time in custody and detention has in the past enabled him to free himself from the bonds of addiction to hard drugs, and has enabled him to work, and earn some qualifications. There is a direct correlation between his failure to take medication that addresses his psychotic symptoms and the resurgence in those symptoms. His current life in London involves sporadic engagement with the various support services available to him, and relapses into drug use. In his own words, his life has been chaotic. He fails to keep appointments and frequently does not act in his own best interests. While drugs are available to him, he reverts to them, we find. These traits will not disappear upon his arrival in Mogadishu, although there is no real risk that he will be able to access Class A equivalent drugs in the way that he can in London, with the effect that the underlying cause of many of the problems he encounters will no longer readily be present. The destructive influences that surround the appellant in London will not follow him to Mogadishu; in his oral evidence, the appellant spoke of "this man" who will provide him with drugs, when he puts money in his pocket. Yet "this man" will not be in Mogadishu, and the appellant will lack the necessary connections and means to access the comparatively rare substances to which he enjoys ready access in this country.

407. At the time of the hearing before us, the appellant had engaged with his methadone script, and was not using heroin. We accept that, as set out in the post-hearing material received by us on 11 October 2021, the appellant had later got into a fight, broken his jaw, and had fallen off his methadone script. Traces of cocaine and heroin have been found in a sample he gave. A letter from the *Supported Pathways Team Leader* in Southwark Council makes it clear that the appellant's methadone script will be available to him, should he choose to re-engage, and states that the appellant is not deemed to be at risk in the community as a result of the conflict

he had been involved in, which was considered to be an isolated incident. In our judgment, this is an appellant who is able to choose to engage with methadone treatment services, and has been clean in the past. Whether he does so is within his gift, and it will not be the Secretary of State's responsibility if he is returned to Somalia when he is not "clean". We accept that there are no methadone facilities in Mogadishu, with the effect that if the appellant is in the clutches of a withdrawal episode immediately upon his return, the prospect of his employment in Mogadishu is likely to be minimal in the first week or fortnight. We find that the prospect of the appellant experiencing immediate withdrawal symptoms in Somalia is minimal, in light of the fact the appellant has methadone treatment available to him in the community, and has previously successfully managed to stop using heroin and cocaine in detention. We have been taken to no evidence to the effect that the appellant will not have adequate treatment available to him prior to his removal, for example in detention, to enable him to enjoy the same level of treatment he has received while in controlled environments in the past.

408. Upon arrival in Mogadishu, the appellant will be able to take a taxi to a basic but adequate hotel, funded by the Secretary of State's Facilitated Returns Scheme, under which the appellant appears to be entitled to at least 750GBP, as confirmed by the Government Legal Department in its note to the tribunal, copied to the appellant, on 14 October 2021. He will be able to stay in such a hotel for up to a month while he takes steps to re-establish himself in the city. He will be able to save money by buying food in the city, rather than paying for the more expensive in-house provision in a hotel; Ms Harper's evidence was that such hotel accommodation is likely to cost 25USD per night, and that food bought in the hotel is likely to cost a similar amount. However, in light of the evidence we have heard concerning the ability of most Somalis to live on considerably less than that each day, we find that the appellant would not need to purchase food at the higher rate for the entirety of his initial stay in a hotel. Most Somalis live on less than 2USD per day, and a realistic monthly food budget in the city is 180USD. The Facilitated Returns Scheme will provide the appellant with approximately 1000USD on current exchange rates, which, before accounting for the possibility of remittances, will provide him with several weeks' initial accommodation and food.

409. We address below the impact of the appellant's health on his employment and other prospects.

"The circumstances in Mogadishu before departure" (MOJ, paragraph 407(h)(i))

410. The appellant left Mogadishu aged five, shortly after the commencement of the civil war. Prior to the conflict, his father had worked for a company with Italian links, which involved the manufacture or supply of water tanks. The company garage was reported to hold 60 vehicles. In her asylum interview, AN said that her late husband was a shareholder in the company. The family's pre-war situation is consistent with the profile of the Reer Hamar; influential, well-established, and assuming a role in the administration of municipal affairs (such as through the provision of water tankers). Immediately before their departure for Kenya, the family encountered tragedy and significant trauma in the form of the events we have already outlined. The appellant's circumstances in Mogadishu before his departure are likely to be a distant memory in his mind.

"Length of absence from Mogadishu" (MOJ, paragraph 407(h)(ii))

411. The appellant left Mogadishu in 1992, and has not returned since.

"Family or clan associations to call upon in Mogadishu" (MOJ, paragraph 407(h)(iii))

412. It is an agreed fact that the appellant lost ties with his immediate family in Mogadishu upon his arrival in the United Kingdom. The question for our consideration is whether there are broader family or clan connections that remain in Mogadishu, or which could be re-established.

413. We recall that the appellant spoke only Somali until he was 15 years old. We accept that the appellant's account of life in Kenya as a Somali refugee in the 1990s and early 2000s is broadly consistent with the background materials, such as the descriptions of police brutality towards refugees and non-refugees living in Nairobi in *Hidden in Plain View: refugees living without protection in Nairobi and Kampala*, Human Rights Watch, November 2002, such that the family limited their movements, and the appellant remained at home for more time than he did upon arrival here. We find that the appellant's experience of life in Nairobi would have felt claustrophobic and confined in comparison to the relative freedom he enjoyed upon his arrival here in July 2002. However, the appellant accepted under cross-examination that he was allowed out with his parents, and in that context he met other Somali families. While contact with other Somalis in Kenya does not lead to the conclusion that he retains links in Mogadishu, it does establish that for most of his childhood, the appellant was steeped in Somali culture. That is a dimension of his history which provides part of the background against which the appellant's ability to call upon, or foster, links in Mogadishu must be considered.

414. We found the appellant's oral evidence to be evasive concerning his contact with his siblings around the world and other relatives in this country. On occasion, he deflected questions and did not engage with the detail of what had been put to him. We recall that the appellant presented as confident and assertive throughout his oral evidence, displaying no comprehension difficulties. No such difficulties in his ability to give evidence were identified by Judge Beach, either: see the analysis of his health conditions at paragraph 63 of that decision.

415. Under cross-examination, the appellant demonstrated insight into the issues that were adverse to his case, and it was primarily in relation to those matters, particularly his family links both here and in Mogadishu, that he sought to deflect questions, and appeared to avoid giving an answer that responded to the substance of Mr Hansen's cross-examination. For example, in his statement dated 30 October 2017, the appellant claimed that his "cousins" called him "*fish and chips*", which is said to be a derogatory Somali term used by Somalis against Somalis living in this country who are no longer in touch with their Somali roots, and who are over familiar with British culture and customs (although we note that there was nothing in *MOJ* suggesting that Westernised – i.e. *fish and chips* – Somalis would encounter particular difficulties). We accept that in many cultures, the term "cousin" has a broad meaning, and can encompass a range of different relationships. Yet the appellant was unable to say who his "cousins" were, nor what their relation to him was, despite repeated questioning. When pressed, he appeared to accept they lived in Barking, and were from his mother's side of the family, but provided very little additional detail. He oscillated between categorising them as just friends, on the one hand, and family, on the other, and was evasive as to whether they were the two young women who lived with his mother, whom she describes as nieces in her statement dated 30 October 2017. In the same statement, the appellant's mother writes of having kicked the "boys" out of the house, as they were too lazy. When asked who the "boys" were, the appellant said he did not know, and sought to change the topic of conversation, recalling his time spent in Sheffield. The appellant eventually resorted to saying that he did not understand the question. We do not accept that he did not understand the question. The questions were put in clear and concise

terms. The appellant eventually said that one of his cousins was called Mohammed Ali, but when pressed as to whether Mohammed Ali was the person to whom he referred in his statement who called him *fish and chips*, the appellant simply shrugged his shoulders, recalling the Somali practice of categorising many people as cousins. In our judgment, we consider the appellant's evasiveness when answering these questions to reveal his underlying unwillingness to be honest with the tribunal about the full extent of his family circumstances.

416. Later, the appellant claimed that his mother had never mentioned her two most recently deceased sisters to him. We find this difficult to accept. The appellant's evidence is that he is in fear of being removed to Somalia for not knowing anyone there. We find it surprising that he has not sought to discuss with his mother whether there are any remaining family members who still live in Mogadishu; at paragraph 10 of his statement dated 13 May 2016, the appellant wrote, "I don't know about my aunts or uncles", implying that he knew that some existed, but had never sought to discuss them with his parents. That itself does not chime with the broader background materials concerning the interconnected nature of Somali families, network and the clan. The suggestion, as later made by the appellant in paragraph 10 of the same statement that "neither of my parents talked about their siblings and I never asked" is at odds with the broader Somali cultural practice as set out above. In his oral evidence, the appellant later said that he did not know what his clan was, despite his clan identity being an agreed fact in these proceedings. Again, we find it surprising that the appellant claims not even to have discussed his broader family relationships with his mother. As Mr Hansen put to the appellant, it appears that he is glossing over the broader family support he may have access to in Mogadishu. The appellant's answers to questions under cross-examination concerning his father again sought to deflect rather than to engage; while the appellant's father died some time ago, the appellant declined to engage with any questions posed by Mr Hansen which could have elicited details concerning his father's family. The appellant said that he would like to have family in Somalia, and that he wished he knew about his family tree. We find it difficult to believe that, if the appellant is so curious about his family, and has such fears of returning to Somalia, that he has not so much as discussed his broader family circumstances with his mother. The appellant's oral evidence is also at odds with what he told Dr Galappathie; at paragraph 140, Dr Galappathie records the appellant as having said that he does not get "much support" from his siblings, rather than there being a complete absence of support or contact, as the appellant claimed under cross-examination.

417. When Mr Hansen put it to the appellant that he must have discussed his circumstances of return in Mogadishu with his mother, he answered with a series of deflected answers, such as speaking of his mother's fears for him, and underlining his own fears that he will be killed. The appellant did not engage with the specific questions put to him about what, if anything, has he discussed with his mother concerning his prospective return to Somalia. He did accept, however, that he had not asked his mother about any friends in Mogadishu, and gave the rather unsatisfactory explanation for not having done so as having lived in Europe for most of his life. In the same series of questions, Mr Hansen asked the appellant as to whether his mother had provided him with any support, to which he said no. That cannot be right, as it is at odds with his mother's own evidence that she has provided him with a significant amount of financial support over the years, to the extent that she has fallen into debt to friends and family for doing so.

418. Even making allowances for the appellant's vulnerability, and the subjective fear that he has concerning his prospective removal, we found his evidence to lack credibility. It was not supported by testimony from his mother, who had not attended the tribunal on medical grounds which, as set out above, we found to be less than persuasive. The written evidence

his mother provided omitted key details surrounding the claimed death of her sister, F, and Z S's written evidence raised more questions than it answered, as we set out below.

419. As alluded to above, we have significant credibility concerns about the evidence of AN concerning the claimed lack of family links to Mogadishu. In her fourth statement, dated 24 March 2021, she said that her two sisters, F and L, had died in Mogadishu, of natural causes and in an explosion respectively. Those were details that did not feature in her statements dated 20 March and 30 October 2017, her evidence before Judge Beach, or her 11 December 2020 statement, save for broad denials of having any family contacts in the city. Her 24 March 2021 statement is significant for the lack of detail concerning how she found out about the deaths of her sisters; at paragraph 28, she wrote that she found out from a family friend who lives in Holland about the death of F. The unnamed friend, wrote AN, "travelled to Somalia and when she came back she told me about F's death. F had been dead for about two years when I found out." We note that there are no dates, nor in this statement are there any details of the family friend who informed AN of F's death.

420. We have been provided with a statement from the claimed family friend, ZS, who resides in the Netherlands, dated 5 May 2021. ZS was born in 1979. Her statement purports to shed further light on the circumstances in which she, ZS, informed AN of the death of F. ZS writes that she knew F and AN when they lived near each other in Hamar Wayne, before the Civil War. On an undated return visit to Mogadishu, ZS spoke to some of F's neighbours for news of F. She had died, they told her. An unspecified time later, ZS was travelling on a bus in London. Having not seen AN since AN left Somalia (which was in 1992) when she, ZS, would have been a child, ZS claims to have recognised a person also travelling on the bus as having very similar facial features to F. They struck up conversation, and it transpired that this person was, in fact, AN. It was during that chance encounter on the bus that ZS told AN of the death of her sister. On the basis of the chronology of F's death in AN's fourth witness statement (see paragraph 27: "*F died about seven years ago…*"; and paragraph 28: "*F had been dead for about two years when I found out…*"), this exchange must have happened around five years before AN's fourth witness statement was signed, in March 2021, i.e. Spring 2016.

421. We have significant credibility concerns arising from this account. First, it did not feature in any of AN's earlier statements, despite it occurring before any of the statements were written. The appellant has been legally represented at all stages of these proceedings, and issues such as his links with Mogadishu have been central to all iterations of the proceedings, pursuant to *MOJ* which was extant country guidance at all material times. There is no record of these accounts having featured in her oral evidence before Judge Beach; such evidence only being that "most" of her family had died or left, not all her family having died or left, as she maintains before us. Secondly, the written accounts prepared for these proceedings, brief as they are, lack consistency. AN's fourth witness statement implies that there was a degree of intentionality to the returning family friend informing her of F's death (paragraph 28: "[ZS] *travelled to Somalia and when she came back she told me about F's death*"), whereas ZS presented the situation as a chance encounter on a London bus. Thirdly, we consider elements of the account to lack credibility. The absence of dates and the vague nature of each account gives rise to some concerns, but our most significant credibility concerns arise from ZS purporting to have been able to identify AN, whom she had not seen for around 25 years since she would have been approximately 13 or 14 years old, on the basis of the facial features of the late F. We do not rule out the possibility that such chance encounters can take place. But when viewed alongside the points we set out above, and in the absence of any reference to this encounter in AN's earlier evidence, our credibility concerns about the bus incident acquire a greater significance. Of course, neither AN nor ZS attended the tribunal to give evidence. There was

no application for ZS to give evidence remotely, nor were there any details as to why ZS could not have attended the tribunal on one of the regular trips to London she describes making at paragraph 9 of her statement.

422. We also note that AN's account of finding out about the death of her other sister, L, lacks detail. The account features a parallel with her account of finding out about the death of F; she was informed by a friend who themselves found out while visiting Somalia, and returned with the news around a year after the explosion. Yet there are no details of the name or identity of this friend, despite the fact she is said to live in London. The unnamed friend has not provided a statement.

423. Although we have not preserved Judge Beach's findings, her decision is instructive insofar as it is a record of the evidence given before the First-tier Tribunal on that occasion: paragraph 32 records AN has having said that "most" of her family members had either left Mogadishu or been killed. On the chronology of her narrative that we set out above, taking her evidence at its highest, by the time of the hearing before Judge Beach, F and L would have died. Her evidence before Judge Beach, was, therefore, inconsistent with her written evidence before us; there was no suggestion in her written evidence for this hearing that it was only a case of "most" of her family having left Mogadishu or died; her evidence was that there were *no* family members remaining. There is a difference between the two accounts.

424. We recall Ms Harper's evidence that it would be surprising for the appellant's mother no longer to have any contacts in Mogadishu. AN had lived in Mogadishu for around 40 years before her departure. This is significant as it gives rise to the suggestion that she will have formed extensive links of her own in the city, and may still have a number of connections there. As we have noted above, Ms Harper was surprised that AN stated in her written evidence that she no longer had any contact with any individuals in the city; the claim is inconsistent with the background materials that we have summarised at paragraph 356.d), above. It is also inconsistent with her immersion in Somali culture in this country; she lives with two Somali women, as confirmed by the appellant in his evidence, and is unable to speak English. Finally, AN's written evidence that she only found out that her sister, L, was unmarried and had died without children through an unnamed friend is at odds with Ms Harper's evidence that information is "the trade of Somalis".

425. We bear in mind that the links between the diaspora and those living in Mogadishu are strong. Despite his claim to be written off as "fish and chips", the appellant has spent much of his time in this country living with his mother, who enjoys extensive links within the diaspora here, speaking only Somali, with at least two other Somalis living with her. The appellant has not given us the full picture of who his "cousins" are, nor the identity of the "boys" who previously lived with his mother but who were thrown out: see paragraph 12 of AN's 30 October 2017 statement. We find that the mental health conditions experienced by the appellant have not prevented him from being resourceful and streetwise in his evidence before us. He presented as intelligent and articulate. Even Mr Toal accepted that the individual who gave evidence before us was far removed from the character he and those instructing him had expected to attend. The appellant's insight into the issues in his case extended to seeking to maintain a denial of having networks and relationships of the sort that would pave the way to making contacts and rekindling relationships in Somalia. The appellant's evidence that he had taken no steps to familiarise himself with people in Mogadishu, or links that could be struck up or re-established, lacks credibility. If he has not taken such steps it is not because the links do not exist, or because there is no prospect of connections being re-established, but because he has chosen not to do so, in an attempt to lay the groundwork for the case he has advanced

before this tribunal, whereby he claims to have no prospects of establishing any connections within his clan in Somalia at all. We do not accept that there is a real risk that the appellant has no contacts in Somalia. Although none of Judge Beach's findings have been preserved, we readily understand why she wrote at paragraph 66 of her decision, having reviewed the evidence of the appellant and his mother concerning their family connections on that occasion:

> "…it is hard to know whether this is the truth or whether the appellant and his mother simply want to distance themselves from any connections in Somalia."

426. Drawing this analysis together, we reject the appellant's case that he has no contacts in Somalia. The appellant bears the burden of proof to demonstrate that he has no contacts or links in Somalia. We do not accept that he has given us the full picture. We consider that he has misled us. We reject the reasons he has advanced for his mother's non-attendance. We find that, consistent with the extensive background materials to which we have been referred and analyse above, there are connections. He has sought to deflect attention from the true nature of his links in Somalia. His mother, having lived there for 40 years, testified before Judge Beach that she had only lost "most" of her family, but not all of her family. The UK-based limb of the appellant's family are immersed in Somali culture here. His mother is firmly established within the diaspora, and has young Somali women living with her, having previously had some Somali "boys" living with her. Bearing in mind the interconnected nature of the diaspora and those living in Somalia, and the clan obligations owed to those returning to Mogadishu, we find that the appellant will readily be able to re-establish links with family and clan contacts upon his return, if not before.

427. The broader background materials to which we referred in our earlier findings do not support the contention that those with criminal backgrounds will be ostracised.

428. Allied to these findings is the fact the appellant is a member of the Reer Hamar. The unique position of the Reer Hamar amongst other minority clans means that its members will be well-placed to offer the appellant assistance upon his return. We find that the appellant will have access to clan links. If he has not re-established family and clan links before his return, he will be able to do so upon his arrival.

"Access to financial resources" (MOJ, paragraph 407(h)(iv)), "availability of remittances from abroad" (MOJ, paragraph 407(h)(vi)), "means of support during the time spent in the United Kingdom" (MOJ, paragraph 407(h)(vii))

429. The appellant's mother has consistently supported him in this country. We reject the appellant's evidence that his mother has been turned against him by his siblings; it is inconsistent with what AN wrote in her witness statement dated 24 March 2021, in which she describes as having "sided" with the appellant, rather than against him. There is no basis to conclude that she will not do so again, and there is nothing to suggest that her income (largely from *Pension Credit*) is lower now than it has been in the past. She will be able to send remittances to support the appellant and we find that she will do so.

430. The appellant will return to Somalia with an initial grant of GBP750 from the Secretary of State, in the form of GBP500 upon his departure, and the prospect of collecting a further GBP250 upon his arrival.

431. The appellant has no other financial resources and will not, for example, be returning with any savings.

Prospects of securing a livelihood

432. The appellant has never worked in regular paid employment, but has earned a number of qualifications while in prison, including a qualification in driving a forklift truck, and a construction qualification card. Also while in prison he worked in the kitchen, warehouse and as a painter and decorator. These are precisely the sort of day labour roles that continue to be available in Mogadishu.

433. We accept that the experience of returning to Mogadishu will be disorientating, and that the expectation that he will have to find work to fund his livelihood will be a challenging prospect for an individual who has never worked before. We accept that, if the appellant is unable to secure sufficient medication, his mental health conditions are likely to form a significant barrier to him being able to engage with labour of this sort. Yet the evidence suggests that, when the appellant is in receipt of his medication, his psychotic symptoms subside, and he responds well. The appellant will be able to engage with the limited but adequate health provision in Mogadishu. In turn, that will facilitate his ability to work through obtaining the correct medication, for example from the Forlanini hospital.

434. He speaks Somali, and spent the majority of his formative years living in Somali communities in Nairobi, speaking Somali, and much of his family life in this country has been spent with close contacts to other members of the diaspora. That he is called *fish and chips* is a testament to the fact he has contacts, friends and family who are imbued within Somali culture; as noted above, we have heard no evidence (and thus have no basis to depart from *MOJ*) as to this being a significantly detrimental feature of an individual's return to Mogadishu. On the contrary, it demonstrates that the appellant retains a degree of exposure to other Somalis who may presently be more familiar with the culture than he is.

435. We find that the appellant's likely family and clan connections will be sufficient for him to secure a guarantor, should one be required for employed work. He will not require a guarantor for self-employed work.

436. The challenge of securing a livelihood is not one to which the appellant will be immediately subject. The Secretary of State's Facilitated Returns Scheme, combined with any remittances from his mother, will provide the appellant with up to a month's residence in an adequate hotel, during which he will be able to look for work, and take steps to secure his own income.

437. We also find that the appellant's mother will continue to support him financially. While we note her limited means, we also consider the fact that she has supported him financially at many times in this country

438. Drawing this analysis together, we find that the appellant will, during the currency of any initial hotel accommodation available to him in Mogadishu, be able to find casual day work in the fields he has worked in prison previously. Again, we do not underestimate the challenge this is likely to present to the appellant, but we find that he will be able to work, if he chooses to do so. Upon his initial arrival, he will be able to re-establish links with his clan and distant family networks in Mogadishu. He will be able to spend his remaining time in the United Kingdom laying the groundwork for his return to the city, by taking advantage of his mother's diaspora links, and his own command of Somali. He speaks fluent English, which may be a factor in his favour. The findings of *MOJ*, from which we have not departed, are that returning members of the diaspora may be viewed upon more favourably than other members of the labour market. These are all factors that will assist the appellant.

Other considerations

439. As a member of the Reer Hamar, the appellant will benefit from his membership of a senior minority clan. His prospects of securing a guarantor to vouch for him when looking for longer term accommodation and employment, combined with the remaining family links we find that he will be able to take advantage of, mean that the appellant will be able to find adequate accommodation in Mogadishu. As "an ordinary Somali", he will not face an enhanced risk on account of his perceived Western or "fish and chips" status. There is no reason for him to be exposed to accommodation and living conditions at the bottom of the IDP camp or informal settlement spectrum as a result of the Secretary of State's removal decision.

440. We find that the appellant is not at real risk of being subject to intense suffering on account of his living conditions in any way which may be causally attributed to the Secretary of State's removal decision. While life in Somalia will entail conditions which are harsh by domestic standards, they will not engage Article 3 of the Convention in the case of this appellant.

441. It would be speculative to attempt to look into the future to ascertain the appellant's prospective living conditions at a time when, in the words of *Vilvarajah* at paragraph 111, the evidence concerning the appellant's background, and the general situation in Mogadishu, is that he would not be "any worse than the generality of other members of the [Reer Hamar] community".

Article 3 claim – health grounds

442. We now approach the appellant's Article 3 health claim. In doing so, we emphasise that we have considered all issues in the appellant's appeal in the round, and our analysis of this limb of his appeal was conducted alongside our discussion of his living conditions case, and vice versa.

443. We do not consider the appellant's health conditions to reach even the clarified *Paposhvili* threshold. While his mental and physical health is poor, even if we were to assume that his conditions may properly be described as "seriously ill", and that they will deteriorate rapidly (factors we do not necessarily accept), we find that there will be no *irreversible* decline in his health conditions upon his return. To the extent that any withdrawal episode takes place in Mogadishu, the phenomenon of withdrawal is, by definition, a temporary experience. It does not meet the *irreversible* criterion of the clarified Article 3 threshold. At its highest, the appellant's case based on withdrawal will entail temporary withdrawal symptoms, which are, by their very nature, reversible. Longer term side effects from heroin withdrawal, such as those described by Professor Fox at paragraph 4.17 of his report, include cravings and depression, do not in our view scale the "seriously ill" hurdle, but even if they did, they too cannot be categorised as irreversible. We find that the appellant's health conditions on account of his drug dependence would not engage the clarified Article 3 threshold pursuant to *Paposhvili*, as authoritatively explained and applied in *AM (Zimbabwe)*. Nor do we consider that the appellant's drug dependency and associated physical and mental health conditions will result in a significant, as in substantial, reduction in his life expectancy. The appellant's life expectancy may well be shorter than otherwise due to his substance abuse, but there is no evidence that his removal to Somalia will entail the prospects of further – and significant – reductions in his life expectancy.

444. The appellant's Article 3 health arguments are not limited to his physical conditions. He contends that his mental health conditions are such that he would take his own life.

445. Dr Galappathie opines that the appellant is at "high risk" of self-harm and suicide, and displays a number of risk factors for self-harm and suicide. This analysis is based primarily on the appellant's diagnosis of depression, and his history of substance misuse, dependence and psychosis. He had previously attempted suicide by attempting to hang himself and by taking an overdose.

446. Dr Galappathie writes that the appellant's present suicide risk is managed and controlled "to a degree" within the UK, "by way of his recently established support networks including provision of accommodation, involvement of an outreach worker and key worker at St Mungo's and the recent re-engagement with Change-Grow-Live, where he has a good relationship with his key worker."

447. We make the following observations about the appellant's claimed risk of suicide. First, as Dr Galappathie noted at paragraph 14, with emphasis added:

> "**It is notable** that he did not outline having any delusional beliefs at the time of my assessment or report having any current thoughts about self-harm or suicide."

We ascribe significance to the fact that the author of the medical report concluded that it was "notable" that the appellant did not have any current suicidal ideation.

448. Secondly, as noted in paragraph 135 of the report, OA informed Dr Galappathie that he self harmed and attempted to take his own life five years ago, but said there have been no other attempts in the time since then. Although Dr Galappathie records the appellant's account as having frequent thoughts concerning self-harm, that must be read alongside the absence of any current suicidal ideation, as outlined at paragraph 14 of the report.

449. There is a letter from the appellant's key support worker, Selma Azzubair, at St Mungo's Community Housing Association dated 20 May 2021, concerning the appellant's failure to attend an appointment with his solicitors. Ms Azzubair wrote that the appellant had made comments to his solicitor alluding to intending to end his life. He had been seen at his hostel with a pair of scissors, and later informed Ms Azzubair that he had not taken his mental health medication, and had missed his methadone appointment. He later informed her that he had taken both his Olanzapine and Mirtazapine, and said that he would not hurt himself.

450. We address the appellant's claimed suicide risk through the lens of the *J* and *Y and Z* cases, as appropriately modified in light of *Paposhvili*. Taking the criteria from those cases, which we have underlined, in turn:

a. <u>First, the test requires an assessment to be made of the severity of the treatment which it is said that the applicant would suffer if removed.</u> As we have set out above, the appellant would initially be removed in circumstances that would allow him to arrange an initial period of residence in a hotel, with sufficient food. There is a realistic prospect of him securing employment, once he has arranged for a guarantor through his network which he can begin to establish from within this country, in light of the extensive links between the diaspora and those residing in Mogadishu. We accept that he faces the prospect of a considerable initial shock, and will need to take sufficient medication with him in order to provide for his needs while he sources a local supply. He will not be exposed to intense suffering, and any decline in his mental or physical health will not be irreversible, nor will it expose him to a

significant reduction in his life expectancy. Of course, to the extent the appellant claims he will commit suicide, such consequences would be grave indeed.

b. Secondly, a causal link must be shown to exist between the act or threatened act of removal or expulsion and the inhuman treatment relied on as violating the applicant's article 3 rights. It is difficult to see a causal link between the appellant's removal and his claimed risk of suicide. We do not accept that the appellant is at a real risk of taking his own life. He informed Dr Galappathie that he attempted to take his own life five years ago and has not made a further attempt since. While he informed his solicitor and Ms Azzubair in May 2021 that he intended to take his own life, he did not count that as a recent attempt on his own life, nor worthy of mention to Dr Galappathie, as recorded at paragraph 14 of the report. Although Dr Galappathie appears to have seen Ms Azzubair's letter (see paragraphs 133 and 161), he does not attempt to reconcile the contents of that letter with the appellant's assertion that the last attempt on his life was five years earlier. Given the appellant did not mention the May 2021 incident to Dr Galappathie, and given Dr Galappathie does not appear to have relayed its contents to the appellant or otherwise questioned him about them, we do not consider the contents of Ms Azzubair's letter to demonstrate a higher degree of risk on the part of the appellant, and prefer Dr Galappathie's summary of the appellant's past suicidal ideation.

c. Thirdly, in the context of a foreign case, the article 3 threshold is particularly high simply because it is a foreign case. And it is even higher where the alleged inhuman treatment is not the direct or indirect responsibility of the public authorities of the receiving state, but results from some naturally occurring illness, whether physical or mental. The risk to the appellant's mental health is naturally occurring, in the sense that it is not caused by any state or non-state actors.

d. Fourthly, an article 3 claim can in principle succeed in a suicide case.

e. Fifthly (as modified by *Y and Z*) whether any genuine fear which the appellant may establish, albeit without an objective foundation, is such as to create a risk of suicide if there is an enforced return. We do not accept that the appellant's fears of returning to Somalia are such as to create a risk of suicide upon his return. Significantly, despite relaying a spectrum of fears to Dr Galappathie about the consequences of his return (see paragraph 138), taking his own life was not one of the consequences that he raised in connection with his return to Somalia. That is significant because he stated that the thought of returning to Somalia was "unbearable" and made him panic. He said he was afraid of being killed, on account of the length of time he had spent in this country, or being able to look after himself. This paragraph is significant for what it does not say; the appellant did not reveal a fear of returning which he expressed in terms that would suggest he would be at real risk of taking his own life. We also recall that he expressed no contemporary suicidal ideation to Dr Galappathie, and stated that the last attempt on his life had been some five years earlier. We do not accept that there is a causal link.

f. Sixthly, a further question of considerable relevance is whether the removing and/or the receiving state has effective mechanisms to reduce the risk of suicide. We do not consider the appellant to be at real risk of suicide upon his return and so need not consider this issue.

451. To adopt the language of Sir Duncan Ouseley in *R (oao Carlos)*, the appellant has not established that he is at a real risk of a contemplated act of suicide that he is unable to control due to his mental state.

Article 3 conclusions

452. In light of the above analysis, we find that the appellant has not demonstrated that he is at a real risk of being exposed to intense suffering, or other mistreatment contrary to Article 3 ECHR. The evidence relied upon by the appellant does not meet the demanding threshold for Article 3, as clarified by *Paposhvili*, and authoritatively applied for present purposes by *AM (Zimbabwe)*.

ARTICLE 8 – SECTION 117C OF THE 2002 ACT

453. It is common ground that the appellant is a "foreign criminal" to whom section 32(1) of the UK Borders Act 2007 ("the 2007 Act") applies and that, accordingly, the Secretary of State is obliged by section 32(5) of that Act to make a deportation order in respect of him. The appellant is a "foreign criminal" because he was sentenced to 16 months' imprisonment for burglary on 27 August 2014; the minimum sentence required to trigger the automatic deportation requirements is 12 months' imprisonment: see section 32(1)(a).

454. According to the sentencing remarks of the judge sitting in the Crown Court, the appellant entered his victim's house at around 5AM, and must have known that it would be occupied, given the hour, and must have been willing to risk coming into contact with the occupants, as indeed he did. That led to what the judge described as a "nasty confrontation" when the householder encountered the appellant and attempted to detain him; the appellant threatened violence, threatened to stab his victim, and threatened to return to burn the property. The judge noted that in the course of what was, at that stage, a criminal record encompassing 73 offences for 33 convictions, the time the appellant had spent in custody had been beneficial. He had become a "trusted prisoner", worked in prison, and had sought help for his drug addiction. The appellant had pleaded guilty, leading to the appropriate sentence of two years' imprisonment following a trial being reduced to 16 months' imprisonment. Since his conviction for this offence, the appellant has also pleaded guilty to four further charges of shoplifting, two separate charges of the possession of a bladed article in public, failure to surrender to custody, two further charges of non-dwelling burglary, and theft. The appellant was sentenced to a range of disposals, with the maximum penalty being six months' imprisonment, for the possession of a bladed article in public.

455. The 2007 Act imposes a duty on the Secretary of State to make a deportation order unless certain exceptions apply. Relevant for present purposes is "exception 1", which is engaged where removal of the foreign criminal in pursuance of the deportation order would breach the individuals rights under the ECHR, or the United Kingdom's obligations under the Refugee Convention 1951. While there is no right of appeal against a decision to make a deportation order on grounds relating expressly to the automatic deportation provisions contained in the 2007 Act, the underlying decisions which go to the applicability of exception 1 in the 2007 Act, namely the Secretary of State's decision to refuse the appellant's human rights claim and to revoke the appellant's protection status are appealable decisions under section 82(1)(b) and (c) of the 2002 Act respectively.

456. To determine the applicability of exception 1 for the purposes of the 2007 Act, we must consider section 117C of the 2002 Act. Pursuant to section 117C(1) of the 2002 Act, the

deportation of "foreign criminals" is in the public interest. "Foreign criminal" for these purposes defined in section 117D(2) of the Act to include a person who has been sentenced to a term of imprisonment of at least 12 months, which is the basis upon which the Secretary of State has pursued the appellant's deportation in these proceedings. Under section 117C(3), unless Exception 1 or Exception 2 applies, the public interest requires the appellant's deportation. In addition, pursuant to *NA (Pakistan) v Secretary of State for the Home Department* [2016] EWCA Civ 662, the appellant enjoys the potential benefit of being able to demonstrate that there are "very compelling circumstances over and above those described in Exceptions 1 and 2", even though the legislation does not expressly make such provision.

Exception 1

"C has been lawfully resident in the United Kingdom for most of C's life" (section 117C(4)(a))

457. We accept that the appellant has been lawfully resident in the United Kingdom for most of his life, for the purposes of section 117C(4)(a). Mr Hansen conceded during closing submissions that, notwithstanding the deportation order currently in force against the appellant, while these proceedings are pending, he continues to hold indefinite leave to remain. That is because section 79(4) of the 2002 Act provides that a deportation order made pursuant to the automatic deportation regime established by the 2007 Act does not invalidate leave to remain already held while an appeal is pending for purposes of section 78 of the 2002 Act. The 35 year old appellant has thus been lawfully resident since his arrival in 2002 aged 16, that is, more than half of his life, which, for present purposes, means "most" of his life (see *Secretary of State for the Home Department v SC (Jamaica)* [2017] EWCA Civ 2112 at paragraph 53).

"C is socially and culturally integrated in the United Kingdom" (section 117C(4)(b))

458. The appellant is not socially and culturally integrated. While we recall that it is important not to equate the commission of criminal offences with not being socially and culturally integrated (as to which, see *CI (Nigeria) v Secretary of State for the Home Department* [2019] EWCA Civ 2027), the conduct of this appellant throughout his time out of custody and detention has been characterised by living on the fringes of society, engaging in drug-fuelled acquisitive offending. He has never worked. He has only ever been "clean" during his repeated periods in custody and immigration detention, such is the ready access to illicit substances he has in this country. He has made life for his mother a misery. There is no positive conduct to which he can point to demonstrate any degree of social or cultural integration.

"There would be very significant obstacles to C's integration into the country to which C is proposed to be deported" (section 117C(4)(c))

459. The concept of integration for these purposes encompasses the appellant's ability to form relationships and develop a meaningful private life of his own within a reasonable time in Somalia. It is a broad, evaluative concept: see *Kamara v Secretary of State for the Home Department* [2016] EWCA Civ 813; [2016] 4 WLR 152. It is not confined to the ability to find a job or sustain life while living in Somalia; it connotates a deeper and richer level of engagement with the society and culture of return.

460. Our analysis of this limb of the exception must go beyond the mere ability that we have found the appellant will have to sustain himself and find accommodation and employment of his own within a reasonable prospect. We accept that the appellant is not familiar with life in Somalia. His enforced, and reluctant, return will be something of a shock to him, albeit not of the magnitude leading to treatment breaching the United Kingdom's obligations under Article

3 ECHR. His capacity to form relationships is limited, and the only relationships of which we are aware have largely been destructive in their character and effect; for example, it was the appellant's "friends" who were to introduce him to the Class A drugs that have marred so much of his life in this country. The appellant appears to lack the social skills needed to integrate, although we note that he aspires to have a partner, obtain work, and live "in the same way as other people": see the report of Dr Galappathie at paragraph 138. In our judgment, it would be naïve to assume that the difficulties encountered by the appellant with engaging in "normal" life in this country will not trouble him, at least to some extent, upon his return to Somalia. We accept that the difficulties experienced by this appellant in integrating in this country are likely to cause difficulties upon his return to Somalia. We accept that he will face significant obstacles to his integration, but we do not categorise those as "very significant". The appellant speaks Somali and is streetwise. He has some experience of work, albeit while in detention or custody, and will be able to work in Somalia in the future. He will be able to reach out to his broader network, or that of his mother and her relatives, and they will be able to assist him to integrate. Provided he accesses the mental health medication that is available to him in Somalia, he has a reasonable prospect, in time, of being able to integrate. Many of the destructive features of his life that surround him in this country, in particular the availability of class A drugs, will not be so readily available in Somalia. He will be required to work, in a way that he has not had to thus far. His relocation to Somalia provides him with an opportunity to engage with society in a way that he has not been able to or have the need to in this country.

461. We therefore find that the appellant does not meet the requirements of exception 1.

462. Exception 2 concerns the impact of an individual's deportation on their "qualifying partner" or "qualifying child", provided the relationships are genuine and subsisting. Seeing as this appellant does not claim to have either a partner or any children, he cannot meet this exception, and so we do not consider it any further.

Very compelling circumstances over and above

463. The remaining issue is whether there are "very compelling circumstances over and above" the exceptions, such that the appellant's deportation would be disproportionate for the purposes of article 8. In conducting this assessment, it is necessary to assess the extent to which the appellant met either of the statutory exceptions, even though he did not meet the entirety of the only applicable exception in his case, Exception 1. We will adopt a so-called balance sheet approach, of the sort endorsed by Lord Thomas in his concurring judgment in *Hesham Ali v Secretary of State for the Home Department* [2016] UKSC 60.

464. Factors militating in favour of the appellant's deportation include:

a. The deportation of foreign criminals is in the public interest (section 117C(1), 2002 Act);

b. The more serious the offence, the greater is the public interest in the deportation of the criminal (section 117C(2), 2002 Act). The main offence for which the appellant's deportation is pursued by the Secretary of State entailed the imposition of a 16 month sentence of immediate custody. While at the lower end of the one to four year bracket of sentences governed by section 117C, a sentence of 16 months' imprisonment is not at lowest end of the spectrum. This was not an offence for which the appellant was only just "on the cusp" of deportation;

c. The appellant has committed a string of other offences and is a serial offender. His deportation could legitimately have been pursued on the basis that he was a "persistent offender", as defined by section 117D(2)(c)(iii) of the 2002 Act. The offences include repeated acquisitive offences, and the possession of bladed articles in public. As to the latter, the appellant declined to take responsibility for his most recent bladed article offences before us, claiming that he found a knife in the road, and used it "to scrape his pipe";

d. The appellant's offending continued, despite express warnings by the Secretary of State (on 28 April 2008, 16 July 2008; and 24 January 2013) prior to his conviction for domestic burglary on 5 August 2014). Since the Secretary of State initiated deportation proceedings on 24 December 2014, the appellant has continued to offend;

e. The appellant speaks Somali;

f. While his return to Mogadishu will present considerable challenges, the appellant will not face "very significant obstacles" to his integration;

g. The appellant is not socially and culturally integrated here;

h. The appellant will return to Somalia with the initial support of the Secretary of State's Facilitated Returns Scheme

465. Factors mitigating against the appellant's deportation include:

a. The appellant has lived in the UK for most of his life, and has not known life in Somalia since he was a small child, aged 5. While, at 16 years old, he was not a small child when he came to this country, he was nevertheless a child;

b. The appellant has been lawfully resident for most of his life;

c. The offence for which the appellant's deportation is pursued was committed in 2014, some six years before this appeal was heard;

d. The appellant has struggled with addiction for most of his time in the United Kingdom. Mr Toal writes at paragraph 193 of his skeleton argument that the appellant, "came to the UK for protection but developed a drug addiction and suffered the degradation that drugs cause";

e. Although the appellant will not face "very significant obstacles" to his integration in Somalia, his enforced removal will create considerable initial challenges for him, and will require him to rely on skills he has never before had to deploy in order to look after himself and provide for himself;

f. On any view, the appellant is a vulnerable individual. His mental health conditions will place considerable challenges in the path to his integration in Somalia, albeit not very significant obstacles;

g. Shortly before the hearing, the appellant was allocated a key worker, and had begun to engage with some of the services that were on offer to him;

h. The appellant will be without the day to day practical support of his mother in Somalia.

466. Weighing the factors militating in favour of deportation against those mitigating against it, we find that the factors in favour of the appellant's deportation outweigh those that tell against it. The public interest in the deportation of foreign criminals is a weighty factor. That the appellant committed the main offence for which his deportation is pursued after having received three warning letters, is a factor of considerable weight (as to which, see *Akinyemi v Secretary of State for the Home Department* [2017] EWCA Civ 236 at [53]). Moreover, the appellant has continued to offend, even during the currency of these proceedings, meaning he cannot point to the passage of time since the commission of the index offence as being a factor mitigating against his deportation. While his return to Mogadishu will be tough, and will present considerable challenges, those challenges will not be such as to present very significant obstacles to his integration. The appellant spent most of his childhood either in Somali or in the Somali diaspora in Nairobi, and still speaks Somali. He will not be at risk of being persecuted or subjected to Article 3 mistreatment upon his return. His return will not be disproportionate for the purposes of Article 8 ECHR.

Conclusion

467. This appeal is dismissed on all grounds.

Anonymity

468. In light the appellant's mother being a victim of a sexual offence, we maintain the order for anonymity already in force.

Notice of Decision

The appeal of Judge Beach involved the making of an error of law and is set aside, with no findings of fact preserved.

We remake the decision, dismissing the appeal on revocation of protection grounds, asylum grounds, and human rights grounds.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed *Stephen H Smith* Date 24 January 2022

Upper Tribunal Judge Stephen Smith

Annex 1 – summary of oral evidence of Mary Harper and Sarah El Grew

Mary Harper

1. Ms Harper prepared a report dated 24 February 2021. She had been provided with key documents by those representing the appellant (see [4.1]), and a number of additional background materials listed at [4.2]. The respondent addressed a series of numbered questions to Ms Harper on 24 March 2021, to which she responded, on 14 May 2021.

2. We have summarised Ms Harper's evidence thematically, drawing on her answers to the respondent's questions, and her oral evidence, rather than adopting and replicating the structure of her report. As such, where it appears that we are taking the Harper report "out of order", as it were, that is because it is more convenient to address Ms Harper's evidence on the thematic basis referred to above. We have adopted this approach in an attempt to marshal the issues in a logical order. For example, we consider that the issue of whether a returnee will be able to establish themselves most logically arises for consideration *before* the issue of whether, if not, an individual will be able to gain entry to an IDP camp arises, and, if that will be possible, what the conditions are likely to be. For that reason, while Ms Harper was asked by those representing the appellant to address conditions in, and access to, IDP camps *before* addressing the factors that go to a returnee's ability to establish themselves in Mogadishu, we will not necessarily reflect that sequence in our summary.

Methodology

3. Ms Harper was instructed by those representing the appellant on the basis of the factual matrix advanced by the appellant, namely that he has lost ties with his immediate family, that he has lost ties with Somalia and has no family or friends to turn to for assistance, and that he has no connections with his clan. See the letter of instruction dated 16 November 2020 to Ms Harper at paragraphs 3(h), (m), (o), and the questions at paragraphs 8, 9, 10, 11, 12, 13, 14, and 15. As we set out in our case-specific analysis of the appellant's appeal, those facts are by no means common ground between the parties. In this part of the decision we analyse the expert evidence and the background materials. The appellant's claimed factual matrix in relation to the lack of ties, the risk of ending up in an IDP camp and other similar matters bears similarities to many Somalia cases, and so much of Ms Harper's evidence is, in principle, capable of informing our country guidance findings. Accordingly, where Ms Harper's evidence addresses the position of an appellant who claims to have lost all ties to Somalia etc., the sources she draws upon and the materials relevant to her conclusions, along with all remaining background materials, enable us to reach findings concerning the general position in Somalia for those in such circumstances, for the purposes of giving country guidance.

4. Ms Harper's most recent visit to Somalia was in November 2020. She conducted face to face research for her evidence during the visit, as well as remote interviews and other research at other times. She was not accompanied by an interpreter, as most people she spoke to could speak English, and she understands some Somali. Where interpretation was necessary, a fellow journalist or a friend assisted.

5. Ms Harper emphasised throughout her written and oral evidence that she has to rely on extensive security arrangements to secure her own protection when visiting Mogadishu. The arrangement include armed guards and travelling in a convoy of vehicles with blacked-out windows. When Ms Harper is on foot, for example having stopped at a market, she will

© CROWN COPYRIGHT 2022

often be surrounded by her close protective security team. During her November 2020 visit, the tense security situation had prevented her from visiting any IDP camps, or having much time on foot. She drove through, but was unable to stop in, Hamar Wayne, where the greatest concentration of Reer Hamar may be found. Ms Harper explained that she stayed in a secure compound, and was able to converse with a number of "ordinary" Somalis who worked there, such as students, traders, drivers, security guards, and waiters.

6. In answer to question 57 posed by the Secretary of State, Ms Harper said that she had visited a total of six IDP camps. Most of Ms Harper's visits to IDP camps took place between 2012 and 2018, with the exception of a small camp in relation to which neither Ms Harper nor her Mogadishu-based contacts know its name, in March 2020. The latter visit lasted an hour. She was unable to visit the Afgoye Road, nor, therefore, any of the IDP camps located along it, during that visit. The Afgoye Road is a main road linking Mogadishu to the town of Afgoye, approximately 30 miles inland.

7. Most of Ms Harper's sources requested anonymity, and only outline details of their roles are provided. One source ("researcher 1") is a Somali researcher who has worked for think tanks in Mogadishu and a research institution in Kenya. Ms Harper writes that he has lived in Somalia "for years" and is "well informed" about people from the poorer sectors of Somali society. Another ("researcher 2/journalist") is a Somali journalist who has always lived in Mogadishu. He is of limited means, as he supports his large family. He lives in poor conditions in a relatively poor part of the city, and Ms Harper considers that he is aware of what life is like for people from the poorer sectors of Somali society. Ms Harper relied on another journalist ("journalist"); this source has worked for local and international media bodies in Somalia for over 20 years; Ms Harper considers him to be one of the most respected journalists in Somalia.

8. A further source is a member of the Reer Hamar people ("employee of international organisation in Mogadishu"), and has served as a minister in Somalia's federal government, has led and worked with "grassroots humanitarian organisations" and currently holds a senior position with an "international body" working in Somalia. Under cross-examination, Ms Harper described this individual as "highly successful". He left Somalia in the 1990s, studied in the UK, then returned to Somalia and became a government minister. Ms Harper also relied on three NGO workers. The first works for UNOCHA in a role focussing on IDP camps. The second works for the Norwegian Refugee Council in an IDP camp-focussed role, working directly with IDPs "conducting studies on their needs and trying to help with [providing] humanitarian assistance to those most in need." The third works for a local NGO whose work focusses on IDP camps. Ms Harper said in her oral evidence that she had not asked the IDP NGO workers how long they had worked with IDPs. The remaining sources were a security official and a government employee.

Mogadishu: contemporary context

9. Ms Harper considers the current security situation to be tense because following the expiry of his current term of elected office, President Farmaajo attempted to seek an extension, remaining in power. There was a day of violence in April 2021, which some feared would catalyse a return to the clan warfare of the early 1990s. However, Ms Harper said, the rival factions appear slowly to be edging towards political agreement; the heightened violence was a relatively unusual and hopefully temporary phenomenon, by Mogadishu standards. The President has now agreed to elections and there has been progress since the peak of the current crisis.

10. Ms Harper also said that the current levels of indiscriminate violence in Mogadishu are similar to the position in 2014, when MOJ was decided. While it is not rare for civilians to die in Al-Shabaab attacks, when they do it is not as a result of direct targeting, but rather from being in the wrong place at the wrong time.

Ability of a returnee to establish themselves in Mogadishu

11. Ms Harper addressed the likely experiences of a returnee to Mogadishu against the background of the recent history of the city: at [6.3] she considers that the impact of drought, floods, and the ongoing conflict has led to increasing numbers of Somalis to relocate to cities, especially Mogadishu. The city is reported to be the fastest growing city in Africa, and the second fastest growing city in the world: see the source quoted at [3.8.2] of the respondent's *Country Policy and Information Note – Somalia (South and Central): Security and humanitarian situation*, version 5.0, November 2020.

12. Addressing the likely reception of a returnee upon arrival at Mogadishu International Airport, Ms Harper considered that a person being forcibly removed on an emergency travel document may experience some difficulties with the authorities at the airport, if they had not been forewarned of his or her likely arrival. An independent Somali MP, Abdi Shire Jama (who also provided a report for these proceedings, but was unable to participate further), and an immigration official, informed Ms Harper that if, upon being questioned, it became clear that the appellant had been forcibly removed from the UK due to a criminal past, he would "in all likelihood" be passed to security and intelligence officials for further interrogation. The officials may become suspicious if the appellant began to act in an unusual way due to his poor mental health, or drug problems. Ms Harper wrote that she had not been able to verify a DFAT Somalia Country Information Report, quoted at paragraph 13.2.2 of the Home Office's *Country Background Note – Somalia*, version 1.0, December 2020 ("the December 2020 CPIN"), which states:

> "A failed asylum seeker would not necessarily be identifiable at a border crossing and there is no central database that monitors whether an individual had departed illegally. DFAT understands that when a returns process is arranged by another country or organisation, the returnee is cleared by Somalia's Department of Immigration prior to their arrival at Mogadishu airport and the returnee is not questioned by authorities upon arrival." (See Harper at [5.3])

13. Ms Harper highlights the importance of having a guarantor to access accommodation, employment and other basic essentials in Mogadishu. A guarantor would ideally be from the same clan as the returnee, who could vouch for the person, and take responsibility if anything went wrong: see [7.2]. Without such a guarantor, and in the absence of family support in-country, securing accommodation, even within an IDP camp (see below) may be subject to "significant obstacles" [7.2]. Ms Harper considers that the criminal history of a returnee would be likely to lead cause many to be unwilling to act as a guarantor, for fear of the behaviour of the returnee reflecting badly on them, if something were to go wrong. At [10.1], Ms Harper cites the March 2020 FIS Report at page 32 which states that, "those looking for a residence in the rental market usually need a local person who can vouch for the tenant." That paragraph of the FIS report continues by outlining the relative disadvantages faced by single females seeking accommodation.

14. Assuming a returnee had no family members or other contacts upon landing in Mogadishu, and bearing in mind the financial assistance available from the respondent, Ms Harper considered that the safest form of initial accommodation would be a hotel, for which no guarantor would be required [8.3]. A hotel would provide a returnee with the opportunity to look for a guarantor, and find longer term accommodation: [8.11].

15. At [11.4] of her report, Ms Harper gave an account of a Reer Hamar deportee from the UK, describing how the individual concerned had been shunned by his clan on account of his criminal convictions. The individual concerned nevertheless managed to find work in Mogadishu. The Secretary of State understandably questioned how that could be so: see question 144. In her written response, Ms Harper explained that the individual concerned met someone from another clan on the plane to Somalia, and that that person allowed the deportee to live in his house until he was established. He also acted as guarantor. Ms Harper said that the individual concerned was "extremely lucky" to have been assisted in that way; he had specialist construction skills which helped him to find work in any event. When pressed by Mr Hansen in relation to the likely reception of a person fitting the profile of this appellant – a drug user with many previous convictions – Ms Harper accepted that, if his criminal past were not known, he may succeed in finding a guarantor. Much depends on the presentation of the appellant when seeking to find a suitable guarantor.

16. The safest hotels, with fortified entrance gates, perimeter walls, and trained security guards cost up to 250USD/night for a room and breakfast. Cheaper hotels are available; Ms Harper highlighted one which charges 25USD/night, plus the same amount for food. Unspecified Somalis Ms Harper spoke to in November 2020 suggested dining at restaurants in the city would cost around 15 to 20USD daily, although did not address the cost of purchasing food elsewhere, such as at markets, or the prices charged by street vendors. Eating every meal in a restaurant is likely to be a more expensive option in most places; at [8.7] Ms Harper quotes figures that had been given to her by a Somali researcher suggesting that $180 was sufficient for monthly food costs, which gives approximately $6 daily.

17. Prices vary for rental property, from two "very basic rooms" in a makeshift property with a toilet and tap, at $80/month, to $140/month for a corrugated iron sheet house, to $350 to $500 for an a apartment, according to the March 2020 report issued by the Finnish Immigration Service, *Security Situation and humanitarian conditions in Mogadishu*. The same report suggested that a 25 square meter room in a more secure part of the city would cost between $50 - $100 monthly. Ms Harper stated that her sources disputed some of the figures given in the FIS report, stating that a friend who lives in the "less secure" Medina district had paid between $100 to $200 monthly; that individual had returned from the diaspora (not, it seems, forcibly), and had limited ties in the city, making it difficult for him to find or negotiate cheaper lodging. Total costs, including utilities, were likely to be in the region of $390, suggests Ms Harper at [8.7]. A UK returnee told Ms Harper in February 2021 that it was possible to survive on $300 a month, in the Medina district. Food prices have increased in light of the pandemic: [8.10]. In cross examination, Ms Harper maintained that those were the figures she had been provided with by her sources. The mother of one of her friends works as a cleaner and earns around $100 monthly, however she lives in an extended household, and the money simply contributes to "the pot".

18. As far as employment is concerned, at [9.4] of her report, Ms Harper said that those who have returned from the diaspora to successful roles were well-connected, and had organised jobs for themselves before they arrived, or had financial resources. Some have the means to leave the country quickly, such as foreign passports, when the security situation deteriorates.

Ms Harper is aware of some less well educated returnees securing roles in the construction industry, especially where they have had specific skills, for example plastering or roofing. To obtain unskilled manual labour, established contacts are required, and a returnee would be competing against many other unemployed Somalis. Most employment in Mogadishu is in some form of trading, rather than construction, although construction remains an important provider of labour. Petty trade is more prevalent as a form of income than unskilled daily labour, said Ms Harper. Ms Harper did not know details of any trends in unskilled labour wages in Mogadishu; when presented with the 1 March 2021 *Market Update* issued by the Food and Agriculture Organisation of the United Nations, which Mr Hansen suggested that labour wages exhibited moderate to significant increases when compared to the five-year average, she accepted that, in construction, and possibly at the port in Mogadishu, that may be accurate. She added that there is a lot of competition for construction work. Speaking English would not necessarily assist with unskilled work, where the greater need will be the ability to speak Somali. Ms Harper readily accepted that her expertise did not lie with economic analysis of supply and demand within different factions of the Mogadishu labour market.

19. The impact of a returnee's living arrangements can impact on employment prospects; those living on the outskirts of Mogadishu, for example in an IDP camp, will have a longer, and more expensive, commute. Even within IDP camps, as we set out below, some are so vast as to make the journey within the camp to the perimeter a significant addition to such a journey in any event.

IDP camps

20. In MOJ, this tribunal found that a person unable to secure accommodation through other means may have to resort to living in an IDP camp, and that the humanitarian conditions in the camps can be very poor.

21. Ms Harper accepted under cross examination that it is very rare for someone from the diaspora to end up in an IDP camp; she had interviewed one returnee from the UK who had done so: [7.1]. Her NGO worker source reported that it was "very, very rare for someone from the diaspora to end up in an IDP camp." Although in answer to question 67 posed by the Secretary of State Ms Harper implied that there were multiple such persons, she confirmed in cross examination that her answer to that question had been in error, and that the single UK returnee she had interviewed was the person referred to at [7.1] of her report. Ms Harper confirmed that, save for that person, she had no other evidence of forced returnees from the UK having to live in IDP camps.

22. As far as forced returnees in general were concerned, Ms Harper said in cross examination that she had spoken to five such persons in total, three of whom were from the UK, one was from Kenya, and another was from elsewhere. The one who had most successfully integrated had family in Mogadishu, and, although he had been shunned by his clan, he had managed to find work for himself in the city.

23. A phenomenon of IDP camps in Mogadishu is the role of the "gatekeeper", sometimes referred to as "informal settlement managers". The gatekeepers are said to control access to their IDP camps, charge residents for their accommodation or land, and take a share of aid intended for the residents. Gatekeepers also have roles relating to the provision of services and security in IDP camps.

24. In cross examination, Ms Harper confirmed that she had heard of, but knew little about, an initiative referred to by the acronym "CCCM" – Camp Cooperation and Camp Management. She was not aware of the partner organisations in this initiative, which involve an alliance of international and regional organisations (including the UNHCR and the IOM), NGOs and human rights groups.

IDP camps: accessibility

25. At [7.3] of her report, Ms Harper said that a guarantor would be required for a returnee seeking to obtain accommodation in an IDP camp. Relying on a 2019 TANA working paper, *Shelter provision in Mogadishu,* page 18, Ms Harper considers that guarantors have a crucial role in accessing shelter and housing finance for new residents.

26. Ms Harper's anonymous NGO worker source opined that, if an individual were able to find a camp with some space which the gatekeeper was looking to fill, it might be possible to secure entry. The source did not mention the need for a guarantor to do so. A "poor quality" camp would cost in the region of $2 each month, and the resident would be expected to turn over a proportion of any aid they receive to the gatekeeper. Under cross examination, Ms Harper maintained that her sources had told her that some form of clan association or local contacts were required to secure a place in an IDP camp, but Ms Harper agreed that gatekeepers, as a rule, like to maximise the residents in their camps, so as to increase their turnover. She also added that she had never heard of a member of the Reer Hamar living in an IDP camp, nor being refused admission to an IDP camp by a gatekeeper.

Conditions in IDP camps: gatekeepers

27. Ms Harper's report paints a largely grim picture of the behaviour of gatekeepers towards their residents. At [7.5], relying on a 2013 Human Rights Watch report, Ms Harper records that IDPs are treated as second class citizens, and subject to repression and frequent physical abuse. Ms Harper also quotes a December 2019 UNOCHA report, *Humanitarian Needs Overview – Somalia*, concerning the development needs of the country in 2020, which states at page 47 that informal settlement managers "curtail effective service delivery to IDPs". In context, the quote is addressing what is said to be the inadequate coordination of services made available to IDPs. There are reports that IDPs are treated as "commodities" being sold between gatekeepers to attract assistance, or repurpose land. Employees of the UNOCHA and Norwegian Refugee Council working with IDPs on Mogadishu informed Ms Harper that the gatekeepers not only control who is allowed to reside in the IDP camps, but also who is permitted to leave, as the gatekeepers stand to lose money if the residents move on.

28. Not all gatekeepers have been tarnished as set out above, reports Ms Harper at [7.7]. Some are reported by her sources genuinely to care about the IDPs in their camps, even if others do exploit and abuse them. It is not always necessary for humanitarian organisations to go through the gatekeepers to provide aid to the IDPs resident there, although gatekeepers are reported always to deduct a percentage of any aid provided, as a "fee".

29. In cross examination, Ms Harper was taken to a March 2017 Tana report, *Engaging the Gatekeepers: using informal governance resources in Mogadishu,* Erik Bryld *et al*. At page 9 of the report, it states:

> "Gatekeepers provide land, security, and a range of other services, including: aid distribution, conflict mediation, funeral arrangements, emergency assistance and, in some cases, crowd-funding facilities."

And:

> "Gatekeepers should not solely be perceived as greedy or exploitative; they reflect a state – and aid community – that is not able to provide citizens with the most basic of services."

30. The context of the above quotes is the report's overall findings that conditions in IDP camps are poor, and that their residents are in need of improvements to their protection and livelihood. Against that background, the Tana report concluded that there needs to be proactive engagement with the gatekeepers if the lot of IDP camp residents is to improve. See the summary at internal page 5 of the report:

> "Gatekeepers remain one of the most resilient local-level governance structures in Mogadishu. Formal stakeholders, including government and the international community need to engage with them proactively if there is to be an improvement in IDPs' protection and livelihoods."

31. The report goes on to document the lack of accountability inherent to the role of gatekeepers, and the resulting and corresponding reluctance on the part of the Federal Government of Somalia ("FGS") to engage with them has led to a perpetuation of the conditions in IDP camps. The conclusions of the report are, as quoted above, that the FGS and others should engage with the gatekeepers in a way they have not done thus far, in order to improve accountability and service levels. We will return to this theme.

32. Ms Harper accepted the conclusions of the Tana report insofar as they went, and accepted that there were some details in the report that were not reported to her by her sources, but maintained the position she adopted in her report: the behaviour of gatekeepers is mixed, and not all IDPs have the positive experience the Tana report suggested they may. There are some positive reports, as she noted at [7.7], but the overall picture from her sources is negative. In response to question 61 from the Secretary of State, Ms Harper had said that she was not aware of positive developments in the roles of gatekeepers, other than the details she provided in her report at that paragraph. When pressed by Mr Hansen, for example in relation to the reports of relatively benevolent gatekeepers in an undated Tana report, *Informal Settlement Managers: Perception and reality in informal IDP camps in Mogadishu*, based on interviews conducted in 2016 and 2017, Ms Harper maintained her position that gatekeepers are varied. Ms Harper accepted that her report had not captured the full scope of the roles of the eight gatekeepers who were analysed as part of the above Tana report, which included conflict resolution, and the provision of madrassa education.

33. Ms Harper's report was silent as to developments in IDP policy, such as that set out in the FGS publication *The National Durable Solutions Strategy (2020 – 2024)*. In cross examination, Ms Harper said that she was aware of the policy, but had little faith that the aspirations of the policy's search for a "durable" solution to IDP camps would translate into concrete change. Ms Harper accepted that her report had overlooked policy-level developments, as she had not appreciated the breadth of the questions with which she was presented extended to policy developments, although later qualified her position by saying that, unless policies led to real changes for those residing in IDP camps, they were of little relevance. She said that the FGS has many policies, but due to its lack of resources and staff, and the security situation, it is not possible to translate those policies into practice. The *National Durable Solutions Strategy* was an "honourable" policy, she added, and one hopes that it would improve the life of those in IDP camps.

Humanitarian conditions in the IDP camps

34. Ms Harper's report addressed whether conditions in IDP camps had changed since the country guidance in MOJ. At [6.1] she said that "most" of the people she had spoken to said that the situation had ether deteriorated or remained the same. When pressed in cross examination as to precisely what she had been told, and by whom, and having had the chance to consult her notes over the luncheon adjournment (the notes having been disclosed in the proceedings), she accepted that there had been a degree of nuance to what had been reported to her. One or two sources had spoken about how the role of some gatekeepers had improved, as discussed above. The sources also highlighted how the militia who used to surround the camps are no longer present. But Ms Harper maintained that, in general, her sources reported that conditions in IDP camps had deteriorated or remained the same.

35. In relation to the reports from her sources concerning the deterioration in IDP camp conditions, Ms Harper accepted that she had not queried with her sources how long they had been working with IDPs and IDP camps. In our view, that was an omission of some significance, as, by definition, in order to offer a comparative view concerning the conditions in IDP camps in 2021 compared to those pertaining in 2014, a degree of familiarity would be required with the conditions in the camps an both ends of the chronology, whether from first-hand knowledge or other means. Ms Harper said that it had been reported to her that many IDPs at camps inside Mogadishu have been evicted and have moved to outlying areas around the city, often in less accessible locations, requiring 4x4 vehicles. Ms Harper's contacts reported that funding to assist IDPs had reduced, and that there was the ever-present reality of Al-Shabaab lurking in the background.

36. Under cross examination, Ms Harper confirmed that the conditions in the sole camp she visited during her March 2020 visit were much the same as they were at the time of MOJ. Ms Harper added that, in general terms, basic supplies and utilities were better in Mogadishu than rural areas, although in Mogadishu there were frequent power supply interruptions, and limited utility supplies, following years of conflict. Many people even in Mogadishu need to buy water or at least collect it using large containers and barrels. While there were reports of latrine access being limited in camps outside Mogadishu, there were no such reports in relation to IDP camps in the city itself.

37. In relation to evictions, when pressed Ms Harper agreed that there was a moratorium on evictions, and that they had, in general, been reducing since 2018, as she noted at [6.12] of her report, in reliance on the *Somalia (South and Central) CPIN* of November 2020. Most evictions were initiated by private citizens against other private citizens, seeking to recover their land.

38. In summary, when pressed about the general picture relating to IDP camps, Ms Harper accepted that evictions were decreasing, and that there is a protective FGS policy in relation to IDPs which features in the *National Eviction Guidelines*. She also accepted that some recent survey evidence (which we address below, such as *Informal Settlement Managers: Perception and reality in informal IDP camps in Mogadishu*,) suggests significant levels of satisfaction with the conditions in which some IDPs live, and also accepted that there is no "uniform" IDP experience.

The impact of Covid

39. Ms Harper agreed that the official figures for the number of Covid infections in Mogadishu (which was a total of 10,838 cases with 496 deaths as at 29 March 2021) were relatively low, but urged caution when analysing the data, due to the likely poor quality or inaccuracy of the data available. Many reasons have been put forward to explain the relatively low infection rate, including the low average age in Somalia, but also the fact that many stay at home to die, and do not attend hospital. During her March 2020 visit, a healthcare professional informed Ms Harper that many Covid victims were thought to be dying at home, although Ms Harper observed that BBC reports suggested that the number of graves had remained relatively steady. Somalia is on so-called "red list" for international travel restrictions, Ms Harper added, suggesting a high level of underlying concern. Ms Harper did accept that, compared to other parts of the world, the impact of Covid had not been as grave.

Clan significance and Somali culture

40. A theme that runs through Ms Harper's report and oral evidence is that the Reer Hamar – the People of Mogadishu – do not reside in IDP camps. There are districts of the city, notably Hamar Wayne, where they reside, and in those areas there are informal rough sleeping arrangements housing those members of the clan without other options for accommodation. So, at [7.1] of her report, Ms Harper reports that her NGO worker source said there are no Reer Hamar camps in the city, due to the clan being well-established in the city, having lived there for centuries. However, those members of the Reer Hamar who squat in vacant government buildings in the Reer Hamar districts are, the NGO source added, at risk of the constant threat of eviction. Ms Harper confirmed this position in cross examination.

41. A feature of the Reer Hamar's quest to preserve their influence in the years since the civil war has been the use of strategic marriage alliances, so called *black cat marriages*, whereby Reer Hamar women married – or were forced to marry – into majority clans, thereby preserving or securing a degree of security for the Reer Hamar. The practice marked a departure from the former cultural resistance to inter-clan marriages. This is a documented phenomenon of recent Reer Hamar history, as Ms Harper confirmed under cross examination.

42. Ms Harper also addressed aspects of Somali culture relating to the diaspora. As will be seen in relation to this appellant's appeal, one issue is the extent to which he has family or clan contacts in Mogadishu, and their likely attitude towards him. This appellant claims to be addressed as "*fish and chips*" by "his cousins", that being an apparent reference to his westernisation, and lack of knowledge of Somali culture. "Fish and chips" is said to be a phrase applied to members of the Somali diaspora residing in this country. Ms Harper confirmed that the term is a common phrase; she accepted that those would be likely to use it would be those who had retained a cultural connection to Somalia. Most, if not all, members of the diaspora maintain their cultures and traditions, she said.

43. Under cross examination, Ms Harper also said that large extended families are common in Somali culture, and that familial terms, such as cousin, aunt etc., may be applied to those who are not actually related but who are nevertheless close. Some Somali households feature members who are not family, but who are treated as such. Accommodation may be provided if something is given in return, for example an elderly Somali who would otherwise live on their own may accept lodgers in return for care.

44. Ms Harper said that an aspect of this appellant's evidence struck her as peculiar. His evidence was that he did not know what his father's occupation in Mogadishu had been. While we deal with this point specifically in more detail when we address the facts of his appeal in further depth below, the underlying point is of general relevance so we deal with it here. His father was some kind of businessman who spoke several languages, and, on the appellant's case, owned many cars, possibly commercially. Ms Harper found it peculiar that the appellant did not know more details about his occupation; while she accepted that there may be a "gulf" between the knowledge of different generations, she nevertheless was struck by the appellant's insistence that he knew very little about his father as peculiar.

45. Ms Harper was asked to address this appellant's claim that his mother, who lived in Mogadishu until she was aged 40 and had 12 children (and whose main language is Somali), had no remaining contacts in Mogadishu. Again, we deal with the specific evidence concerning this appellant in more detail below, but for present purposes we consider Ms Harper's answer to be of significance: she said she would have expected the appellant's mother to have had family in Mogadishu. She was surprised she claimed to have no family. In fairness to the appellant, we record at this juncture that Ms Harper was not surprised at *his* claim not to have any contacts in Mogadishu, in light of his age upon leaving the capital, and his other personal characteristics. For present purposes, we can summarise this aspect of Ms Harper's evidence as follows: it was not surprising to Ms Harper that an individual who left Mogadishu aged five, who lived for approximately ten years in Kenya in circumstances in which he claimed to have had minimal contact even with other displaced Somalis living in Kenya, and who has committed a vast number of offences leading to ten years' criminal detention and imprisonment in this country, no longer has any contacts in Mogadishu. By contrast, a person such as the appellant's mother, who lived in Mogadishu until she was 40 years old, with over ten children born there, who now clearly lives among the diaspora community in this country, would be expected still to have family connections in Mogadishu. As we set out below, the remaining background materials address the issue of retained links between the diaspora and Somalia, and we return to this issue, below, both in the context of giving country guidance, and also in relation to this appellant's appeal specifically.

46. Ms Harper made three further points concerning the significance of clan membership for a returnee. First, in light of the connections between the diaspora and those still residing in Somalia, in her view it would be very difficult for the appellant to conceal his past. The Mogadishu rumour mill would be at work, she said, or the individual concerned would be asked many questions about their background and family: "information is the trade of the Somalis". Secondly, once an individual's criminal past is known, it is not necessarily the case that the individual would be ostracised by his or her clan. If the individual concerned is seen as someone who behaves honourably, and is willing to give what support they can to other people, especially if that includes those who are not linked by immediate family, then a criminal past is not necessarily an obstacle to clan acceptance, although it could be. Clan assistance is not necessarily conditional upon having sent remittances in the past. Thirdly, in areas where there is violence, and an Al-Shabaab presence or risk, then the clan may be less willing to provide assistance. In areas where there is no Al-Shabaab risk, this additional concern may not present a significant obstacle to a person being accepted.

47. Ms Harper addressed remittances, a well-documented feature of Somali life, for residents of the country, and the diaspora alike. Remittances flow in both directions, Ms Harper said, but primarily *to* Somalia. The older members of the diaspora feel a strong obligation to send remittances, but the younger generation are less keen, to the extent that the companies

facilitating the international money transfers are concerned for the future viability of their business model.

Sarah El Grew

48. Ms El Grew provided reports dated 20 March 2018 and 5 February 2020, based on research (including interviews) conducted between July 2017 and March 2018, and 28 January 2020 and 4 February 2020, respectively.

49. Ms El Grew approaches the topics upon which she was asked to conduct research thematically, and we summarise her reports on that basis here. In her first report, her overall assessment of the appellant's risk on return is that he faces homelessness, violence and detention. There are no addiction services in Somalia, and only very crude mental health services. The appellant's health places him at greater risk.

50. Roger Middleton, a Program Director for a US non-profit organisation called Conflict Dynamics International, opined that the diaspora returning to Mogadishu is now of such a number that it represents a community of its own. It comprises mainly returnees from East Africa and from Western countries, with the latter generally being privileged. Many such returnees have political aspirations, business plans or professional skills. Recent graduates from majority clans return to assist the new government. Returnees from elsewhere in Africa are poorer and from minority clans, but tend to have maintained strong cultural connections to the country, which assists with their reintegration, although it is still difficult. Those, such as this appellant, who do not readily fit into either category, are likely to face more difficulties.

51. Ms El Grew's interviewees' remaining views were largely consistent with the established background materials concerning Somalia and existing country guidance, and so may be dealt with here in outline form only. The clan system operates as a social security net, in the absence of state support, and also provides a basic moral code and other support. Most returnees are welcomed to the diaspora, provided they are "connected to their community", without which housing and employment may be difficult. Returnees can be expected to have the upper hand financially, even by their clan.

52. As far as the return of a person addicted to recreational drugs was concerned, Ms El Grew's first report touches upon the stigma and difficulties that would be likely, with her interviewees concluding that clan support would be even less likely. Drugs are forbidden. Most people take a hard line, but some returnees report knowing of others who have fallen into substance abuse, mental illness and homelessness.

53. It is easy for the wider community to find out about a person's past, consider Ms El Grew's interviewees. The prevalence of gossip reported to Ms El Grew correlates with the emphasis on the same by Ms Harper.

54. As far as the Reer Hamar are concerned, Ms El Grew's interviewees considered the position to be complex; the Reer Hamar remain segregated, and their support system is weaker than their historical position would otherwise suggest. Formal quota systems to mandate the representation of minority clans in government positions mean that the Reer Hamar are unlikely to secure influential roles, as the quota system does not distinguish between different minorities, with the effect that the Reer Hamar must essentially compete with the other minority clans for formal and influential positions. The report makes no reference to the *black cat marriage* phenomenon outlined above.

55. Several of Ms El Grew's interviewees highlighted the difficulties likely to be faced by a person with no connections arriving at the airport in Mogadishu. There are multiple checkpoints to be navigated to leave the compound. Those not being met by family or other transport risk being singled out for adverse attention, whether from the authorities or otherwise. The risk is enhanced for those perceived to be "Western", and it extends simply to walking around the city without protection. One correspondent, Dr Laura Hammond, considered that the generic risk of violence from Al Shabaab, as well as military factions, would place returnees at a particular risk. A person "loitering" may be at likely to face at least questions from the police, or arrest and detention (although one interviewee disagreed, opining that the police would be more likely simply to "move him along": see [85]). There are reports of arbitrary arrests, detention and mistreatment. Areas populated by the Reer Hamar are at risk of arbitrary police raids and "shake downs" as the clan lacks the ability to influence the police and dissuade them from doing so; the clan faces discrimination from the authorities on that basis.

56. Ms El Grew's first report goes on to outline what her interviewees consider to be the difficulties faced by a returnee seeing accommodation and employment without a guarantor, or sufficient clan links. As to the latter, Dr Hammond considered there to be high unemployment in Mogadishu, presenting significant barriers to those without strong clan connections and the right skills. Five Somali returnees from Kenya interviewed in 2016 were all unemployed; 2017 interviews of unspecified "Western returnees" were said to have highlighted nepotism as a major problem. Without specialist constructions skills, the employment prospects of even an English-speaking returnee would be bleak, especially for a person returning for the first time since being a young child. Merely speaking English is not sufficient, especially for a person with the troubled background of this appellant. Even assistance from the Reer Hamar for a person of this appellant's profile would be unlikely to yield significant results, given the diminished significance of the clan. They would only have access to low paid jobs, or those in trades requiring sector-specific experience. And even if a person with the profile of this appellant was successful in securing work, it would be unlikely to cover his living costs.

57. One opinion attributed to Dr Hammond was at odds with the evidence of Ms Harper, namely that large numbers of IDPs are from the Reer Hamar, described by Dr Hammond as "the poorest of the poor". Dr Hammond also considered the conditions in IDP camps to be appalling. She opined that many residents arrive in large groups, whereas a person such as this appellant arriving alone would be in a much worse position. Another interviewee considered was a risk of being turned away by a gatekeeper. IDP camp conditions have deteriorated since 2016; evictions have increased, as have demolitions.

58. For those unable to access even IDP camps, being homeless would be the reality, considered Ms El Grew's interviewees. That could entail squatting in a damaged building, which would still require the permission of a gatekeeper. Such buildings have no running water. Other persons sleep on the streets, and have to scavenge scraps of food from waste to avoid starvation, lacking even basic sanitary facilities. For a returnee not speaking fluent Somali, that presents further difficulties. Violence and robbery would be a significant risk, including risks from a greater likelihood of being exposed to indiscriminate violence.

59. Ms El Grew highlights what her correspondents consider to be the poor health provision, in particular mental health and drugs services. Some healthcare is available privately, but even then it is very poor, with overcrowded and unsanitary hospitals. The treatment that is available in those contexts can include 'chaining' and prescribing medication.

60. There are reports of 'cultural rehabilitation' centres for returnees with drug, alcohol and mental health problems, at the behest of their families. The centres focus on Islamic teaching, with no social interaction permitted, and detention in cells for those who misbehave. There are reports of those returning from serving criminal sentences in the UK being sent to such centres.

61. In report dated 5 February 2020, Ms El Grew considered the availability of drug addiction services, including the provision of a Methadone script, in Mogadishu. This report adopts a similar approach to her 2018 report, collating the opinions of others alongside a selection of background materials.

62. The general consensus among those consulted by Ms El Grew was that there are no drug addiction or rehabilitation services connected to the general or mental health hospitals in Mogadishu. Methadone and opiate substitutes would not be available in Somalia, nor any treatment schemes making similar provision. One interviewee opined that public hospitals would be reluctant to use heroin substitutes for religious reasons, as drugs are considered to be forbidden in Islam ("*haram*").

ANNEX 2

BACKGROUND MATERIALS

Item	Document	Date
1.	Home Office, *Response to an information request: Somalia*	24 May 2021
2.	Home Office, *Modern Slavery: Statutory Guidance for England and Wales (under s49 of the Modern Slavery Act 2015) and Non-Statutory Guidance for Scotland and Northern Ireland. Version 2.2*	May 2021
3.	Crown Prosecution Service Guidance '*Human Trafficking, Smuggling and Slavery*' https://www.cps.gov.uk/legal-guidance/human-traffickingsmuggling-and-slavery [accessed 4 June 2021]	30 April 2021
4.	Home Office, *Response to an information request (civilian fatalities)*	8 April 2021
5.	Home Office, *Response to an information request (returns process)*	8 April 2021
6.	UNOCHA, *Somalia: Humanitarian Bulletin*	April 2021
7.	IPC, *Somalia: IPC Acute Food Insecurity and Acute Malnutrition Analysis January – June 2021*	March 2021
8.	Food and Agriculture Organisation of the United Nations, *Market Update*	1 March 2021
9.	Camp Co-ordination and Camp Management, *CCCM Household Satisfaction Surveys*	March 2021
10.	Country Expert Report of Mary Harper	24 February 2021
11.	GOV.UK, *Somalia travel advice* [accessed 24.02.2021]	24 February 2021
12.	Food Security and Nutrition Analysis Unit – Somalia, *Technical Release*	4 February 2021
13.	FSNAU, *Up to 2.7 million people in Somalia face acute food insecurity Crisis (IPC Phase 3) or worse outcomes through mid-2021*	4 February 2021
14.	https://africanarguments.org, *'Somalia's prosperity can only be driven through local knowhow', Esse M Halane*	2 February 2021
15.	UNOCHA, *Humanitarian Response Plan: Somalia*	February 2021

16.	Famine Early Warning Systems Network, *Somalia Food Security Outlook February-September 2021*	February 2021
17.	World Bank, *Improving Access to Jobs for the Poor and Vulnerable in Somalia*	January 2021
18.	UNOCHA, *Humanitarian Needs Overview: Somalia*	January 2021
19.	Home Office, *Country Background Note: Somalia*	December 2020
20.	Home Office, *County Background Note: Somalia*	December 2020
21.	UNICEF Somalia, *Somalia: COVID-19: Situation Report No.11*	24 November 2020
22.	WHO EMRO, *Outbreak update – Cholera in Somalia*	22 November 2020
23.	Shelter Cluster Somalia, *Somalia Fact Sheet October 2020*	15 November 2020
24.	UNHCR, *Somalia: Internal Displacements Monitored by Protection & Return Monitoring Network (PRMN) September 2020*	5 November 2020
25.	Home Office, *Country Policy and Information Note - Somalia (South and Central): Security and humanitarian situation*	November 2020
26.	Home Office, *Country Policy and Information Note – Somalia: Al Shabaab*	November 2020
27.	Home Office, *Country Policy and Information Note – Somalia: Al Shabaab*	November 2020
28.	Home Office, *Country Policy and Information Note – Somalia (South and Central): Security and humanitarian situation version 5*	November 2020
29.	Danish Immigration Service, *Somalia Health System*	November 2020
30.	Land Info, *Query response – Somalia: Violence in Mogadishu and developments since 2012*	30 October 2020
31.	Reuters, *Elaborate Somali insurgent tax system collects almost as much as government*	27 October 2020
32.	ICRC Somalia, *Somalia: Fear of food insecurity as number of malnutrition cases spike*	16 October 2020
33.	UN Security Council, *Report of the Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator*	15 October 2020

34.	ACCORD, *The effects of COVID-19 on AMISOM operations in Somalia*	14 October 2020
35.	WHO, *Urgent Need to Scale up Mental Health Services in Somalia*	11 October 2020
36.	Hiraal Institute, *A Losing Game: Countering Al-Shabab's Financial System*	October 2020
37.	UNOCHA, *Somalia: Covid-19 Impact Update No.13*	October 2020
38.	UN Security Council, *Report of the Panel of Experts on Somalia*	28 September 2020
39.	Marketlinks/USAID, *COVID-19 in Somalia: Three Urgent Challenges Posed by Falling Remittances*	22 September 2020
40.	Yale School of Medicine, *Lack of COVID-19 Resources Putting Millions at Risk in Somalia Settlement Camps*	17 September 2020
41.	Immigration and Refugee Board of Canada, *Response to information request*	3 September 2020
42.	LSE, *State-building and COVID-19 in Somalia: Impact on Government Revenues*	2 September 2020
43.	CCCM Cluster and DTM, *COVID-19 Response: RCCE Feedback Assessment in IDP Sites – Round 2: Somalia*	September 2020
44.	UNHCR, *Somalia: Somali Returnees from Kenya at 31 September 2020*	September 2020
45.	The Guardian, Inside Somalia: How Covid-19 Created a Perfect Storm in a Humanitarian Crisis	31 August 2020
46.	ACLED, *Mid-Year Update: 10 Conflicts to Worry About in 2020* (extract)	18 August 2020
47.	Alawa et al., *Knowledge and Perception of COVID-19, Prevalence of Pre-Existing Conditions, and Access to Essential Resources and Health Services in Somali IDP Camps*	17 August 2020
48.	UN Security Council, *Situation in Somalia: Report of the Secretary-General*	13 August 2020
49.	Al Jazeera, *At least six prisoners killed in Mogadishu prison shoot-out*	11 August 2020
50.	The Independent, *19 Dead after Riot in Somalia Prison where al-Shabab Members are Held*	11 August 2020
51.	USAID, *Somalia – Complex Emergency*	7 August 2020

52.	Finnish Immigration Service, *Somalia Fact-Finding Mission to Mogadishu in March 2020: Security situation and humanitarian conditions in Mogadishu*	7 August 2020
53.	Wash Cluster Somalia/Shelter Cluster Somalia/REACH, *Somalia: Joint Market Monitoring Initiative – Factsheet Booklet*	August 2020
54.	SaferWorld, *The Missing Link: Access to justice and community security in Somalia*	August 2020
55.	UNOCHA, Somalia *Country Preparedness and Response Plan (CPRP): COVID-19*	August 2020
56.	UNHCR, *Somalia Post Return Monitoring Snapshot*	August 2020
57.	UNOCHA, *Humanitarian Response Plan Revision: Somalia HRP Revision - COVID-19*	26 July 2020
58.	CARE International, *Stigma harming Somalia's efforts to stop COVID-19*	22 July 2020
59.	Amnesty International, *Somalia: Internally displaced people surviving by "the grace of God" amidst COVID-19*	21 July 2020
60.	Chatham House, *Understanding US Policy in Somalia*	14 July 2020
61.	Danish Immigration Service, *South and Central Somalia: Security Situation, forced recruitment, and conditions for returnees*	July 2020
62.	Risk and Compliance Portal, *Corruption in Somalia: Somalia Corruption Report & Profile*	July 2020
63.	Land Info, *Query response – Somalia: Clan, family, migration and assistance with (re) establishment*	25 June 2020
64.	UNOCHA, *Flood Response Plan: Somalia*	5 June 2020
65.	Erik Bryld, Christine Kamau & M. A. Mohamoud, *Using an adaptive approach to making gatekeepers accountable to internally displaced persons in Mogadishu, Somalia*	23 May 2020
66.	UNHCR, *Conflict and heavy floods force tens of thousands of people to flee their homes in Somalia, amidst COVID-19 threat*	8 May 2020
67.	CCCM Cluster, Flood Risk for IDP Camps in Banadir	May 2020
68.	International Institute for Strategic Studies, *Urban Drivers of Political Violence: declining state authority and armed groups in Mogadishu, Nairobi, Kabul and Karachi*	May 2020

69.	US Aid/Somalia Cash Working Group/REACH, *Somalia Market Feasibility Study: Mogadishu*	May 2020
70.	World Bank, *Press Release*	25 March 2020
71.	UN Somalia, Common Country Analysis 2020	March 2020
72.	One World Research, Statement of Sarah El-Grew, Senior Researcher	5 February 2020
73.	International Institute for Environment and Development/Tana, *Finding shelter in Mogadishu: challenges for vulnerable groups*	February 2020
74.	Forced Migration Review, *Multi-stakeholder approach to urban displacement in Somalia*	February 2020
75.	ACLED, *Ten Conflicts to Worry About in 2020 (extract)*	23 January 2020
76.	LSE/Conflict Research Programme, Food and Power in Somalia: Business as Usual?	21 January 2020
77.	UNOCHA, *Humanitarian Response Plan: Somalia*	January 2020
78.	US State Department, *Somalia 2019 Human Rights Report*	2020
79.	The Guardian, *Truck bomb kills scores including many students in Mogadishu*	28 December 2019
80.	Refugees International, *Durable Solutions in Somalia – Moving from Policies to Practice for IDPs in Mogadishu*	December 2019
81.	Somalia Ministry of Planning, *Investment and Economic Development, Somalia National Development Plan 2020 to 2024* (excerpt)	December 2019
82.	UNOCHA, *2019 Flood Response Plan Nov 2019 – Jan 2020*	23 November 2019
83.	The New Humanitarian, Weather and war: *How climate shocks are compounding Somalia's problems*	19 November 2019
84.	UN Security Council, *Report of the Panel of Experts* (excerpts)	1 November 2019
85.	Forced Migration Review, Educating for return: *Somali refugees in Dadaab*	October 2019
86.	International Institute for Environment and Development/Tana, *Shelter provision in Mogadishu - Understanding politics for a more inclusive city*	September 2019

87.	The New Humanitarian, *Somalia's displacement camp 'gatekeepers' – 'parasites' or aid partners?*	18 July 2019
88.	Somalia Ministry of Humanitarian Affairs and Disaster Management/UNOCHA, *Somalia 2019 Drought Impact Response Plan (DIRP) June - December 2019*	12 July 2019
89.	The Guardian, *In Somalia, the climate emergency is already here. The world cannot ignore it*	8 July 2019
90.	Jutta Bakonyia, Peter Chonkab & Kirsti Stuvøyc, *War and city-making in Somalia: Property, power and disposable lives*	5 June 2019
91.	Landinfo, Somalia: *Al-Shabaab areas in Southern Somalia*	21 May 2019
92.	Land Info, *Query response – Somalia: Rer Hamar population in Mogadishu*	21 May 2019
93.	Cornell University Law School, *Removals to Somalia in Light of the Convention against Torture: Recent Evidence from Somali Bantu Deportees*	1 April 2019
94.	Federal Government of Somalia, *Somalia Social Protection Policy*	March 2019
95.	Ministry of Foreign Affairs of the Netherlands, *Country of Origin Information – South and Central Somalia*	March 2019
96.	BBC News, *Briton survives razor-blade attack in Somali jail*	29 January 2019
97.	International Institute for Environment and Development/Tana, Accessing Land and Shelter in Mogadishu: a city governed by an uneven mix of formal and informal practices	January 2019
98.	Home Office, *Country Policy and Information Note - Somalia: Majority clans and minority groups in south and central Somalia*	January 2019
99.	Banadir Regional Administration & Municipality of Mogadishu, *IDPs and refugee returnees policy*	January 2019
100.	Berghof Foundation, *Salafi jihadi armed groups and conflict (de-)escalation: The case of al-Shabaab in Somalia*	2019
101.	Federal Government of Somalia's '*National Policy on Refugee-Returnees and Internally Displaced Persons (IDPs)*'	2019
102.	IPC, *Technical Manual Version 3.0: Evidence and Standards for Better Food Security and Nutrition Decisions* [pp. i-38]	2019

103.	Federal Government of Somalia, *National eviction guidelines*	2019
104.	Internal Displacement Monitoring Centre, City of Flight – New and secondary displacements in Mogadishu, Somalia	November 2018
105.	Finnish Immigration Service, *Somalia: Fact finding mission to Mogadishu and Nairobi, January 2018*	5 October 2018
106.	Home Office, *Country Policy and Information Note – Somalia (South and Central): Security and humanitarian situation version 4*	September 2018
107.	Norweigan Refugee Council, Troubling Trend Sees Evictions in Somalia Double	28 August 2018
108.	BBC News, *Torture exposed at Somali rehab clinic in Kenya*	30 July 2018
109.	YouTube: BBC Africa Eye, *Rehab Nightmare: Drugs, Chains and Canes* [with screenshots]	30 July 2018
110.	Hiraal Institute, *The AS Finance System*	July 2018
111.	UNOCHA, 2018 Humanitarian Response Plan – Revised July – December 2018	July 2018
112.	Land Info, *Report – Somalia: Marriage and divorce*	14 June 2018
113.	Somalia Protection Cluster, *Mid-Year Review 2018*	June 2018
114.	Land Info, *Somalia: Security challenges in Mogadishu*	15 May 2018
115.	Institute for Integrated Transitions/United Nations University, *The Limits of Punishment: Transitional Justice and Violent Extremism - Somalia Case Study*	May 2018
116.	Garowe Online, *Somalia: Hundreds Arrested in Mogadishu Security Sweep*	20 March 2018
117.	One World Research, Statement of Sarah El-Grew, Senior Researcher	20 March 2018
118.	https://minorityrights.org, *Benadiri*	March 2018
119.	Stabilisation Unit, *Elite Bargains and Political Deals Project: Somalia Case Study*	February 2018
120.	Human Rights Watch, *Somalia: Thousands Homeless as Settlements Razed – Government Pledge to Investigate Forced Evictions a Positive Step*	28 January 2018

121.	The Heritage Institute, *Durable Solutions for Somali Refugees*	December 2017
122.	UNOCHA, *2018 Humanitarian Response Plan*	December 2017
123.	International Institute for Environment and Development, *Working paper – Protecting internally displaced communities in Somalia: Experience from the Benadir region*	December 2017
124.	Danish Demining Group, *Dadaab Returnee Conflict Assessment*	August 2017
125.	Refugees International, *On the Edge of Disaster*	August 2017
126.	CCCM Cluster, *Somalia Strategy*	July 2017
127.	Tana, *Engaging the Gatekeepers*	6 March 2017
128.	Land Info, *Query response – Somalia: Violence, fatalities, perpetrators and victims in Mogadishu*	27 February 2017
129.	Open Edition Journals, *Uninformed Decisions and Missing Networks: The Return of Refugee from Kenya to Somalia*	January 2017
130.	Rift Valley Institute / Heritage Institute for Policy Studies, *Land Matters in Mogadishu*	2017
131.	Land Info, *Query response – Somalia: The settlements in Mogadishu*	11 November 2016
132.	Transparency International, *Collective Resolution to Enhance Accountability and Transparency in Emergencies: Southern Somalia Report*	November 2016
133.	The New Humanitarian, *Shock and Revulsion over Mogadishu Bombing*	16 October 2016
134.	Home Office, *The Facilitated Return Scheme version 8*	3 October 2016
135.	Ken Menkhouse, *Non-State Security Providers and Political Formation in Somalia*	April 2016
136.	Land Info, *Somalia: Relevant social and economic conditions upon return to Mogadishu*	1 April 2016
137.	Joint IDP Profiling Service, *Internal displacement profiling in Mogadishu*	April 2016
138.	LOGiCA/Rift Valley Institute, *The Impact of War on Somali Men*	May 2015

139.	UNODC, *Issue Paper: The Concept of 'Exploitation' in the Trafficking in Persons Protocol*	2015
140.	Land Info, *Somalia: Medical Treatment and Medication*	14 August 2014
141.	BBC News, *Somalis sent back home in fear of al-Shabab*	16 June 2014
142.	UNOCHA, *2014 Humanitarian Needs Overview: Somalia*	September 2013
143.	Food Security and Nutrition Analysis Unit – Somalia, *Family Ties: Remittances and Livelihoods Support in Puntland and Somaliland*	5 June 2013
144.	Human Rights Watch, *Hostages of the Gatekeepers*	March 2013
145.	United States Agency for International Development, *Mid-term evaluation of three countering violent extremism projects*	22 February 2013
146.	African Union, *Kampala Convention*	6 December 2012
147.	UN Security Council, *Report of the Monitoring Group on Somalia and Eritrea* (excerpts)	13 July 2012
148.	Anti-Corruption Resource Centre, *Overview of Corruption and Anti-corruption in Somalia*	13 July 2012
149.	Tana, *Political Economy Analysis in Mogadishu*	May 2012
150.	Danish Immigration Service, *Security and human rights issues in South-Central Somalia, including Mogadishu*	30 January 2012 – 19 February 2012
151.	UNODC, *Guidance Note on 'abuse of a position of vulnerability' as a means of trafficking in persons in Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*	2012
152.	United States Institute of Peace, *Governance, Corruption, and Conflict*	2010
153.	Land Info, *Somalia: Reer Hamar*	17 December 2009
154.	Austrian Red Cross, *Clans in Somalia: Report on lecture by Joakin Gundel*	December 2009
155.	FAO, *An Introduction to the Basic Concepts of Food Security*	2008

156.	Global Protection Cluster, *Handbook for the Protection of Internally Displaced Persons*	2007
157.	Human Rights Watch, *Hidden in Plain View: Refugees Living Without Protection in Nairobi and Kampala*	November 2002
158.	Human Rights Watch, *Hidden in Plain View: Refugees Living Without Protection in Nairobi and Kampala*	November 2002
159.	Danish Immigration Service, *Report on Minority Groups in Somalia*	17 September 2000 – 24 September 2000
160.	UN Economic and Social Council, *Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2*	11 February 1998
161.	Migration and Refugee Services of the United States Catholic Conference, *Benadir Refugees from Somalia*	1998
162.	Office of the High Commissioner for Human Rights, *Review of the composition, organization and administrative arrangements of the Sessional Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights. Economic and Social Council resolution 1985/17*	1985
163.	Camp Co-ordination and Camp Management, *What is CCM?*	Undated
164.	Federal Government of Somalia, *National Policy on Refugee-Returnees and Internally Displaced Persons (IDPs)*	Undated
165.	N/A, Maps	Undated
166.	Screenshot – World Health Organisation, *Covid 19 statistics*	Undated
167.	Tana Copenhagen, *Informal Settlement Managers: Perception and reality in informal IDP camps in Mogadishu*	Undated
168.	The Federal Government of Somalia, *The National Durable Solutions Strategy*	Undated
169.	UN Committee on Economic and Social Rights, International Covenant on Economic, Social and Cultural Rights; General Comments • General Comment No 1: Reporting by States parties • General Comment No 3: the nature of States Parties' obligations • General Comment No 4: the right to adequate housing • General Comment No 7: the right to adequate housing • General Comment No 12: the right to adequate food	Undated

	• General Comment No. 18: the right to work • General Comment No. 19: the right to social security	
170.	Word Population Review, *Population of cities in Somalia*	Undated