



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/02340/2013

**THE IMMIGRATION ACTS**

Heard at Newport  
On 4 February 2014

Determination sent  
On 5 March 2014

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

SA  
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms K Parker instructed by Seraphus Solicitors  
For the Respondent: Mr I Richards, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. This appeal is subject to an anonymity order made by the First-tier Tribunal pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 (SI 2005/230). Neither party invited me to rescind the order and I continue it pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698).

## **Introduction**

2. The appellant is a citizen of Somalia who was born on 22 October 1988. She arrived in the United Kingdom on 31 December 2012 and claimed asylum. She claimed to be a member of the minority Reer Hamar sub-clan of the Ashraf. She claimed that she and her family had suffered at the hands of Al-Shabab who had burned down her brother's kiosk in the local market in Beledweyne after they had accused him of serving the Ethiopian forces in the area. She claimed that her brother had died in the fire and that the following day, after receiving threats from Al-Shabab over the telephone, she and her family left to live in Ethiopia. She claimed that if returned to Somalia, she would suffer the same consequences from Al-Shabab as had her brother.
3. On 26 February 2013, the Secretary of State rejected the appellant's claim for asylum and refused to grant her leave to enter proposing to make directions for her removal to Somalia.

## **The Appeal to the First-tier Tribunal**

4. The appellant appealed to the First-tier Tribunal. In a determination dated 3 June 2013, Judge Devittie dismissed the appellant's appeal.
5. Judge Devittie accepted that the appellant was from the minority Ashraf clan as she claimed, however, the Judge rejected the appellant's evidence that her family had been persecuted by Al-Shabab; that Al-Shabab killed her brother; and that the appellant and her family had fled to Ethiopia because of threats from Al-Shabab. As a consequence, the Judge found that the appellant would not be at risk on return to her home area. Additionally, the Judge found that, in any event, the appellant would receive a sufficiency of protection in her home area.
6. Further, the Judge found that it would be reasonable to expect the appellant to relocate to Mogadishu. On the basis of evidence obtained by the Judge from the internet subsequent to the hearing, he concluded that the position in Mogadishu had improved since the country guidance decision in AMM and Others (Conflict; Humanitarian Crisis; Returnees; FGM) Somalia CG [2011] UKUT 00445 (IAC) in which the Upper Tribunal had concluded that, as a generality those returned to Mogadishu faced a risk of indiscriminate violence falling within Article 15(c) of the Qualification Directive (Council Directive 2004/83/EC).
7. The appellant sought permission to appeal on the basis that the Judge had erred in law in relying upon evidence obtained post-hearing and upon which the parties had not had an opportunity to make submissions. On 24 June 2013, the First-tier Tribunal (Judge Davidge) granted the appellant permission to appeal on that ground.

## Error of Law

8. The appeal initially came before me on 22 October 2013. In a decision dated 25 October 2013, I concluded that the First-tier Tribunal Judge had erred in law in reaching his adverse findings in relation to the risk, if any, to the appellant in Mogadishu. My reasons are set out in full in that decision and it is not necessary to repeat them here.
9. Consequently I set aside the Judge's decision to dismiss the appellant's appeal and directed that at a resumed hearing in the Upper Tribunal I would remake the decision.
10. It was accepted by both representatives at that initial hearing that the Judge's findings in paragraphs 6-11 of his determination stood. Those findings were that the appellant had failed to establish:
  - (i) That she and her family had been attacked by the Al-Shabab in Beledweyne;
  - (ii) That her brother's kiosk in the local market had been burned down and her brother had died in the fire;
  - (iii) That as a consequence she and her family had left to live in Ethiopia.
11. However, the Judge's finding that the appellant is a member of the Reer Hamar sub-clan of the minority Ashraf clan stood.
12. The two issues to be determined at the resumed hearing were:
  - (i) The risk, if any, to the appellant on return to Mogadishu; and
  - (ii) The risk, if any, to the appellant en-route to her home in Beledweyne.
13. The appeal was again listed before me on 2 December 2013 but adjourned in order that the appellant could obtain an expert's report dealing with the current situation in Somalia. The appeal was again listed before me on 4 February 2014.

## The Submissions

14. Ms Parker who represented the appellant relied upon her skeleton argument which she expanded upon in her oral submissions. She relied upon the country guidance case of AMM and an expert report prepared by Dr Markus Hoehne dated 27 January 2014.
15. Ms Parker submitted that the appellant would be at risk of serious harm contrary to Article 15(c) of the Qualification Directive if she were returned to Mogadishu. She submitted that that was the position recognised, as a generality, by the Upper Tribunal in AMM and Dr Hoehne's report whilst recognising that there had been a sharp decline in security related incidents between the end of 2012 and early 2013

(following the withdrawal of Al-Shabab from Mogadishu), nevertheless recognised that there had been a sharp rise in incidents in the first half of 2013. She submitted relying upon his report at paras 11, 16, 17, 30, 33 and 34 that the risk from Al-Shabab of indiscriminate violence affecting civilians remained. She also submitted that there was a risk from undisciplined government soldiers (see para 20 of Dr Hoehne's report) and a risk to lone women returning (in paras 27-29 of Dr Hoehne's report). Ms Parker submitted that the risk to the appellant, recognised in AMM, did not require the appellant to be "living" in Mogadishu. The risk arose even if she was only there in transit for a single day.

16. Further, Ms Parker submitted that the appellant would be at risk on travelling to Beledweyne. She relied upon paras 48 and 49 of Dr Hoehne's report although she accepted that in para 49 part of his reasoning had to be discounted as it was based on an acceptance of the appellant's claimed persecution in Beledweyne which had been rejected by Judge Devittie. Nevertheless, she submitted that Dr Hoehne supported the appellant's claim that the 300 kilometre road between Mogadishu and Beledweyne passed largely through areas not controlled by the Somali government or AMISOM forces and there was a risk of Al-Shabab checkpoints at which, because she was returning from abroad, she would be at risk of being questioned by Al-Shabab fighters and ill-treatment as they tried to "defend" Somalia against western influences including spies.
17. Ms Parker relied principally on paragraph 339C of the Immigration Rules reflecting Article 15(c) of the Qualification Directive. She also relied on the Refugee Convention but made no separate submission in respect of it.
18. On behalf of the respondent, first Mr Richards submitted that the appellant could not establish a real risk of persecution contrary to the Refugee Convention or of indiscriminate violence falling within Article 15(c) in Mogadishu. He acknowledged that, if the appellant had to live in Mogadishu, then she might be able to succeed. But that, he submitted, was not her case. She had family who could come to Mogadishu, meet her and take her back to her home area Beledweyne.
19. Secondly, Mr Richards submitted that the appellant could not establish that she would be at risk if she reached Beledweyne. In relation to Dr Hoehne's report at paras 36-37, dealing with the security situation in Beledweyne, Mr Richards submitted that the incidents referred to by Dr Hoehne were, in fact, the same incidents described in three new reports which occurred on 9 December 2013. The report, Mr Richards submitted, showed that the AMISOM forces were conducting operations in the town to protect the inhabitants against Al-Shabab.
20. Thirdly, Mr Richards submitted that the appellant could not show that she would be at risk in travelling from Mogadishu to Beledweyne. She would be accompanied by her family. Mr Richards submitted that much of Dr Hoehne's reasoning in para 49 of his report that she would be at risk was based upon the false premise that she and her family had publicly spoken out against Al-Shabab which had been rejected by the Judge. Mr Richards submitted that there was insufficient evidence to show that

the appellant would be at risk en-route if accompanied by her family. Mr Richards submitted that there was no reason to believe, as Dr Hoehne hypothesised, that the appellant or her family would inform any Al-Shabab fighters, if stopped, that she was returning from abroad. There was no reason to believe that she would not be seen as part of a family returning from Mogadishu to Beledweyne.

### **The Law**

21. In order to establish that she is a refugee, the Claimant must establish that she has a well-founded fear (namely a real risk or reasonable likelihood) of persecution for a Convention reason (namely for reasons of race, religion, nationality, membership of a particular social group or political opinion).

22. In relation to humanitarian protection the Qualification Directive requires the Claimant to establish that on return there is a real risk she will suffer “serious harm”. Art 15 of the Qualification Directive, so far as relevant, defines “serious harm” as follows:

“Serious harm consists of:

....

(b) torture or inhuman or degrading treatment or punishment...; or

(c) serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of...internal armed conflict.”

23. The terms of Art 15(c) are reflected in para 339C of the Immigration Rules.

24. The CJEU set out the scope of Art 15(c) in Elgafaji v Staatssecretaris van Justitie (Case C-465/07) [2009] 1 WLR 2100 at [35]. It covers:

“harm to civilians irrespective of their identity, where the degree of indiscriminate violence characterising the armed conflict taking place assessed by the competent national authorities before which an application for subsidiary protection is made, or by the courts of a Member State to which a decision refusing such an application is referred reaches such a high level that substantial grounds are shown for believing that a civilian, returned to the relevant country or, as the case may be, to the relevant region, would, solely on account of his presence on the territory of that country or region, face a real risk of being subject to the serious threat referred in Article 15(c) of the Directive.”

25. At [39], the CJEU added this:

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

26. In the case of risk emanating from non-state actors or agents, it must also be established that the state or international organisations are unable or unwilling to provide a sufficiency of protection (see Art 6(c) and Horvath v SSHD [2001] 1 AC

489). Art 7.2 of the Qualification Directive sets out the standard of protection required as follows:

“Protection is generally provided when [the state or international organisations] take reasonable steps to prevent the persecution or suffering of serious harm, *inter alia*, by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.”

## Discussion

27. I deal first with the risk to the appellant in Mogadishu.
28. In AMM the Upper Tribunal was considering the situation in Mogadishu around the time of the withdrawal of Al-Shabab in early August 2011. Despite that withdrawal, the Upper Tribunal concluded that there was a real risk of Article 15(c) harm arising in Mogadishu at least for some, if not all, individuals.

29. At [594], the Upper Tribunal said this:

“594. There remains in general a real risk of Article 15(c) harm for the majority of those returning to [Mogadishu] after a significant period of time abroad. Such a risk does not arise in the case of a person connected with powerful actors or belonging to a category of middle class or professional persons, who can live to a reasonable standard in circumstances where the Article 15(c), which exists for the great majority of the population, does not apply. The significance of this category should not, however, be overstated and, in particular, is not automatically to be assumed to exist, merely because a person has told lies.”

30. In [594], the Upper Tribunal went on to find that the armed conflict in Mogadishu did not pose a real risk of Article 3 harm in respect of any person in Mogadishu.

31. Whilst the Upper Tribunal expressed the risk as being to “the majority of those returning to [Mogadishu] after a significant period of time abroad”, it is clear from [339] of AMM that the Upper Tribunal was concerned with those who were “living” or who had to “stay for a significant period of time” in Mogadishu. At [339] the Upper Tribunal said this:

“339. On the state of the evidence as it was in July 2011, before Al-Shabab’s withdrawal from Mogadishu, we have concluded that, for most returnees from the United Kingdom, having to live or stay for a significant period of time in Mogadishu would have exposed them to Article 15(c) risk.” (my emphasis)

32. At [350], the Upper Tribunal confirmed the position had not changed post the Al-Shabab withdrawal:

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

33. The risk, of course, refers back to the risk of those living there or who have to stay there for a significant period of time.
34. So far as Mogadishu is concerned, therefore, I do not accept Ms Parker's submission that the Upper Tribunal in AMM concluded that a person arriving in Mogadishu (for example from the UK) and who was only in Mogadishu in transit to their home area was at real risk of harm falling within Article 15(c). That is abundantly clear from [339]. Although that is not specifically referred to in [594] and the relevant paragraph in the head note, those paragraphs have to be seen in the light of [339] and the wording of [594] itself which contemplates exceptions to the risk to the "majority" of returnees where, for example, a person has a connection with powerful actors or belongs to a category of persons who can live to a reasonable standard in circumstances when the Article 15(c) risk does not apply.
35. At [371] the Upper Tribunal in AMM also concluded that it was "unlikely that a proposed return to Mogadishu at the present time will raise Refugee Convention issues."
36. The crucial issue is, therefore, whether the report of Dr Hoehne - which was the only additional evidence post-AMM to which I was referred, provides an evidential basis for identifying a real risk to a transient individual such as the appellant not recognised in AMM whether of harm falling within Article 15(c) as a result of indiscriminate violence or, as I understood Ms Parker's submissions, targeted violence whether from government soldiers or as a "lone female"?
37. Dr Hoehne deals at some length with the situation in Mogadishu at paras 11-35 and 50-52 of his report.
38. At para 11, Dr Hoehne deals with the situation in Mogadishu since the withdrawal of Al-Shabab in August 2011 as follows:
- "11. While the situation in Mogadishu was volatile for much of the past two decades, of course with changes in the extent to instability and intensity of violence, there was a sharp decline in security related incidents between end of 2012 and early 2013, and an equally sharp rise of these incidents again in the first half of 2013. Only the intensity of 'conventional' armed clashes inside Mogadishu between Al Shabaab and its enemy forces durably declined since May 2012. This shows of course that indeed, Al Shabaab had lost ground in the city since it had withdrawn in August 2011. However, the fact that hand-grenade attacks, attacks with Improvised Explosive Devices (IEDs) and assassinations/assassination attempts are on the increase again since April or May 2013 (see table 1 below) shows that Al Shabaab retained a clandestine presence in Mogadishu and actually reorganised its operations in the city."
39. At paras 12-15, Dr Hoehne cited an example of an attack on AMISOM forces and Somali government forces which also resulted in civilian casualties:
- "12. Somali news reports from December 2012 and January 2013 show that government and army officials in Mogadishu were the main targets of assassinations and bomb attacks and occasionally shoot outs. But since

around May 2013 many civilians are again falling victim to Al Shabaab attacks. Particularly damaging in this regard were larger scale (suicide) bombings that are on the increase in Mogadishu over the past months (For references, see below, paragraphs 13-25).

13. In this report on the situation in Somalia dated 31 May 2013, the Secretary General found in paragraphs 11 and 12:
  11. The security situation remained fragile during the reporting period. Despite some improvements in Mogadishu, Al-Shabaab continued to launch asymmetrical attacks on soft targets using terrorist tactics that often resulted in civilian casualties. Targeted killings and attacks were routinely reported. The number of incidents involving improvised explosive devices rose in 2013 in comparison with 2012. On 24 January, for example, a device hit a convoy carrying two United Nations personnel, who were unharmed. Incidents such as the suicide bombings targeting Prime Minister Shirdon in Villa Somalia on 29 January and the head of the National Security Intelligence Agency for Banadir, which killed 10 people on 18 March, showed Al-Shabaab's continued intent and capability to attack government and soft targets.
  12. On 14 April, more than 30 people died in a complex attack perpetrated by Al-Shabaab on a regional court house. The attack, which involved multiple gunmen and bombs, was the deadliest to date in Mogadishu in 2013. On the same day, a vehicle likely to be that of a suicide bomber hit a Turkish aid agency convoy. On 25 April, a Deputy State Attorney was murdered in Mogadishu, while, on 5 May, a suicide vehicle that targeted a Qatari delegation travelling in a ministerial convoy killed over 10 people.
14. On 19 June 2013, armed men including suicide bombers reportedly belonging to Al Shabaab attacked the UNDP compound in Mogadishu. At least 14 people were killed in the attack. The intensification of Al Shabaab attacks from June onward led to many civilian casualties in Mogadishu in recent months. The UN Secretary General confirmed in his report on the situation in Somalia, dated 3 September 2013, in paragraph 12:

Security remained extremely volatile. The reporting period saw a direct attack by Al-Shabaab on the United Nations in Mogadishu, and a surge of asymmetric attacks during the month of Ramadan (9 July to 7 August). This followed reports of upheaval in the leadership of Al-Shabaab. Meanwhile, international forces undertook some reconfiguration: Ethiopian forces withdrew from Baidoa on 15 July, handing over security responsibilities to AMISOM and the Somali security forces. AMISOM deployed additional forces to Kismaayo, but continue to emphasize that it lacks the capacity to support new military advances.

In paragraph 14 of the same report the UN Secretary General added:

There was a surge in violent attacks in the capital. In May and June, hand grenade attacks in Mogadishu doubled compared to the start

of the year. There were three times as many bombings in June as in January. Targeted killings occurred almost daily. There were at least four mortar attacks, including two against Villa Somalia on 20 May and 17 June. On 12 July, an improvised explosive device attack against an AMISOM convoy on the airport road in Mogadishu resulted in more than 17 civilian casualties. On 27 July, a complex attack by Al-Shabaab against a facility adjacent to the Turkish Embassy resulted in the death of one Turkish security officer and one civilian, and injured at least eight others.

15. Insecurity in Mogadishu continued on a high level. Anyone playing a (even only subordinate) official role was a potential target for Al Shabaab still holding sway over around six of the sixteen districts of Mogadishu. In November 2013 alone, a good number of government employees such as soldiers, commanders and judges were assassinated in Mogadishu. The UN Secretary General reported in the paragraphs 10 and 11 of his most recent report on Somalia dated 2 December 2013:

10. The security situation in Mogadishu remained relatively unstable during the reporting period. The African Union Mission in Somalia (AMISOM) and the Somali national security forces continued to thwart Al-Shabaab attacks almost daily in and outside Mogadishu. In a significant incident on 3 September, Al-Shabaab claimed responsibility for an attack on a convoy of the Federal Government that was carrying security personnel in connection with the visit by the President of Somalia to the southern port city of Marka.

11. On 4 September, a string of coordinated explosions occurred in all districts of Mogadishu and, on 7 September, a suicide bombing attack against a popular restaurant near Villa Somalia killed 15 people and injured more than 20 others. Small-scale attacks and targeted assassinations also continued. On 8 November, two bombs exploded at the Maka Al Mukaramma Hotel in Mogadishu, killing at least four people and wounding more than a dozen, including a member of parliament. Al Shabaab claimed responsibility for the attack."

40. At paragraph 17 Dr Hoehne concluded that:

"Against this background, it becomes clear the Al Shabaab at present (early December 2013) has a considerable capacity to operate in Mogadishu and since as late as June 2013, the attacks of the group on government and military officials, but also on civilians who fall victim to suicide and other bomb attacks, are on the increase."

41. At para 21, under the heading "Civilian costs", Dr Hoehne said this:

"21. Scores of civilians have been killed between September 2012 and January 2013 by gunmen, through indiscriminate use of force by armed groups, or in bomb attacks. The dramatic situation of civilians in Mogadishu has been reported by Midnimo.com, a Somali website, which reported on 23 September 2012 that 'Mogadishu's security situation has deteriorated and more than 30 people were killed in the capital in the last three days only. Al Shabaab continued assassinations and terror attacks in Mogadishu and other places in south-central Somalia."

42. At paragraph 23, Dr Heohne referred to a report of a joint fact-finding mission by the Danish Immigration Service conducted from 16 April to 7 May 2013 that:

“The improvement of the general security situation was reported since Al Shabaab left the city. However, threats emanating from improvised explosives and assassinations still exist and cause fear among people in Mogadishu. Many also still are afraid to talk about Al Shabaab and stressed that the organisation still has a sizable but clandestine presence in Mogadishu.”

43. At paras 27-29, Dr Heohne cited a number of background documents concerning “sexual violence” as follows:

- “27. In paragraph 53 of his most recent report on the situation in Somalia dated 2 December 2013, the UN Secretary General found: “Government efforts and capacity to end violence against women and girls remain extremely limited. Documented cases of rape continued to be widespread throughout the country.” Amnesty International stressed in a report published in August 2013:

Rape and other forms of sexual violence have long been part of the multitude of human rights abuses committed by different actors in Somalia, during more than two decades of conflict. [...] Women and children remain at risk of sexual violence and in this context of lawlessness the avenues for them to get justice are extremely limited.

A central issue with sexual and gender based violence, which makes it easy for perpetrators to hide their claim, is the stigmatisation involved with rape. Fortuun Adan, a Somali human rights activist who is co-founder of ‘Sister Somalia’, a Mogadishu-based organisation protecting women’s rights, stressed: “A lot of people know what is going on but they are denying. [...] Even the family, they deny if their girl gets raped because they don’t want her to be stigmatized and shamed and that makes it hard.”

28. The sexual violence is perpetrated by various groups including those supposed to protect Somali civilians, such as Somali government forces and even AMISOM forces. Human Rights Watch summarised in a statement in November 2013:

AMISOM forces have previously faced allegations of sexual violence in Somalia. The UN Security Council in a March 2013 resolution called on AMISOM to take measures to prevent sexual abuse and exploitation and address allegations of abuse. In July, the Security Council Monitoring Group on Somalia and Eritrea reported that allegations of sexual exploitation and abuse are regularly levelled against AMISOM but that the mission lacks procedures to address these allegations systematically.

Amnesty International reported in August 2013:

There have also been allegations of rape against members of the peacekeeping Africa Union Mission in Somalia (AMISOM). On 8 August 2013 a woman was reportedly abducted in Mogadishu by four people in government uniforms and taken to AMISOM barracks where she alleges she was drugged and raped on multiple occasions. She was released two days later. There are allegations

that there were other women in the barracks who were subjected to similar brutal treatment.

29. This is an ongoing issue. In paragraph 54 of his most recent report on Somalia dated 2 December 2013, the UN Secretary General confirmed that

UNSOM continued to follow up on the case of alleged gang rape of a 19-year old woman by AMISOM soldiers at Maslah Camp in Mogadishu. Serious concerns have been raised about the way in which investigations were conducted and it has been reported that attempts have been made to intimidate people connected to the case.”

44. At paragraph 34, Dr Heohne reached the following conclusion:

“34. Regarding the general insecurity in Mogadishu, in my view an important turn can be observed. Between the second half of 2012 and early 2013, the security situation in Mogadishu started to improve. This was related mainly to the continued weakening of Al Shabaab and the enthusiasm of many Somalis for the new government under President Hassan Sheikh Mahmoud. But Al Shabaab reorganised itself in the first half of 2013, while the government was not able to intensify its control over much of southern and central Somalia substantially. Al Shabaab turned into a smaller, internally more coherent and therefore more potent group that specialised on operating clandestinely in Mogadishu and elsewhere. The West-Gate attacks in Nairobi in September 2013 showed its new face even internationally. Also in Mogadishu and parts of southern Somalia the group stepped up its operations from late June 2013 onward. This trend is continuing, as outlined in the paragraphs above.”

45. At paragraph 35, Dr Heohne dealt with Article 15(c) and the decision in AMM as follows:

“35. Against this background, it is in my view probable that an Article 15(c) risk exists, as described by the tribunal in the case of AMM & Others (Somalia) v SSHD [UKUT (IAC) 445, 2011] (22 November 2011) ‘as a general matter, in respect of the majority of those in Mogadishu’ and those returning from the diaspora without special arrangements and protection in place. Article 15(c) is, according to Paragraph 328 of the Tribunal’s decision in the case of AMM, concerned ‘with “threat [...] to a civilian’s life or person” rather to specific acts of violence [...] the threat is inherent in a general situation of armed conflict. [...] The violence that gives rise to the threat is described as indiscriminate’. In my view, this assessment in the case of AMM & Ors is still - or better: again - valid regarding the situation in Mogadishu in January 2014. “

46. At para 50, Dr Heohne dealing partly with the risk, if any, to the appellant in Mogadishu but also the risk, if any, to her having left Mogadishu concluded that:

“50. {The appellant}... runs a specific and high risk to her life upon return to Somalia”

47. Dr Heohne then set out three reasons as follows:

“...**First**, as a young woman of about 25 years, she is highly vulnerable to sexual abuse. Rape and sexual slavery are still widely spread in Somalia and women; particularly women belonging to minority groups or IDPs (Internally Displaced Persons) fall frequently victim to these kinds of abuse and violence and have little to no chance to address such matters with clan or state authorities (see paragraphs 26 to 28 above). **Second**, [the appellant] and her family have, according to her own account, spoken out against Al Shabaab on the occasion of the killing of her brother. I agree with the statements of [the appellant] that Al Shabaab continue to operate clandestinely and one often does not realise who among the ‘civilians’ in one area, e.g. Beledweyne or parts of Mogadishu, is a hidden Al Shabaab member or supporter. The ‘hidden members’ of Al Shabaab in fact spy for the organisation and seek out dissenters. Therefore, upon return to Somalia, [the appellant] runs a serious risk of being identified as someone who spoke out against Al Shabaab. This would certainly lead to persecution by Al Shabaab. In Mogadishu this risk is lower since [the appellant] originates from Beledweyne and there the conflict between her family and Al Shabaab happened. Still, Al Shabaab members are mobile and it cannot be excluded that by chance [the appellant] runs into a (secret) member of Al Shabaab who knows her and her family also in Mogadishu. **Third**, as someone returning from the diaspora, particularly from the ‘West’ (i.e., UK), [the appellant] is very likely to arise suspicion by locals, including local Al Shabaab members and supporters. The head of a Mogadishu-based research institution, whom I asked for his assessment of the security situation in Mogadishu, with particular focus on the situation of a returnee to the city from abroad (without privileged access to security, like government officials or well-established businessmen), wrote me in a mail dated 2, November 2013:

[...]I can tell you that the notion that security has improved for ordinary Somalis that European countries can now deport to Somalia is deeply worrying. Even if they’re Hawiye, the nature of the threats they face are not clan warfare and can’t be protected by other clans; people face serious threats from al-Shabaab. And individuals returned from the diaspora are particularly in jeopardy as they become target both for al-Shabaab and Somali security forces who suspect that they might be rejected from Europe due to their extremist views. In short, this is no country for returned diaspora. The threats are grave and the price people pay could be ultimate. Even if people have and can afford bodyguards, like me, my colleagues and I face great dangers because of the work we are doing.”

48. At para 51 Dr Heohne set out a news report in which it is reported that an Al-Shabab commander had warned diaspora Somalis in late December 2013 that they would be targeted specifically for “bringing indecency” to Somalia. The news report is in the following terms:

**“30/12/2013 Al-Shabab threaten to target Somali diaspora, accuse them of indecency**

Text of report by privately-owned Somali news website Alldhacdo

Al-Shabab Commander for Banaadir Region, Ali Muhammad Husayn, has said they will be targeting Somali diaspora returning from abroad with attacks.

The Al-Shabab commander said Somalis from diaspora have brought indecency into the country and are even working with the unbelievers and they would therefore target them as they target government forces and AMISOM [African Union's Mission in Somalia]. He also urged Mogadishu residents to stay away from areas populated by Somalis from diaspora as well as government and AMISOM troops.

Ali Husayn urged Mogadishu residents to stay away from 'enemies' as they would target them.

Source: Alldhacdo in Somali 0000gmt 30 Dec 13."

49. For the present, I am concerned with this latter material in relation to the risk, if any, to the appellant in Mogadishu rather than her journey to Beledweyne.
50. Whilst Dr Heohne's report recognises that the security situation in Mogadishu improved in the second half of 2012 and early 2013. However, since that time there has been a further deterioration in the security situation. The main targets of Al-Shabab have been government forces or AMISOM forces rather than civilians directly although, as a result of the terrorist attacks by Al-Shabab there have been civilian casualties. This led Dr Heohne in paragraph 35 of his report to conclude that the risk recognised in AMM continued in January 2014. The evidence, and Dr Heohne's report read as whole, does not however, in my judgement, establish that any risk existed beyond that recognised by the Upper Tribunal in AMM. That risk was to the majority of the population of Mogadishu who lived in Mogadishu or spent a significant period of time there. That, as I have already indicated, is not the appellant's situation. The appellant, on the findings of the Judge which stand, has male family members living in Beledweyne including a brother and uncles. There is no reason why they cannot come to Mogadishu to accompany her back to Beledweyne. The appellant does not have to live or spend a significant period of time in Mogadishu.
51. Consequently, on the basis of AMM and the report of Dr Heohne, I am not satisfied that there is a real risk falling within Article 15(c) to her by transiting from Mogadishu airport, if necessary through Mogadishu, to return to her home area.
52. The Upper Tribunal in AMM did not consider that there was any real risk of persecution engaging the Refugee Convention (apart from FGM) in Mogadishu. Whilst I accept that there is evidence of some sexual violence directed against women and girls in Mogadishu, despite the report set out in paragraphs 27-29 of Dr Heohne's report, that evidence does not establish a real risk to this appellant accompanied by her male family members at the beginning of her journey to her home area.
53. I do not accept Ms Parker's submission, based upon paragraph 50 of Dr Heohne's report, that the appellant would be at real risk as a returned member of the Somali diaspora in Mogadishu. Mogadishu is no longer controlled by Al-Shabab and there

is, in my judgement, no real risk that she would be apprehended to be and, therefore identified as, such a person simply passing through the City. The basis of the risk set out in paras 50-51 of Dr Heohne's report is clearly premised upon the appellant living in Mogadishu where he states that:

"As someone returning from the diaspora, particularly from the 'West' (i.e., UK), [the appellant] is very likely to arise (sic) suspicion by locals, including local Al-Shabaab members and supporters."

54. The real risk of harm is to residents not transient individuals.
55. For these reasons, I reject Ms Parker's submissions that the appellant has established a real risk of serious harm falling within Article 15(c) or of persecution for a Convention reason in Mogadishu.
56. I now turn to the second basis upon which the appellant puts her case, namely that she is at risk en-route to her home area of Beledweyne. Dr Heohne deals with this in paras 48-49 of his report as follows:

"48. The distance between Mogadishu and Beledweyne is around 300 kilometers. There is one road leading there. There are no commercial flights operating between Mogadishu and Beledweyne. The road from the capital to Beledweyne leads largely through areas which are not controlled by the Somali government or AMISOM or Ethiopian forces. As indicated in the paragraphs 38 to 41 above, the control the government exerts in southern and central Somalia is extremely limited, and also AMISOM and Ethiopian troops focus on strategic spots and do not control much of the hinterland. In September 2013, the Council of Foreign Relations wrote about Al Shabaab:

Despite strategic setbacks inflicted by AMISOM forces over the past several years, al-Shabab remains in control of most of southern and central Somalia. The group's military strength is approximately 5,000 fighters, as it has "preserved the core of its fighting force," according to the July UN report. Analysts say the group's resilience is likely the result of significant support from local clans and the perception among elders that it remains a plausible alternative to corrupt institutions in Mogadishu.

This situation has not changed dramatically in early 2014. Al Shabaab has still many positions in rural southern and central Somalia, is in a position to erect road blocks and, as outlined above (paragraph 37) operates in and around Beledweyne.

49. On her way from Mogadishu to Beledweyne, [the appellant] is very likely to encounter Al Shabaab who control roadblocks in the hinterland and operate hold positions around Beledweyne. Upon encountering Al Shabaab, [the appellant] will face a very high risk of being questioned as someone who returned from abroad (the UK), if anyone around her (e.g., in the care in which she is travelling) would have heard about her stay abroad. Somalis from abroad, particularly the West, arise the suspicion of Al Shabaab fighters who try to 'defend' Somalia against any Western influence and try to seek out spies of the enemy (including western counter-terrorism forces). Moreover, the closer [the appellant] would come to Beledweyne, the higher the risk would be that she is being controlled by an Al Shabaab member who

knows her from her time in Beledweyne, when in 2012 she and her family publicly spoke out against the group after the brother of [the appellant] had been killed. If she would be identified by a local Al Shabaab member or supporter, she almost certainly would be severely punished, possibly even executed, by Al Shabaab forces in the vicinity of Beledweyne.”

57. Ms Parker accepted that the second half of paragraph 49 could not assist the appellant as it was based upon a risk deriving from the fact that her family had spoken out against Al-Shabab and her brother had been killed. She accepted that that was contrary to Judge Devittie’s findings which were preserved. Nevertheless, Ms Parker submitted that Dr Heohne’s reasoning in paras 48 and the first half of para 49 supported the appellant’s claim.

58. In AMM, the Upper Tribunal dealt with the risk to a person having to traverse an Al-Shabab area. At [462] the Upper Tribunal said this:

“...the appellants drew particular attention to the evidence regarding Al-Shabab’s generally paranoid behaviour and, in particular, its apparent fear of spies. There is sufficient of this evidence, often of a harrowing nature, to support the appellants’ contention that one of the ways in which a person may most seriously fall foul of Al-Shabab is by being suspected of being a spy, whether for TFG/AMISOM, the Ethiopians, the USA or other western interests.”

59. At [464] the Upper Tribunal continued:

“...given the fact of Al-Shabab’s paranoia, its violently anti-Western stance and its (perhaps justified) feeling of insecurity in recent times, as funding has become more difficult and military reverses more common (including what appears to have been a forced withdrawal from positions in Mogadishu), we do not consider that it is engaging in speculation to conclude that the fact of having come from the United Kingdom is, as a general matter, likely to elevate the risk to a person of being branded a spy, which carries the very real risk of serious ill-treatment or death. The only exception we would make is where the returnee is seeking out Al-Shabab in order to join its ranks as a fighter for international jihad.”

60. However, at [466] the Upper Tribunal limited the scope of this risk:

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

61. At [473] the Upper Tribunal dealt with the situation of those who have to pass through Al-Shabab areas:

“We consider that the general findings we have just made encompass those who are reasonably likely to have to pass through Al-Shabab areas. Although the evidence regarding behaviour at checkpoints was mixed, and we accept that in some areas,

such as the Afgoye Corridor, there has been (at least until very recently) considerable traffic to and from the Al-Shabab-controlled area, the unpredictability of Al-Shabab behaviour, the extremely grave and immediate likely consequences of being categorised as a spy and the assumption that one of the functions of checkpoints is to serve what Al-Shabab regards as its security concerns, point clearly towards including travellers within the general finding, just as the ECtHR did at [277] of Sufi & Elmi.”

62. At [516] the Upper Tribunal added this:

“So far as Al-Shabab is concerned, as is already evident from our findings, a distinction needs to be drawn between people passing through the checkpoints, who are long-term residents of Somalia, and those who have been living in the West for any significant period of time.”

63. At [517]-[518] the Upper Tribunal noted the risk to travellers, particularly women even if accompanied by, for example, a male driver as follows:

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

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

64. I accept on the basis of Dr Heohne’s report, which was not challenged on this issue, that the appellant would have to pass through Al-Shabab controlled areas or, at least, areas not under the control of the Somali government or AMISOM forces and is likely to encounter Al-Shabab checkpoints along the 300 kilometre road.

65. I do not, however, accept on the basis of AMM that the appellant is at risk. First, she will only have been away from Somalia since December 2012. She does not fall into the category in AMM of a person who has been away from Somalia for a significant period such that she will readily identify herself to Al-Shabab as a member of the Somali diaspora (see [466]). Dr Hoehne’s assessment of the risk to the appellant is, in part, based upon someone with her ‘giving away’ she has been to the UK. I accept Mr Richards’ submission that there is no reason for her or her family members (who can come to Mogadishu to accompany her home) to disclose this information. No specific feature of the appellant now was identified to me or in Dr Hoehne’s report to suggest that she would be self-evidently anyone other than a returning resident of Beledweyne who, of course, on Judge Devittie’s findings, had no previous problems with Al-Shabab. The latter judicial finding removes much of the substance of the remainder of Dr Hoehne’s reasoning why she would be at risk. Consequently, I do not accept that in one of these encounters there is a real risk that the appellant would be identified as someone who had returned from the “West”.

66. Secondly, the risk to 'lone women' of sexual violence recognised in AMM does not apply. She will have family members to accompany her. Clan violence is now less important and, despite her family being from a minority clan, she cannot, in my judgment, be considered to be a 'loan woman' without protection. This is not a case, as postulated by the Upper Tribunal in AMM, of a 'lone woman' who would not be able to seek the protection of unconnected men, for example driving the bus on which she was travelling. I am not satisfied that there is a real risk of sexual violence to the appellant en route to her home area.
67. Taking into account all the evidence, I am not satisfied that there is a real risk of serious harm or persecution to the appellant during her journey to Beledweyne entitling the appellant to refugee status or humanitarian protection.
68. Judge Devittie's findings were that the appellant had not established a risk of persecution for a Convention reason in her home area of Beledweyne and she would be provided with a sufficiency of protection there. Ms Parker did not seek to argue that she would be otherwise at risk in Beledweyne. For the avoidance of doubt, I accept Mr Richards' submission that Dr Hoehne's report at paras 36-37 repeats an incident that occurred in Beledweyne and does show a continued presence by AMISOM forces to provide a reasonable level of protection to the inhabitants of Beledweyne. I am not satisfied that the appellant would be exposed to a real risk of harm in her home area. And, like Judge Devittie whose finding stands unchallenged, there would in any event be a sufficiency of protection.
69. The reality is that, as Mr Richards accepted in his submissions, the appellant cannot be expected to live in Mogadishu because of the Article 15(c) risk to residents in general. She is, therefore, required to return to her home area. For the reasons I have given, however, I am not satisfied that there is a real risk of serious harm or persecution to the appellant travelling to her home area. No separate argument was made that the appellant could succeed under Art 3 of the ECHR on any basis.
70. For these reasons, the appeal is dismissed.

### Decision

71. The decision of the First-tier Tribunal to dismiss the appellant's appeal involved the making of an error of law. That decision is set aside.
72. I remake the decision dismissing the appellant's appeal on asylum and humanitarian protection grounds and, to the extent relied upon, Art 3 of the ECHR.

Signed



A Grubb  
Judge of the Upper Tribunal  
28 February 2014