



Hungarian Helsinki Committee

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FAMILY REUNIFICATION OF SOMALI REFUGEES – GOOD PRACTICES OF SEVERAL EU MEMBER STATES

In recent years, Somali refugees and beneficiaries of subsidiary protection (*"oltalmazott"*) who have been granted protection in Hungary have faced insurmountable difficulties when trying to be reunited with their family members in Hungary. While Hungarian legislation in force provides for the right to family reunification, Somalis – citizens of a "failed state" – are *de facto* excluded from this possibility.

This policy paper gives an overview of how some EU member states overcome the practical problems related to Somali travel documents, which seemingly in Hungary constitute an absolute obstacle to family reunification.

1. INTRODUCTION

Somalia has not had a functioning government and state administration since 1991, and large parts of its territory are not controlled by any central government or power. Somali citizens have therefore been unable to obtain reliable official documents such as identity cards, passports or other certificates for the past 18 years.

This situation results in grave difficulties regarding the family reunification of Somali refugees in Europe. The right to family life is a core human right embedded in international law, the family reunification of refugees is ensured under certain conditions by the EU Directive no. 2003/86/EC on the right to family reunification (Family Reunification Directive). Hungarian law also provides for this possibility (see Section 19 of Act II of 2007 on the admission and right of residence of third-country nationals in Hungary).

Bearing a valid travel document is usually a condition for family reunification. Hungary, similarly to the vast majority of EU member states, does not accept Somali travel documents as valid, based on security concerns (i.e. Somalia, as a "failed state", is not able to ensure an acceptable quality of these documents and is not able to guarantee the veracity of the personal data included therein).

The Hungarian Helsinki Committee (HHC) believes that these practical difficulties shall not impede Somali refugees and beneficiaries of subsidiary protection from exercising their right to family life. In order to propose an appropriate solution to this problem, the HHC gathered information from its partner organisations on the relevant practices of other EU member states with a significant amount of Somali asylum-seekers in recent years.

2. BACKGROUND INFORMATION – IDENTITY DOCUMENTS IN SOMALIA

The information in this section is obtained from the Norwegian Landinfo (Country of Origin Information Centre) report on "Documents in Somalia and Sudan"¹ and from the Immigration and Refugee Board of Canada report "Somalia: Information on the types of identity documents which have been issued in Mogadishu within the past two years, including the authority responsible for their issuance, and any significant physical and security features; availability of fraudulent documents."²

¹ http://www.landinfo.no/asset/769/1/769_1.pdf, 5 January 2009, [accessed 22 December 2009].

² Immigration and Refugee Board of Canada, *Somalia: Information on the types of identity documents which have been issued in Mogadishu within the past two years, including the authority responsible for their issuance, and any significant physical and security features; availability of fraudulent documents*, 16 April 2008, SOM102797.E, available at: <http://www.unhcr.org/refworld/docid/49b92b245.html> [accessed 22 December 2009].



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2.1 Population data and census

Somalia had its last census in 1975. All archives and public offices were plundered or destroyed during the civil war, leaving Somalia with no remaining registers, copies or originals which can be used for comparing or referencing documents and certificates. Currently, no national or local authority administers or possesses population data.

2.2 Birth registration and birth certificates

Although no Somali authority registers births or issues official birth certificates, certain certificates are issued to babies born in hospitals. There is currently little or no possibility of verifying such documents. In order to obtain a birth certificate, the family would have to approach the municipal administration, which then would create a family file and allocate a family number. The applicant would have to bring two witnesses from his/her clan or sub-clan, with good knowledge of the applicant.

2.3 Marriage and divorce

The centrally administered system of religious marriages ceased to exist in 1991. However, since 1991 local Sharia courts have to a certain extent retained some form of oversight and control over the persons authorised to perform marriages. Marriage certificates have also been issued by Sharia courts in Mogadishu and other towns after 1991.

Civil marriage has never existed in Somalia.

2.4 Identity cards

Identity cards are not issued currently in Somalia. Prior to 1991, identity cards were issued in all towns and districts. An ID card was required in order to obtain a passport, be enrolled to education, open a bank account etc. To obtain an ID card, the applicant had to submit a birth certificate. The ID cards contained both a family number and a registration number.

2.5 Passports

Since the collapse of the central government in 1991, very few countries have accepted the Somali passport as a valid travel document. There are reports that Somali embassies, during and after the 1990s, issued (sold) passports to Somalis residing abroad. Somali foreign services operated outside the control or command of central authorities, and have had no opportunity to verify documents presented to them (as proof of a person's identity). The Federal Transitional Government (TFG), appointed in the autumn of 2004, has not yet established any state institutions mandated to issue or register official documents. However, the authorities started issuing new passports via the Emirate of Sharjah (United Arab Emirates) on 1 April 2007. Consequently, all documents and certificates issued by various private agencies rely on information provided by the individual concerned (with witnesses when appropriate) or relatives. According to media reports, the Somali transitional authorities approved the introduction of new electronic passports in 2007. The new passport, according to Afro1News, contains an electronic chip and biometric technology in order to prevent abuses. The passport will be issued via the Emirate of Sharjah to Somalis living in the United Arab Emirates. Media reports allege that Kenyan and Ethiopian authorities, as well as the authorities in the Emirates, approved the new Somali passport as a valid travel document. The passports have not been approved by date by Schengen countries, Canadian or US authorities. Lack of approval by the above authorities is not caused by a sub-standard quality of the passport itself, but rather because there are no national authorities with notoriety to issue such documents. Introducing new passports will not change this situation.



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3. EU MEMBER STATES' PRACTICE

3.1 Sweden

Swedish authorities do not accept Somali passports issued after 1990. The Somalis who are granted a residence permit based on their family ties to somebody living in Sweden are provided with a **temporary alien's passport** valid for 6 months and valid for one trip to Sweden only.³ After arriving in Sweden they have to apply for a regular alien's passport.

The following table shows how many Somali citizens were granted a residence permit based on family ties.⁴

2005	771
2006	1658
2007	3293
2008	3548

Source: Lena Rösell, The Social Mission, Sweden

3.2 The Netherlands

Dutch authorities do not accept Somali travel documents. According to the legislation, when special circumstances apply and the foreigner is not entitled to a travel document (refugee or alien's passport), but she/he is entitled to reside temporarily on the territory of the Netherlands, she/he can obtain a ***laissez-passer* or a travel document for aliens**. The Minister of Foreign Affairs is entitled to authorise the issuance of such a document.

In practice, family members shall apply for a long-term visa at the Dutch embassy⁵ for example in Nairobi, or the refugee living in the Netherlands shall first ask the Secretary of State for "advice". The advantage of the latter is that if the result is positive, it will accelerate the issuance of the long-term visa for the family members once they submit their claim at the embassy, since by that time the competent Dutch authority has already evaluated the case. The disadvantage is that the person cannot make an appeal against a negative advice. Once the family members lodge their claim for a long-term visa, the Dutch embassy forwards the application to the Immigration and Naturalisation Service in the Netherlands. If the outcome is positive, the family members are granted a *laissez-passer* document and a long-term visa stamped in it. This procedure usually takes up to 3 months.

The following table shows the number of family reunifications of Somali citizens in the Netherlands in 2005-2007.⁶

2005	153
2006	227
2007	656

Source: Martine Vriens, VluchtelingenWerk Nederland, Landelijk Bureau, Kenniscentrum, afdeling Integratie

3.3 France

French authorities **accept Somali passports that were issued before 1991 and after 2007**. However, since France is apparently the only among the examined EU member states that accepts Somali passports issued after 2007, it cannot issue a Schengen visa to Somali applicants. They receive therefore a **special visa called**

³ <http://www.migrationsverket.se/english/easy/eframpass.html>

⁴ <http://www.migrationsverket.se/pdf/filer/statistik/tabe4.pdf>

⁵ The general rule is that such a *laissez-passer* cannot be issued in the country of origin.

⁶ Central office of statistics (CBS)



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VTL (*visa à territoire limité*). With such a visa they need to access French territory directly, without passing through another EU country.⁷

Somali applicants for family reunification possessing a passport issued between January 1991 and December 2006 have to apply either for a *laissez-passer* or have to hold a refugee travel document. The legal basis regulating the issue of the *laissez-passer* documents is the Decree No. 2004-1543 of 30 December 2004, concerning the attributions of the Heads of Consulates in the matter of travel documents. Section 8 states that a consul is entitled to deliver a *laissez-passer* to a foreigner who cannot obtain a travel document from the authorities of his country of origin or the local authorities, following the verification of the person's identity and her/his entitlement to the travel document in question. The spouse and the children of refugees are cited among the persons falling under the scope of this provision. Since 1993, France does not have a diplomatic representation in Somalia and the persons that apply for visa to enter France need to apply at the French embassy in Nairobi. The *laissez-passer* is valid only for one journey.

Eventual difficulties Somalis may experience during the family reunification procedure are in most cases due to irregularities related to birth or marriage certificates (and thus the difficulty of proving one's identity).

The use of a Red Cross family reunification travel document has not been reported so far.

Source: Erci Metra, France Terre d'Asile

3.4 United Kingdom

The UK does not accept Somali passports as valid. When agreeing to admit Somalis for family reunion the British diplomatic posts (most usually Ethiopia or Kenya) issue their visas on **EU Uniform Format Forms** (based on Council Regulation (EC) No 333/2002 of 18 February 2002 on a uniform format for forms for affixing the visa issued by Member States to persons holding travel documents not recognised by the Member State drawing up the form).

Entry Clearance Officers (ECOs) may issue an EU Uniform Format Form to a person who holds a travel document on which a visa cannot be placed because it is not recognised as a valid travel document by the UK. It is important to ensure that EU Uniform Format Forms are issued in conjunction with a travel document. This form is only accepted for the purpose of establishing identity, not nationality, and therefore ECOs may only issue an EU Uniform Format Form without a travel document after referral to ECO Support for authority. ECOs should not issue one unless they intend to endorse a visa on it. As the form is personal to the holder, ECOs must issue a separate form and vignette for each person travelling. Only one visa may be attached to an EU Uniform Format Form. An EU Uniform Format Form is not a statutory declaration in the true sense and may be witnessed by an officer responsible for signing entry clearances. There is no fee for the EU Uniform Format Form. The standard fees are payable for entry clearance as required (except in categories where the fee is not payable).

The **Red Cross *laissez-passer*** document may be considered acceptable for travel to the UK. The International Red Cross authorities issue a Travel Document in the form of a continuous sheet of eight pages printed in seven languages. It is usually valid for one year and is only exceptionally renewable for six months. The sole purpose of

⁷ This practice is regulated by an internal act of the Minister of Foreigner affairs, which is not made public. The HHC obtained this information from the French embassy in Nairobi.



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this document is to facilitate the journey of a stateless person to a country which has agreed to accept him. When she/he arrives in that country the document becomes invalid. Visas should not be endorsed on travel documents issued by the International Committee of the Red Cross. When authorised, visas for holders of these documents should be endorsed on Declarations of Identity.

Source: Paul Morris, lawyer

3.5 Italy

Italy does not accept Somali passports as valid. Somali applicants for family reunification can turn to Italian consular representation in Kenya, and the latter can issue **a *laissez-passer* specifically for the purpose of family reunification**.

In case of absence of the documents that would prove the identity or family ties, Section 29bis Para. 2 of law decree 286/1998 ("*testo unico immigrazione*") concerning the family reunification of refugees provides that "when a refugee cannot produce official documents to prove her/his family ties, because of her/his status, or because of the lack of recognised authorities or because of the presumed unreliability of the documents released by local authorities, (...) the diplomatic or consular representatives will issue the certificates (...) after the examination that they consider necessary, the person interested bearing the costs."

It is also possible to use other means to prove the existence of the family links such as documents issued by international organisations that are considered appropriate by the Ministry of Foreign Affairs. The denial of the request cannot be based only on the absence of documentary evidence. Usually, Documents issued by the UNHCR or other international organisations operating in the area are accepted.

Source: Maria Cristina Romano, lawyer, National coordinator for the European Legal Network on Asylum (ELENA)

3.6 Germany

Germany does not recognise Somali passports issued or renewed after 31 January 1991. In case the applicant does possess a valid travel document not recognised by the Federal Republic of Germany but fulfils the conditions for obtaining a visa, the Federal Interior Ministry can exempt her/him from this obligation. The procedure is based on Article 3 II of the German residence law and follows a regulation laid down by the Federal Interior Ministry in coordination with the Federal Ministry of Foreign Affairs. After a thorough verification the Interior Ministry can issue an **official notification** stating that the individual holder of this notification can enter Germany without a valid and recognised passport. This notification, together with the visa, is handed out to the applicant by the responsible German consulate, where the applicant submitted her/his visa application, in accordance with council regulation (EC) 333/2002 on the base of the prescribed uniform format form. Generally the visa is only valid for Germany.

Germany does not recognise the Red Cross family reunification travel document.

Somali applicants for family reunification are generally advised to obtain a Somali national passport or an alien's passport issued by the country they are residing in (usually Kenya or Ethiopia). Furthermore, they are advised to contact the UNHCR office and register as refugees. The UNHCR then may issue a refugee ID card following an interview. With this document, combined with a DNA test the family reunification should be granted according to the general practice.

Source: K. A. Holletzek, Auswärtiges Amt (German Ministry of Foreign Affairs) and Roman Fränkel, lawyer

3.7 Austria

Austria accepts **Red Cross family reunification travel documents**. Since there is no Austrian embassy in Somalia, family members usually travel to Kenya or Ethiopia in order to submit their application for family reunification. The International Committee of the Red Cross (ICRC) issues a travel document only upon the request of an embassy, the UNHCR or a national Red Cross. Family members can initiate the procedure by



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contacting the ICRC; the latter will also take their fingerprints. The travel documents are then sent back to the competent Austrian embassy, which contacts the Ministry of Interior for permission to issue a visa. The visa is then stapled to the ICRC Passport and permits entry into Austria. The visa fee can also be waived for Red Cross and Convention refugee passport holders.

Since the authorities do not accept Somali documents (such as birth certificates), families have to go through a DNA test in order to prove their family affiliation (if relevant). Authorities do not explicitly require such tests, but in almost all the cases this constitutes the only factual evidence of the family tie. Joint photos of family the family members are also often recognised as evidence.

Source: Anny Knapp, Asylkoordination Österreich

4. CONCLUSIONS AND RECOMMENDATIONS

The following conclusions can be reached based on information collected about the relevant practices of seven EU member states (those having had a relatively high number of Somali asylum-seekers in past years and/or hosting a significant Somali refugee population):

- Only one of the seven examined EU member states (namely France) recognises Somali passports, and even this country with strong limitations (only those issued before 1991 and after 2007). **Most EU member states, similarly to Hungary, do not accept Somali travel documents.**
- The above fact does not prevent any of the EU member states examined from granting the opportunity of family reunification for Somali refugees and beneficiaries of subsidiary protection. **All seven countries have elaborated practical solutions in order to sort out the problem of Somali citizens not bearing a recognised travel document in the process of family reunification.** These solutions include:
 - The use of a “Uniform Visa Format Form” based on Council Regulation (EC) No 333/2002 of 18 February 2002 on a uniform format for forms for affixing the visa issued by Member States to persons holding travel documents not recognised by the Member State drawing up the form;
 - The acceptance of the Red Cross travel document for the purpose of family reunification;
 - The issuance of a special one-way *laissez-passer* regulated in national law.These documents are usually issued by the diplomatic representations of the examined member states in countries adjacent to Somalia (like Kenya or Ethiopia).
- **Contrary to the practices of the seven member states examined, Hungary *de facto* excludes Somali citizens from the possibility of family reunification,** as it does not operate any of the above-enumerated alternative regimes in order to substitute the non-accepted Somali travel documents. It is noteworthy that most of the seven examined member states received much more Somali refugees in recent years than Hungary⁸. Therefore a disproportionate “burden” on the Hungarian reception and integration system cannot be used as an argument in this respect.
- **Hungary fails to implement the Council Regulation (EC) No 333/2002 of 18 February 2002** on a uniform format for forms for affixing the visa issued by Member States to persons holding travel documents not recognised by the Member State drawing up the form.
- As the UNHCR Regional Representation for Central Europe reported, Somali refugees recognised in Hungary often refer to the lack of opportunities to reunite with their family members as a reason to leave the country

⁸ 185 Somali citizens asked for asylum in Hungary in 2008, as compared to 411 in Austria, 1 575 in the UK, 3 361 in Sweden, 3 842 in the Netherlands and 4 864 in Italy. At the end of 2008, Italy hosted 5 251 Somali refugees, while Sweden 6 753, the Netherlands 8 565 and the UK 31 665 (source: UNHCR 2008 Annual Statistical Yearbook). Meanwhile, Hungary only granted protection to 272 Somali asylum-seekers between 2000 and the end of 2008 (source: official statistics of the Office of Immigration and Nationality), the vast majority of whom are supposed to have left the country following the recognition of their protection status.



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and move to another EU member state.⁹ This often results in unlawful stay in another member state and a later forced or voluntary return to Hungary. As a consequence, a number of Somalis find themselves in a hopeless situation after return to Hungary, having lost most opportunities of state-supported housing or integration services (due to the fact that they voluntarily left the country earlier). Homelessness is an increasing phenomenon among this population, the majority of whom have already gone through seriously traumatising experiences in Somalia or while *en route* towards Europe and are in poor health conditions.¹⁰ The Hungarian authorities' denial of family reunification for Somali refugees therefore significantly **contributes to the creation of a refugee population stranded in Hungary without any integration possibilities and often even in a protracted situation of homelessness.**

Based on the above conclusions, the Hungarian Helsinki Committee urges the Government of Hungary to:

- **Elaborate a mechanism which enables Somali citizens granted protection in Hungary but not holding a valid and recognised travel document to reunite with their family members in Hungary** (in compliance with Section 19 (2) of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals), primarily through the due practical implementation of Council Regulation (EC) No 333/2002 of 18 February 2002.
- **Enhance cooperation with other EU member states, the United Nations High Commissioner for Refugees (UNHCR), the Red Cross and non-governmental organisations** in order to facilitate the reunification of Somali citizens granted protection in Hungary with their family members remained in Somalia or neighbouring countries.

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⁹ See for example: <http://www.unhcr-budapest.org/index.php/news/210-even-a-homeless-shelter-is-out-of-reach-for-young-somali-refugee>

¹⁰ Ibid.