Flygtningenævnets baggrundsmateriale

Bilagsnr.:	**421**
Land:	Somalia
Kilde:	UNHCR
Titel:	International Protection Considarations with Regard to people fleeing Southern and Central Somalia
Udgivet:	1. januar 2014
Optaget på baggrundsmaterialet:	21. januar 2014

International Protection Considerations with Regard to people fleeing Southern and Central Somalia

United Nations High Commissioner for Refugees (UNHCR)
January 2014
HCR/PC/SOM/14/01

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I. Summary

In light of recent and ongoing developments in Somalia, these Protection Considerations are being issued as an interim update of UNHCR's eligibility guidelines on Somalia (hereafter: the 2010 Guidelines), issued in May 2010.[1] These Protection Considerations contain information about **recent and current developments which impact the assessment of international protection needs for persons from Southern and Central Somalia falling within certain risk profiles or finding themselves in certain circumstances.**

This document is based on information available to UNHCR up to 24 December 2013, unless otherwise stated. UNHCR will continue to monitor and assess developments as they relate to the determination of eligibility for international protection of asylum-seekers originating from Somalia with a view to issuing further updated, more detailed guidance in the future.

II. Main Relevant Developments in Southern and Central Somalia

A. The Security Situation and its Impact on Civilians

1. Civilian Casualty Figures

The armed conflict in Somalia continues to lead to civilian casualties.[2] Nevertheless, accurate civilian casualty figures are difficult to ascertain, largely due to continued insecurity and a reported lack of political will to prioritize tracking.[3] In a country report on Somalia published in the context of the Armed Conflict Location and Event Dataset (ACLED), a graph with event and fatality statistics for the period January 2009 – March 2013 indicated that in 2012 and early 2013, the total levels of fatalities (for civilians and combatants combined) were higher than in 2011, both in terms of monthly averages and in terms of annual totals, with a lowest monthly figure of approximately 100 fatalities and a highest monthly figure of approximately 600 fatalities.[4]

Over the course of 2012 and early 2013, the African Union Mission in Somalia (AMISOM) mapped existing information systems and created an implementation plan for a Civilian Casualty Tracking, Analysis, and Response Cell**.** The Cell was expected to be functional by the end of 2013.[5]

2. Reported Security Incidents

Compared to other countries, only limited systematic tracking and recording of security incidents and security trends takes place in Somalia. One of the reasons for this may be the limited humanitarian access to many parts of the country, particularly in Southern and Central Somalia.[6] An ACLED report, describing security trends in Somalia for August 2013, observed that conflict event levels (battles) in Somalia had fallen for the first time since February 2013, while fatality levels resulting from such events remained fairly stable compared to previous months' figures.[7] Attacks by Al-Shabaab were reported to have remained significant. The number of civilian fatalities as a result of Al-Shabaab

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1 UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Somalia,* 5 May 2010, HCR/EG/SOM/10/1, http://www.refworld.org/docid/4be3b9142.html, and UNHCR, *Addendum to 2010 UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Somalia, relating specifically to the city of Galkacyo,* 16 March 2012, http://www.refworld.org/docid/4f675c5e2.html.

2 For example, in June 2013 fierce fighting was reported to have broken out between rival factions in Kismayo leading to 314 casualties, including 15 women and five children under the age of five; see World Health Organization, *Somalia Situation Report (May-June 2013),* http://www.who.int/hac/crises/som/sitreps/somalia_sitrep_may_july2013.pdf.

3 On the basis of available annual figures it was estimated in 2011 that the overall annual death toll in Somalia was likely to exceed that in Afghanistan. Walter Lotze, Yvonne Kasumba, *AMISOM and the Protection of Civilians in Somalia,* Conflict Trends, Issue 2 (2012), http://www.isn.ethz.ch/Digital-Library/Publications/Detail/?ots591=0c54e3b3-1e9c-be1e-2c24-a6a8c7060233&lng=en&id=146592.

4 Armed Conflict Location and Event Dataset (ACLED), *Country Report Somalia,* April 2013, http://www.acleddata.com/wp-content/uploads/2013/04/ACLED-Country-Report_Somalia_April-2013.pdf ; Note that the ACTED report does not distinguish between civilian casualties and combatants.

5 Center for Civilians in Conflict, *Backgrounder: Tracking Civilian Harm,* August 2013, http://civiliansinconflict.org/uploads/files/publications/Center_Tracking_Backgrounder_8.13.pdf.

6 OCHA, *Somalia – Humanitarian Access Map,* September 2013, http://reliefweb.int/sites/reliefweb.int/files/resources/131031_Access%20Map%20-%20Somalia%20%281309%29.pdf.

7 ACLED, *Conflict Trends (No. 18), Real-Time Analysis of African Political Violence,* September 2013, http://www.acleddata.com/wp-content/uploads/2013/09/ACLED-Conflict-Trends_No-18_September-2013.pdf, pp. 7-8.

activity nearly doubled in August 2013 compared to July 2013, to 198.[8] The ACLED report indicated in this regard that "[t]he ongoing and deliberate attempt to cast Somalia as a nation on the brink of emerging into a bright post conflict future is undermined by the persistence of this threat".[9]

Nicholas Kay, the Special Representative of the UN Secretary-General for Somalia, has noted that Somalia still faces many challenges, including the volatile security situation in Southern and Central Somalia and particularly Mogadishu.[10] As additionally emphasized by the UN Secretary General, security remains extremely volatile and despite Mogadishu being reported to be under control of the Somali Federal Government (SFG), there has been a surge in violent attacks in the capital in 2013. 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 2013. Targeted killings occurred almost daily. There were at least four mortar attacks, including two against Villa Somalia, the seat of the Somali government.[11]

Although Al-Shabaab reportedly has largely lost its capacity to act as a conventional military force,[12] its increasing use of asymmetric attacks has provided a more complex challenge to AMISOM and Somali National Security Forces (SNSF) in Southern and Central Somalia.

3. The Security Situation and Its Impact on Civilians in Disputed Areas / Areas Affected by Fighting or Armed Clashes

The security situation in some areas of Southern and Central Somalia has improved to some extent in comparison to the situation at the time of issuance of the 2010 Guidelines. However, the situation in Somalia continues to be qualified as a non-international armed conflict.[13] Armed clashes continue outside of Mogadishu and in rural areas in Southern and Central Somalia which remain under Al-Shabaab control. In addition, areas under the control of the SFG, including Mogadishu, are often affected by attacks and other forms of violence.

As documented by many sources, military operations in Southern and Central Somalia continue to result in civilian casualties, with civilians being killed and wounded by crossfire in the context of armed clashes and by improvised explosive devices (IEDs) and grenade attacks.[14]

4. The Security Situation and its Impact on Civilians in Areas under Control of Al-Shabaab

As of February 2013, some 80 percent of Southern and Central Somalia was reported to fall under Al-Shabaab control,[15] and there have been no major changes in territorial control since then other than the loss of Xudur in Bakool region, which fell back under control of Al-Shabaab once Ethiopian and Government-aligned forces withdrew in March 2013.[16] Since 2011, Al-Shabaab has been reported to be suffering from deep internal divisions and in-fighting, pitting Somali nationalist factions against the radical *jihadi* faction of the group. The in-fighting has reportedly led to the killing of some key

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8 Ibid.

9 Ibid.

10 UN Radio, *Somalia Still Faces Many Challenges, Says Top Envoy*, 26 August 2013, http://www.unmultimedia.org/radio/english/2013/08/somalia-still-faces-many-challenges-says-top-un-envoy/.

11 UN Security Council, *Report of the Secretary-General on Somalia*, S/2013/521, 3 September 2013, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2013/521.

12 Armed Conflict Location and Event Dataset (ACLED), *Conflict Trends (No. 18), Real-Time Analysis of African Political Violence,* September 2013, http://www.acleddata.com/wp-content/uploads/2013/09/ACLED-Conflict-Trends_No-18_September-2013.pdf, pp. 7-8.

13 For the legal qualification of the conflict in Somalia, see Rule of Law in Armed Conflict Project (RULAC), *Somalia, Applicable International Law,* last updated July 2012, http://www.geneva-academy.ch/RULAC/applicable_international_law.php?id_state=204. More recent references to the applicability of international humanitarian law in Somalia can be found in: UN Security Council, *Letter Dated 14 October from the Secretary-General Addressed to the President of the Security Council,* S/2013/606, 14 October 2013, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2013/606, and UN Security Council, *Security Council Resolution 2124 (2013),* S/RES/2124 (2013), 12 November 2013, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2124(2013). See also, ICRC, *The ICRC in Somalia,* 13 August 2013, http://www.icrc.org/eng/where-we-work/africa/somalia/overview-somalia.htm.

14 See, for example, Integrated Regional Information Networks (IRIN), *How Safe is Going Home to Somalia?,* 28 November 2013, http://www.irinnews.org/fr/report/99219/how-safe-is-going-home-to-somalia.

15 Somalia NGO Consortium, *Proposed Benchmarks for an Incremental Approach to UN Structural Integration in Somalia,* 27 February 2013, http://www.somaliangoconsortium.org/docs/key/17/2013/1362462865.pdf.

16 OCHA, *Humanitarian Bulletin, Somalia*, 12 April 2013, http://reliefweb.int/sites/reliefweb.int/files/resources/OCHA_Somalia_Humanitarian_Bulletin_March_2013.pdf.

leaders.[17] Nevertheless, the military strength of Al-Shabaab – with at least 5,000 troops – is reported to have remained intact in terms of operational readiness, chain of command, discipline and communication capabilities.[18] In the areas under its control, Al-Shabaab continues to impose a severe interpretation of *Sharia* law which prohibits the exercise of various types of freedoms and rights, especially affecting women. These include forcing women to wear veils and preventing them from working and travelling without a male relative.[19] Further, Al-Shabaab bans leisure activities such as playing football, listening to music and watching television,[20] which are deemed to be "un-Islamic."[21] Stoning, public whipping, and amputation are meted out as punishment to those who violate Al-Shabaab's interpretation of Islam.[22]

Al-Shabaab also reportedly continues to commit grave abuses against civilians such as killings of prominent peace activists, community leaders, clan elders, and their family members for their role in peace-building, and beheadings of people accused of "spying for" and collaborating with Somali national forces and affiliated militias.[23] Other reported violations against civilians include disappearances, restrictions on civil liberties and freedom of movement and religion, restricting access to humanitarian assistance, rape and other acts of gender-based violence such as forced marriages, as well as conscription and use of child soldiers.[24]

In areas under the effective control of Al-Shabaab, the group reportedly resorts to widespread abuses to instil fear among the local population. For example, when Ethiopian and Somali government troops withdrew from the town of Xudur in Bakool region in March 2013, the Al-Shabaab forces who moved in reportedly engaged in a surge of abuses against civilians in Bakool, causing thousands of people to flee the area.[25] Ill-treatment of civilians by Al-Shabaab is reported to be especially severe in areas where Al-Shabaab is under strain, with an increase in the number of unlawful arrests, detention and executions of non-combatants for alleged spying within territory under the group's control, and generally mounting levels of violence.[26]

5. The Security Situation and Its Impact on Civilians in Mogadishu and Other Areas under Control of the Somali Federal Government (Government Forces and AMISOM)

Mogadishu has been nominally under the control of government forces, supported by AMISOM, since August 2011. While the security situation in Mogadishu has improved since then, with a reduction of open conflict and signs of a resumption of economic activity in the city, Al-Shabaab retains the ability to stage lethal attacks even in the most heavily guarded parts of the city, with civilians reportedly bearing the brunt of its attacks.[27] The SFG is reported to be failing to provide much of its population with basic security. Thus the reality on the ground, as reported by observers, remains that civilians are injured and killed every week in targeted attacks by gunmen, or attacks by IEDs and grenades.

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17 Al Jazeera, *The Fight against Al-Shabab,* 8 October 2013, http://www.aljazeera.com/indepth/opinion/2013/10/fight-against-al-shabab-201310282112677589.html.

18 UN Security Council, *Report of the Monitoring Group on Somalia and Eritrea pursuant to SC Resolution 2060 (2012): Somalia,* S/2013/413, 12 July 2013, http://www.un.org/ga/search/view_doc.asp?symbol=S/2013/413.

19 AllAfrica, *Kenya: New Al-Shabaab Magazine Spins Horrors of Westgate, Threatens Kenya With More Attacks*, 18 November 2013, http://allafrica.com/stories/201311190082.html; The Boston Globe, *Fear of Al Shabab Squeezes African Port Town*, 11 October 2013, http://www.bostonglobe.com/news/world/2013/10/10/fear-grips-somali-town-raided-seal-commandoes/AVISVzMBdmjJKBusRaJbvL/story.html; Reuters, *Somalia Women Say Islamists Becoming More Draconian*, 15 January 2011, http://in.reuters.com/article/2011/01/15/idINIndia-54179120110115.

20 Africa Review, *Al-Shabaab Ban iPhones, Samsung Galaxies*, 17 November 2013, http://www.africareview.com/News/Al-Shabaab-ban-iPhones-Samsung-Galaxies/-/979180/2076654/-/10jp7k0/-/index.html.

21 New Statesman, *What You Need to Know about Al-Shabab*, 23 September 2013, http://www.newstatesman.com/global-issues/2013/09/what-you-need-know-about-al-shabab.

22 Council on Foreign Relations, *Backgrounder: Al-Shabab*, 23 September 2013, http://www.cfr.org/somalia/al-shabab/p18650.

23 US Department of State, *2012 Country Reports on Human Rights Practices - Somalia*, 19 April 2013, http://www.refworld.org/docid/517e6dd61c.html.

24 US Department of State, *2012 Country Reports on Human Rights Practices - Somalia*, 19 April 2013, http://www.refworld.org/docid/517e6dd61c.html.

25 Amnesty International, *Somalia: Human Rights Agenda for the Post-Transition Somalia Government,* 25 April 2013, http://www.refworld.org/docid/517a94f14.html.

26 ACLED, *Country Report Somalia,* April 2013, http://www.acleddata.com/wp-content/uploads/2013/04/ACLED-Country-Report_Somalia_April-2013.pdf.

27 Human Rights Watch, *Memo to The Hague: Somalia Is Not Safe,* 27 November 2013, http://www.hrw.org/news/2013/11/27/memo-hague-somalia-not-safe.

A number of these attacks, often claimed by Al-Shabaab, have targeted government institutions as well as public places frequented by civilians, such as restaurants and hotels. Markets are amongst the places often attacked. For example, at least two people were reportedly killed and four others injured in September 2013, when attackers believed to be Al-Shabaab operatives threw a hand-grenade in the foreign exchange part of Mogadishu's Bakara market.[28] Such places are believed to have attracted Al-Shabaab's adverse attention because activities in public spaces in SFG-controlled areas are an indication of a certain level of normalcy in daily life. Even when a specific individual appears to be the target of the attack, the number of civilian casualties unrelated to the person who is the target of the attack is often high.[29]

Reports indicate that in 2013 attacks by Al-Shabaab were on the increase in Mogadishu and became more sophisticated.[30] For example, in April 2013 Al-Shabaab claimed responsibility for two large-scale attacks in Mogadishu. The first attack targeted the Banadir High Court, killing at least four legal professionals, including a judge and three lawyers. Al-Shabaab reportedly stated that the court was a legitimate military target as it was ruling contrary to *Sharia* law. In the second simultaneous attack a car bomb was detonated, hitting several cars carrying Turkish aid workers on the airport road several kilometres from the court complex.[31] On 19 June 2013, Al-Shabaab attacked the main UN compound in Mogadishu, killing 22 people.[32] Al-Shabaab was reported to have claimed responsibility for the attack on 7 September 2013, in which a car laden with explosives went off near a restaurant, following which a suicide bomber blew himself up in the crowd of civilians who rushed to the scene to help. The twin blasts were reported to have caused the deaths of 30 people.[33] In November 2013, Al-Shabaab also took responsibility for an explosion that killed six people outside a popular hotel.[34]

Bystanders and persons associated with or in the vicinity of "high level targets", including family members, bodyguards, drivers or other personnel or members of the household, are at risk of being casualties of attacks directed at these targets. Even though there was less outright fighting in Mogadishu in 2013 compared to previous years, the toll of injured and dead civilians from grenade attacks and bombings reportedly went up in 2013.[35] Observers consider that Al-Shabaab strikes have evolved, from the laying of roadside bombs intended to hit vehicles of passing government officials and AMISOM convoys, to ramming vehicles laden with explosives into security gates of buildings housing government institutions or international organizations, before gunmen with explosives strapped to their bodies storm the premises.[36] In addition, targeted killings / assassinations are reported to have continued.[37]

Analysts suggest that the current operational capacity of Al-Shabaab and other armed groups in Mogadishu is evidenced not only by high-profile attacks such as suicide bombings, but also through reports of general intimidation and abuse, harassment, forced recruitment of civilians and more permanent infiltration in some of the capital's neighbourhoods and districts.[38] In addition to attacks by Al-Shabaab in Mogadishu, a very high level of violence is reportedly perpetrated by unidentified

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[28] Jamestown Foundation, *Westgate Mall Attack Demonstrates Al-Shabaab's Desperation, Not Strength,* 24 September 2013, http://www.refworld.org/docid/5243ec344.html.

[29] Somalia Newsroom, *Mogadishu Is Heaven. Mogadishu Is Hell.,* 27 August 2013, http://somalianewsroom.com/2013/08/27/mogadishu-is-heaven-mogadishu-is-hell/.

[30] Global Issues, *Extremist Violence Returns to Hit Mogadishu,* 3 August 2013, http://www.globalissues.org/news/2013/08/03/17196.

[31] Human Rights Watch, *Somalia*: *New Al-Shabaab Attacks are War Crimes,* 16 April 2013, http://www.hrw.org/news/2013/04/16/somalia-new-al-shabaab-attacks-are-war-crimes.

[32] Reuters, *Somali Islamist Rebels Attack U.N. Base, 22 Dead,* 19 June 2013, http://www.reuters.com/article/2013/06/19/us-somalia-blast-idUSBRE95I0AJ20130619.

[33] AllAfrica, *Somalia: Al-Shabaab Claims Responsibility for Mogadishu Restaurant Attack That Kills 30,* 8 September 2013, http://allafrica.com/stories/201309090011.html.

[34] Al Jazeera, *Deadly Explosion Rocks Mogadishu Hotel*, 11 November 2013, http://www.aljazeera.com/news/africa/2013/11/deadly-car-bomb-targets-somali-capital-201311818442752910 2.html.

[35] Human Rights Watch, *Memo to The Hague: Somalia Is Not Safe,* 27 November 2013, http://www.hrw.org/news/2013/11/27/memo-hague-somalia-not-safe.

[36] Al Jazeera, *Mogadishu's Stability under the Gun Again*, 11 September 2013, http://www.aljazeera.com/indepth/features/2013/09/201391110133339201.html.

[37] Inter Press Service, *Extremist Violence Returns to Hit Mogadishu,* 3 August 2013, http://www.ipsnews.net/2013/08/extremist-violence-returns-to-hit-mogadishu/. Human Rights Watch, *World Report 2013 - Somalia,* 31 January 2013, http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=510fb4d02a.

[38] Digital Journal, *Over 250 Al-Qaeda Linked Al-Shabaab Militants to Surrender,* 24 September 2013, http://digitaljournal.com/article/333438#ixzz2fopyu0Bg.

armed groups. Most of the violence perpetrated by unidentified armed groups is reported to be sporadic, low-grade targeting of civilians and soldiers.[39] Reports indicate that the assailants are ideologically – though not formally – aligned with the Al-Shabaab agenda, or that of smaller, localized militia leaders.[40]

Further, a reported lack of authority, discipline and control of government forces and allied armed groups means that government forces often fail to provide protection or security for civilians and are themselves a source of insecurity.[41] Security agencies, such as the police and intelligence services, are, according to reports, frequently infiltrated by common criminal, radical, or insurgent elements. For instance, in January 2013, in a suicide attack at a checkpoint into Villa Somalia, a compound in Mogadishu that houses both the president's and prime minister's offices, the bomber was an ex-Islamist militant recently fired from his job in the intelligence services.[42]

6. Internal and External Displacement and Returns

As a result of armed conflict and human rights abuses, thousands of civilians continue to be displaced both within and outside Somalia's borders. Between January and September 2013, more than 57,800 people were reported to have been newly displaced in Southern and Central Somalia for reasons such as forced evictions, forced returns, insecurity, clan conflict and floods.[43]

The total number of IDPs in Southern and Central Somalia as of 1 October 2013 was estimated to be 893,000 (out of 1.1 million IDPs country-wide). Of these, around 369,000 continued to remain in IDP settlements in and around Mogadishu, choosing, at this stage, not to return to their areas of origin. These persons are reportedly subjected to a variety of human rights abuses, particularly from IDP settlement managers or 'gatekeepers' in positions of power, as well as various militias and security forces, often affiliated with the government, operating within or near the IDP settlements.[44] Several displaced women have described being raped by armed men in uniform, some of whom were reportedly identified as government soldiers.[45]

Between January and end November 2013, 21,517 Somali nationals sought asylum in neighbouring countries (in Ethiopia, Yemen, Kenya, and Djibouti).[46] In addition, Somalis lodged 20,600 asylum claims in 44 industrialized countries in 2013, compared to 18,701 claims in 2012, putting Somalia in sixth place in terms of asylum-seekers' countries of origin.[47]

Over 33,000 spontaneous Somali refugee returns were recorded between January and November 2013, mainly from Kenya, but also from Ethiopia and Yemen.[48] However, many of these were thought to have been persons undertaking 'go and see' visits rather than permanent returns.[49]

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[39] ACLED, *Country Report: Somalia*, April 2013, http://www.acleddata.com/wp-content/uploads/2013/04/ACLED-Country-Report_Somalia_April-2013.pdf.

[40] Ibid.

[41] See, for example, Amnesty International, *Mogadishu's Clean-Up Puts Thousands of Displaced at Risk*, 13 September 2013, http://www.refworld.org/docid/5237fee14.html.

[42] BBC News, *Suicide Blast by Offices of Somalia President and PM*, 29 January 2013, http://www.bbc.co.uk/news/world-africa-21241751.

[43] UNHCR, *Somalia Fact Sheet,* 13 September 2013, http://reliefweb.int/sites/reliefweb.int/files/resources/UNHCR_Briefing_Sheet_Sept_v6.1.pdf. The total number of newly displaced Somalis in the whole of Somalia for the period January-December 2013 is estimated to be 80,000 persons. See UNHCR, *Somalia Fact Sheet, November 2013*, 26 December 2013, available through http://data.unhcr.org/horn-of-africa/country.php?id=197 or at http://reliefweb.int/sites/reliefweb.int/files/resources/UNHCR_Briefing_Sheet_Nov_2013.pdf.

[44] Human Rights Watch, *Hostages of the Gatekeepers: Abuses against Internally Displaced in Mogadishu, Somalia*, 29 March 2013, http://www.refworld.org/docid/5152c1002.html.

[45] Ibid.

[46] UNHCR, *Somalia Fact Sheet, November 2013*, 26 December 2013, available through http://data.unhcr.org/horn-of-africa/country.php?id=197 or at http://reliefweb.int/sites/reliefweb.int/files/resources/UNHCR_Briefing_Sheet_Nov_2013.pdf..

[47] UNHCR, *Asylum Claims in Industrialized Countries, Latest monthly data, Jan-Dec 2013,,* lastupdated 10 January 2014, http://www.unhcr.org/statistics/asylumdata2013.zip.

[48] Regional Mixed Migration Secretariat, *Mixed Migration in Horn of Africa and Yemen*, 18 November 2013, http://reliefweb.int/sites/reliefweb.int/files/resources/RMMS_Monthly_Map_October_2013.pdf. UNHCR, *Somalia Fact Sheet, November 2013,* 26 December 2013, available through http://data.unhcr.org/horn-of-africa/country.php?id=197 or at http://reliefweb.int/sites/reliefweb.int/files/resources/UNHCR_Briefing_Sheet_Nov_2013.pdf. Although this factsheet includes returns from Saudi Arabia under the "spontaneous returns", it should be noted that many Somalis who returned from Saudi Arabia to Mogadishu were forcibly deported.

[49] Regional Mixed Migration Secretariat, *Mixed Migration in Horn of Africa and Yemen*, 18 November 2013, http://reliefweb.int/sites/reliefweb.int/files/resources/RMMS_Monthly_Map_October_2013.pdf.

Between January and November 2013 10,115 IDP families were supported with assisted returns within Somalia.[50] These IDPs were in many instances living in difficult conditions in interim settlements and were able to get information on latest conditions in areas of origin through 'go and see' visits before making the voluntary decision to go back.[51] In addition, in the same period some 13,000 IDPs returned spontaneously to their place of habitual residence, including some within Mogadishu.[52]

B. Governance and Rule of Law in Mogadishu and Other Areas of Southern and Central Somalia

Government control over Mogadishu remains nominal and while there is less open armed conflict since Al-Shabaab withdrew from the city in August 2011, improving security remains a serious challenge for the SFG. The continued high number of security incidents, including targeted killings of journalists, judiciary, government officials and others, and fighting between government forces and affiliated militias still dominant in parts of the city[53] illustrate these challenges.

The new Somali government has had a mixed record in addressing the difficult situation in areas under its control. It has made public commitments to tackling abuses, reforming the security sector, and holding its forces to account, including for sexual violence. But concrete changes have reportedly been "minimal".[54] Reports indicate furthermore that law enforcement is conducted largely at local levels, while there is very little oversight from the State and the underlying legal framework remains inadequate.[55] The influence of the traditional system of justice has declined due to the strict interpretation of *Sharia* law being implemented by Al-Shabaab in areas under its control, leaving less room for the role of customary law and protection based on negotiation among clan elders.[56] (See Section II.C for further detail on the changing role of the clan). There is, furthermore, no functioning, organized system of criminal justice in Southern and Central Somalia; nor is there any recognized or established authority to administer a uniform application of due process – enforcement of criminal law is reported to be haphazard to non-existent.[57]

The capacity of the SNSF is reported to remain limited, with an undeveloped national command and control system, competing clan-based loyalties, limited equipment and resources, and discipline concerns.[58] Nearly the entire police force is based in Mogadishu and remains too weak to take over from military forces the functions of guaranteeing public security. Outside of Mogadishu, in some urban areas of Southern and Central Somalia under the control of government forces or AMISOM troops, local security arrangements are reported to exist, albeit with varying capacities and loyalties to the SFG.[59]

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[50] UNHCR, *Somalia Fact Sheet, November 2013,* 26 December 2013, available through http://data.unhcr.org/horn-of-africa/country.php?id=197 or at http://reliefweb.int/sites/reliefweb.int/files/resources/UNHCR_Briefing_Sheet_Nov_2013.pdf.

[51] Danish Refugee Council, *IDP Returns in Somalia,* January 2013, http://drc.dk/fileadmin/uploads/pdf/IA_PDF/Horn_of_Africa_and_Yemen/Drc%20fact%20sheet-07.2013/IDP%20Return%20Somalia%20JAN%202013-DRC%20fact%20sheet.pdf.

[52] UNHCR, *Somalia Fact Sheet, November 2013,* 26 December 2013, available through http://data.unhcr.org/horn-of-africa/country.php?id=197 or at http://reliefweb.int/sites/reliefweb.int/files/resources/UNHCR_Briefing_Sheet_Nov_2013.pdf..

[53] Human Rights Watch, *World Report 2013 - Somalia,* 31 January 2013, http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=510fb4d02a.

[54] Human Rights Watch, *UN Human Rights Council: High Level Interactive Dialogue on Somalia,* 24 September 2013, http://www.hrw.org/news/2013/09/24/un-human-rights-council-high-level-interactive-dialogue-somalia.

[55] UK Government Foreign and Commonwealth Office, *Human Rights and Democracy 2012, The 2012 Foreign and Commonwealth Office Report,* April 2013, http://www.hrdreport.fco.gov.uk/wp-content/uploads/2011/01/2012-Human-Rights-and-Democracy.pdf, p. 215.

[56] Amnesty International, *Mogadishu Cannot Qualify as an Internal Flight Alternative,* 26 September 2013, http://www.refworld.org/docid/524574664.html.

[57] US State Department, *Country Specific Information: Somalia*, 9 December 2013, http://travel.state.gov/travel/cis_pa_tw/cis/cis_1023.html.

[58] IRIN, *Analysis: Somali Security Sector Reform,* 13 May 2013, http://www.refworld.org/docid/51b8411b4.html.

[59] Council of the European Union, *Joint Staff Working Document on an 'Integrated EU Approach to Security and Rule of Law in Somalia',* 15 July 2013, http://register.consilium.europa.eu/pdf/en/13/st12/st12360.en13.pdf.

C. The Role of the Clan in Providing Traditional Forms of Protection in Mogadishu and Other Areas of Southern and Central Somalia

In some areas of Southern and Central Somalia, clan protection has been undermined in recent years, not only by the ongoing conflict but also by the declining influence of the traditional system of justice due to Al-Shabaab enforcing its own strict interpretation of *Sharia* law[60] in areas under its control.[61] However, certain clans continue to dominate some regions. In these areas, customary law and protection based on negotiation among clan elders is often only accessible to members of the dominant local clan, putting those from minority groups at a disadvantage.[62]

During Al-Shabaab's rise to prominence, the organization sought to present itself as above clan politics and espoused a narrative of "Somali Nationalism" to unify Somalis under Al-Shabaab and mitigate clan conflict. Nonetheless, Al-Shabaab has at times engaged in clan-based military and economic alliances throughout Southern and Central Somalia. Al-Shabaab has reportedly intervened in many instances in conflicts between clans or backed minority clans against rival dominant clans.[63]

Al-Shabaab has reportedly been killing traditional elders who refuse to follow its orders[64] and has also reportedly been pushing traditional elders from power in the Bay, Bakool and Lower Shabelle regions and elevating younger loyalists to back the militant group's doctrine. Since 2011, Al-Shabaab has reportedly removed at least a dozen traditional elders in those regions, parts of which were considered to have been the hardest hit by the organization's rigid rules and where elders have been outspoken against the organization's views.[65] Al-Shabaab has reportedly been trying to control traditional elders so that these leaders use their influence to help Al-Shabaab with the recruitment of local boys to participate in fighting and to enable Al-Shabaab fighters to obtain weapons held by clan militias and get protection within the clans.[66] In many places the traditional elders, in order to survive, have given Al-Shabaab their loyalty and reportedly put pressure on youth to join the organization.[67]

Furthermore, due to a breakdown in Somalia's traditional social fabric caused by 20 years of conflict and massive displacement flows, the traditional extended family and community structures of Somali society no longer constitute as strong a protection and coping mechanism as they did in the past, particularly in locations such as Mogadishu. Clan protection and conflict resolution used to be bolstered and supported by customary law (*xeer*). However, there have been many pressures on the clan structure and clan elders' traditional authority has reportedly been eroded and in some places even collapsed.[68] It has also reportedly proven difficult to apply *xeer* in a modern urban environment such as Mogadishu in the context of armed conflict.[69] In Mogadishu in particular, the nuclear family has reportedly become the main protection mechanism.[70]

Despite these changes, in general it reportedly remains the case that Somali nationals enjoy greater physical security when residing in an area dominated by their own clan. As many neighbourhoods in

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60 Council on Foreign Relations, *Al-Shabaab Backgrounder,* 23 September 2013, http://www.cfr.org/somalia/al-shabab/p18650.

61 Amnesty International, *Mogadishu Cannot Qualify as an Internal Flight Alternative,* 26 September 2013, http://www.refworld.org/docid/524574664.html.

62 Internal Displacement Monitoring Centre, *Somalia: Solutions for IDPs Revealed as Key for Future Peace and Stability in Somalia,* 1 October 2013, http://www.refworld.org/docid/528c828a4.html.

63 George Washington University: Homeland Security Policy Institute, *Somalia's Al-Shabaab: Down But Not Out*, 27 August 2013, http://www.gwumc.edu/hspi/policy/HSPI%20Issue%20Brief%2022%20Somalia%20Al%20Shabaab.pdf.

64 Raxanreeb.com, *SOMALIA: Al Shabab Fighters Murder Respected Elder in Central Somalia Region*, 8 December 2013, http://www.raxanreeb.com/2013/12/somalia-al-shabab-fighters-murder-respected-elder-in-central-somalia-region/; Somali Current, *Al-Shabaab to turn Somalia into a shared country*, 27 November 2013, http://www.somalicurrent.com/2013/11/27/al-shabab-to-turn-somalia-into-a-shared-country/.

65 Sabahi Online, *Al-Shabaab ousts traditional elders in favour of loyalists*, 31 October 2013, http://sabahionline.com/en_GB/articles/hoa/articles/features/2013/10/31/feature-01.

66 Ibid.

67 Danish Immigration Service and Norwegian Landinfo, *Update on Security and Human Rights Issues in South-Central Somalia, Including in Mogadishu,* January 2013, http://www.refworld.org/docid/511ca6b12.html.

68 Danish Demining Group, *Somalia: Local Accountability Framework,* May 2013, http://www.danishdemininggroup.dk/fileadmin/uploads/pdf/IA_PDF/HAP/HAF_2013/Local_HAF_-_DDG_Somalia_-_May_2013.pdf.

69 Campaign for Innocent Civilians in Conflict (CIVIC), *Civilian Harm in Somalia: Creating an Appropriate Response*, October 2011, http://www.refworld.org/docid/4ec4bec02.html.

70 Danish Immigration Service and Norwegian Landinfo, *Security and Protection in Mogadishu and South-Central Somalia,* May 2013, http://www.refworld.org/docid/519c9c0b4.html.

Mogadishu are reportedly dominated by one clan and sometimes affiliated armed militia,[71] presence in such areas could, depending on the specific circumstances, put a member of another clan at risk. There continue to be reports of clan tensions in the context of a struggle for control of districts, and clan militias are an additional source of insecurity.[72]

Persons belonging to minority clans or who are not part of the Somali clan lineage system remain at particular disadvantage in Mogadishu and other parts of Southern and Central Somalia. There remains a low sense of Somali social and ethical obligation to assist individuals from weak lineages and social groups. This stands in sharp contrast to the powerful and non-negotiable obligation Somalis have to assist members of their own lineage.[73]

For Somalis in Mogadishu, it is very difficult to survive without a support network,[74] and newcomers to the city, particularly when they do not belong to the clans or nuclear families established in the district in question, or when they originate from an area formerly or presently controlled by an insurgent group, face a precarious existence in the capital.[75] Somalis from the diaspora who have returned to Mogadishu in the course of 2013 are reported to belong to the more affluent sectors of society, with resources and economic and political connections. Many are reported to have a residence status abroad to fall back on in case of need. For some of the Somali returnees from Kenya, the main motivation for returning to Somalia in 2013 was fear of more reprisal attacks[76] against them in Kenya and an overall sense of insecurity in Kenya. This was at a time when there was more optimism than before about Somalia as Al-Shabaab had been pushed out of Mogadishu and other towns in Southern and Central Somalia.[77] Due in part to the return of wealthy Somalis from the diaspora, rents in Mogadishu have reached an all-time high, as a result of which some persons are being forced to move to overcrowded IDP camps because they cannot afford the new prices quoted by landlords.[78]

III. Assessment of International Protection Needs of Asylum-seekers from Mogadishu and other areas of Southern and Central Somalia

A. Refugee Protection under the 1951 Convention

Where applications for international protection of asylum-seekers who have fled Southern and Central Somalia are considered on an individual basis, they should be assessed carefully in accordance with established asylum or refugee status determination procedures. The evidence presented by the applicant must be taken into account, as well as reliable current information about the situation in Mogadishu and other areas of Southern and Central Somalia. UNHCR considers that persons with any of the profiles below, or a combination thereof, may be in need of international protection in the sense of the Convention Relating to the Status of Refugees ("1951 Convention").[79] Where relevant, particular consideration needs to be given to any past persecution to which applicants for refugee

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71 Somalia Cash Consortium, *Gatekeepers in Mogadishu: Research Consultancy,* 31 January 2013, http://adesoafrica.org/wp-content/uploads/2012/03/Cash-Consortium-GateKeepers-In-Mogadishu-Study-January-20131.pdf.

72 Danish Refugee Council and UNICEF, *Community-Driven Recovery and Development Project. Political Economy Analysis in Mogadishu Final draft report,* May 2012, http://tanacopenhagen.com/uploads/Political%20Economy%20Analysis%20of%20Mogadishu%20-%20full%20report.pdf.

73 Ken Menkhaus, "No Access: Critical Bottlenecks in the 2011 Somali Famine", *Global Food Security Vol.1, No. 1*, December 2012, pp. 29-35, http://www.sciencedirect.com/science/article/pii/S2211912412000053.

74 Human Rights Watch, *Dispatches: Deported to Danger in Somalia*, 19 November 2013, http://www.hrw.org/news/2013/11/19/dispatches-deported-danger-somalia.

75 Ibid.

76 Human Rights Watch, *Kenya: Police Abuse Nairobi's Refugees,* 29 May 2013, http://www.hrw.org/news/2013/05/29/kenya-police-abuse-nairobi-s-refugees.

77 The Heritage Institute for Policy Studies, *Hasty Repatriation: Kenya's Attempt to Send Somali Refugees Home*, February 2013, http://gallery.mailchimp.com/19679cf7708fe9b4e9f72c846/files/Heritage_Institute_Hasty_Repatriation.pdf.

78 Al Jazeera, *For Some Somalis, A New Threat after War,* 2 September 2013, http://www.aljazeera.com/indepth/features/2013/09/201391132712462442.html.

79 UN General Assembly, *Convention Relating to the Status of Refugees* ("1951 Convention"), 28 July 1951, UN Treaty Series, Vol. 189, p. 137, http://www.refworld.org/docid/3be01b964.html.

status may have been subjected.[80] In light of the history of violent conflict and human rights abuses in Somalia, the applicability of the exclusion clauses may need to be considered in certain cases.[81]

The profiles listed here are not necessarily exhaustive; they are based on information available to UNHCR at the time of writing. Hence, a claim should not automatically be considered as without merit simply because it does not fall within any of the profiles identified here. In the forthcoming eligibility guidelines these profiles will be further updated as needed and analyzed in detail.

Potential Risk Profiles:

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

B. Refugee Status under UNHCR's Broader Mandate Criteria, under Article I(2) of the 1969 OAU Convention or under the Cartagena Declaration

The 1951 Convention forms the cornerstone of the international refugee protection regime. The criteria for refugee status in the 1951 Convention need to be interpreted in such a manner that individuals or groups of persons who meet these criteria are duly recognized and protected under that instrument. Only when an asylum-seeker is found not to meet the refugee criteria in the 1951 Convention, for example because the feared persecution is found not to be for reason of a Convention ground, or if otherwise the threshold for applying the 1951 Convention definition is not met, should broader international protection criteria as contained in UNHCR's mandate and regional instruments be examined, including subsidiary protection.

1. Refugee Status under UNHCR's Broader Mandate Criteria

UNHCR's mandate encompasses individuals who meet the refugee criteria under the 1951 Convention and its 1967 Protocol,[82] but has been broadened through successive UN General

[80] See relevant considerations on the significance of past persecution in UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, December 2011, HCR/1P/4/ENG/REV. 3, http://www.refworld.org/docid/4f33c8d92.html, p. 12, para. 45; and UNHCR, *Guidelines on International Protection No. 4: "Internal Flight or Relocation Alternative" Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees,* HCR/GIP/03/04, 23 July 2003, http://www.unhcr.org/refworld/docid/3f2791a44.html, para. 26.

[81] UNHCR, *Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees,* 4 September 2003, HCR/GIP/03/05, http://www.unhcr.org/refworld/docid/3f5857684.html.

[82] UN General Assembly, *Protocol Relating to the Status of Refugees*, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267, http://www.refworld.org/docid/3ae6b3ae4.html.

Assembly and ECOSOC resolutions to a variety of other situations of forced displacement resulting from indiscriminate violence or public disorder.[83] In light of this evolution, UNHCR's competence to provide international protection to refugees extends to individuals who are outside their country of origin or habitual residence and who are unable or unwilling to return there owing to serious threats to life, physical integrity or freedom resulting from generalized violence or events seriously disturbing public order.[84]

In the context of Southern and Central Somalia, indicators to assess the threat to life, physical integrity or freedom resulting from generalized violence include: (i) reports of civilian casualties as a result of indiscriminate acts of violence, including bombings, suicide attacks and IED explosions (see Section II.A.1); (ii) reports of conflict-related security incidents (see Section II.A.2); and (iii) the number of people who have been forcibly displaced due to conflict (see Section II.A.6). Such considerations are not, however, limited to the direct impact of the violence. They also encompass the longer-term, more indirect consequences of conflict-related violence that, either alone or on a cumulative basis, give rise to threats to life, physical integrity or freedom.

In this respect, relevant elements include the information presented in Section II.A.4 relating to (i) the control over civilian populations by Al-Shabaab (and related militias/armed groups) including through the imposition of parallel justice mechanisms and the meting out of illegal punishments, as well as by means of threats and intimidation of civilians, and restrictions on freedom of movement; (ii) forced recruitment; (iii) the impact of violence and insecurity on the humanitarian situation as manifested by food insecurity, poverty and the destruction of livelihoods; (iv) high levels of organized crime and the ability of militia leaders, 'gatekeepers' and corrupt government officials to operate with impunity in government-controlled areas; (v) systematic constraints on access to education or basic health care as a result of insecurity; and (vi) systematic constraints on participation in public life, including in particular for women.[85]

In the exceptional circumstances of Southern and Central Somalia, relevant considerations to assess the threat to life, physical integrity or freedom resulting from events seriously disturbing public order include the fact that in certain parts of the country the Government has lost effective control to Al-Shabaab (and related militias or armed groups) and is unable to provide protection to civilians. Available information indicates that the exercise of control over key aspects of people's lives in these areas is repressive, coercive and undermines an *ordre public* based on respect for the rule of law and human dignity. Such situations are characterized by the systematic use of intimidation and violence directed against the civilian population, in a climate of widespread human rights abuses.

Against this background, UNHCR considers that individuals who originate from areas affected by active conflict between the SNSF/AMISOM and Al-Shabaab (and/or related militia or armed groups) or from areas under the effective control of Al-Shabaab (and/or related militias or armed groups), may, depending on the individual circumstances of the case, be eligible for international protection under UNHCR's broader mandate on the grounds of serious threats to life, physical integrity or freedom resulting from generalized violence or events seriously disturbing public order.

2. Refugee Status under Article I(2) of the 1969 OAU Convention

Persons originating from Southern and Central Somalia who seek international protection in countries that are States parties to the Convention Governing the Specific Aspects of Refugee Problems in Africa ("OAU Convention"), [86] may qualify for refugee status under Article I(2) of that instrument, on the grounds that they were compelled to leave their place of habitual residence owing to events

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[83] UNHCR, *Providing International Protection Including Through Complementary Forms of Protection*, 2 June 2005, EC/55/SC/CRP.16, http://www.refworld.org/docid/47fdfb49d.html; UN General Assembly, *Note on International Protection,* 7 September 1994, A/AC.96/830, http://www.refworld.org/docid/3f0a935f2.html.

[84] See for example UNHCR, *MM (Iran) v. Secretary of State for the Home Department - Written Submission on Behalf of the United Nations High Commissioner for Refugees*, 3 August 2010, C5/2009/2479, http://www.refworld.org/docid/4c6aa7db2.html, para. 10.

[85] UNHCR, *Summary Conclusions on International Protection of Persons Fleeing Armed Conflict and Other Situations of Violence; Roundtable 13 and 14 September 2012, Cape Town, South Africa*, 20 December 2012, http://www.refworld.org/docid/50d32e5e2.html, paras. 10-12.

[86] Organization of African Unity, *Convention Governing the Specific Aspects of Refugee Problems in Africa ("OAU Convention"),* 10 September 1969, 1001 UN Treaty Series 45, http://www.refworld.org/docid/3ae6b36018.html.

seriously disturbing public order in either part or the whole of Somalia, in order to seek refuge outside the country.

In the context of the OAU Convention, the phrase "events seriously disturbing public order" encompasses situations of conflict or violence that threaten civilians' lives, freedom or security, as well as other serious disruptions of the *ordre public*. For the same reasons as above, UNHCR considers that areas of Southern and Central Somalia that are affected by active conflict as part of the ongoing struggle for control between the SFSG and AMISOM on the one hand, and Al-Shabaab and related militias or armed groups on the other, as well as areas of Southern and Central Somalia that are under the effective control of Al-Shabaab and/or other militias or armed groups should be regarded as areas affected by events seriously disturbing public order.

Against this background, UNHCR considers that individuals who originate from areas affected by active conflict between the SNSF/AMISOM and Al-Shabaab (and/or related militia or armed groups) or from areas under the effective control of Al-Shabaab (and/or related militias or armed groups), may, depending on the individual circumstances of the case, be in need of international protection under the terms of Article I(2) of the OAU Convention. Whether a specific area is affected by active conflict needs to be assessed in each case at the time of adjudication.

3. Refugee Status under the Cartagena Declaration

Somali asylum-seekers who seek international protection in any of the countries that have incorporated the Cartagena Declaration on Refugees ("Cartagena Declaration")[87] into their national legislation may qualify for refugee status on the grounds that their lives, safety or freedom have been threatened by generalized violence, internal conflict, massive violation of human rights or other circumstances that have seriously disturbed public order.

Following similar considerations as for UNHCR's broader mandate criteria and the 1969 OAU Convention, UNHCR considers that individuals originating from areas in Southern and Central Somalia affected by active conflict between the SNSF/AMISOM and Al-Shabaab (and/or related militia or armed groups) or from areas under the effective control of Al-Shabaab (and/or related militias or armed groups), may, depending on the individual circumstances of the case, be in need of international protection under the terms of the Cartagena Declaration, on the grounds that their lives, safety or freedom were threatened by circumstances that have seriously disturbed public order, either in the form of direct or indirect consequences of conflict-related violence, or as a result of serious and widespread human rights abuses committed by Al-Shabaab and/or other militias or armed groups in areas under their effective control.

4. Eligibility for Subsidiary Protection under the EU Qualification Directive

Persons originating from Southern and Central Somalia who seek international protection in Member States of the European Union and who are found not to be refugees under the 1951 Convention may qualify for subsidiary protection under Article 15 of the 2011 Qualification Directive, if there are substantial grounds for believing that they would face a real risk of serious harm in Southern and Central Somalia.[88] In light of the information presented in these Protection Considerations, applicants may, depending on the individual circumstances of the case, be in need of subsidiary protection under Article 15(a) or Article 15(b) on the grounds of a real risk of the relevant forms of serious harm (death

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[87] *Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America*, Mexico and Panama, 22 November 1984, http://www.refworld.org/docid/3ae6b36ec.html. Unlike the OAU Convention, the Cartagena Declaration is not a binding legal instrument; its provisions acquire the force of law only through incorporation in national legislation.

[88] Serious harm for the purposes of the Qualification Directive is defined as (a) the 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. European Union, *Directive 2011/95/EU of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast),* 13 December 2011, http://www.refworld.org/docid/4f06fa5e2.html, Articles 2(f), 15.

penalty[89] or execution; or torture or inhuman or degrading treatment or punishment[90]), either at the hands of the State or its agents, or at the hands of Al-Shabaab and related groups.[91] Equally, in light of the fact that Southern and Central Somalia continues to be affected by a non-international armed conflict and in light of the information presented in these Protection Considerations, applicants originating from or previously residing in conflict-affected areas may, depending on the individual circumstances of the case, be in need of subsidiary protection under Article 15(c) on the grounds of a serious and individual threat to their life or person by reason of indiscriminate violence.

In the context of the non-international armed conflict in Southern and Central Somalia,[92] factors to be taken into account to assess the threat to the life or person of an applicant by reason of indiscriminate violence in a particular part of the country include those outlined above in Section III.B.1 with reference to the analysis of "generalized violence" under UNHCR's broader mandate.

These factors, either alone or cumulatively, may be found to give rise to a situation in a particular part of Southern or Central Somalia that is sufficiently serious to engage Article 15(c) without the need for the applicant to demonstrate individual factors or circumstances increasing the risk of harm.[93] Where, after all relevant evidence has been considered, this is found not to be the case in the part of Southern or Central Somalia from which the applicant originates, it falls to be considered whether the applicant's individual characteristics are such as to reveal specific vulnerabilities which, combined with the nature and the extent of the violence, give rise to a serious and individual threat to the applicant's life or person.

C. Considerations Relating to the Application of an Internal Flight or Relocation Alternative

An assessment of the possibility of the application of an internal flight or relocation alternative (IFA/IRA) requires an assessment of the relevance as well as reasonableness[94] of the proposed IFA/IRA. In the case of Southern and Central Somalia, there are three possible scenarios to be considered: a possible IFA/IRA in areas controlled by the government, a possible IFA/IRA in areas under control of Al-Shabaab or other non-State agents, and a possible IFA/IRA in areas affected by armed conflict.

1. Relevance of IFA/IRA

Where the claimant has a well-founded fear of persecution at the hands of the State and its agents, there is a presumption that consideration of an IFA/IRA is not relevant for areas under the control of the State.

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89 The 1960 Constitution of the Republic of Somalia states that the law may prescribe the death penalty only for the most serious crimes against human life or the personality of the State. Examples of recent implementations of the death penalty include the execution in early 2013 of a soldier who was convicted of rape: IRIN, *Death sentence and detentions raise profile of rape in Somalia*, 24 January 2013, http://www.irinnews.org/report/97325/death-sentence-and-detentions-raise-profile-of-rape-in-somalia; and the execution of another man after being convicted of killing a journalist, see News.com.au, *Somalia Executes Aden Sheikh Abdi for the Murder of Journalist Hassan Yusuf Absuge,* 18 August 2013, http://www.news.com.au/world/somalia-executes-aden-sheikh-abdi-for-the-murder-of-journalist-hassan-yusuf-absuge/story-fndir2ev-1226699573018. As regards executions by Al-Shabaab, see reference on page 4 and footnote 26.

90 See Section II.A.4 and II.A.5.

91 It should be noted that where applicants face a real risk of such treatment for reason of a 1951 Convention ground, they should be accorded refugee status under the Convention (unless they are to be excluded from the benefit of protection under the Refugee Convention under Article 1.F); only where there is no nexus between the risk of serious harm and one of the Convention grounds should the applicant be accorded subsidiary protection.

92 See footnote 12, above.

93 See Court of Justice of the European Union, *Elgafaji v. Staatssecretaris van Justitie*, C-465/07, 17 February 2009, http://www.refworld.org/docid/499aaee52.html, where the Court of Justice of the European Union held (at para. 43) that the existence of a serious and individual threat to the life or person of an applicant "can exceptionally be considered to be established where the degree of indiscriminate violence characterising the armed conflict taking place […] reaches such a high level that substantial grounds are shown for believing that a civilian, returned to the relevant country or, as the case may be, to the relevant region, would, solely on account of his presence on the territory of that country or region, face a real risk of being subject to that threat."

94 The decision-maker bears the burden of proof of establishing that an analysis of relocation is relevant to the particular case. If considered relevant, it is up to the party asserting this to identify the proposed area of relocation and provide evidence establishing that it is a reasonable alternative for the individual concerned. See UNHCR, *Guidelines on International Protection No. 4: "Internal Flight or Relocation Alternative" Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003, http://www.refworld.org/pdfid/3f2791a44.pdf, para. 33-35.

In light of the available evidence of serious and widespread human rights abuses by **Al-Shabaab and/or other militias or armed groups**[95] in **areas under their control** in Southern and Central Somalia, as well as the inability of the SFG to provide protection against such abuses in these areas,[96] UNHCR considers that an IFA/IRA is not available in areas of the country under control of Al-Shabaab or allied non-State agents, with the possible exception of individuals who may have ties with the leadership of these groups or persons who are otherwise influential within these groups in the proposed area of relocation in Southern and Central Somalia.

Additionally, UNHCR considers that no IFA/IRA is available in **areas affected by active conflict** in Southern and Central Somalia, regardless of the actor of persecution.

Where the agents of persecution are non-State agents, consideration must be given to whether the persecutor is likely to pursue the claimant in the proposed area of relocation. Given the wide geographic reach of Al-Shabaab,[97] a viable IFA/IRA may not be available to individuals at risk of being targeted by Al-Shabaab. Although the government holds some key towns in Southern and Central Somalia, its reliance on AMISOM means that the territorial gains and level of control are generally assessed to be fragile and cannot be considered as sustainable or durable.[98] It is particularly important to note the operational capacity of Al-Shabaab to carry out attacks in all parts of Southern and Central Somalia, including Mogadishu and other areas not under its territorial control, as evidenced by recent reports on high profile complex attacks in urban areas under the effective control of pro-government forces.

In relation to consideration of IFA/IRA for Somalis fleeing persecution or serious harm by Al-Shabaab, protection from the State is generally not available **in Mogadishu** even though the city is under control of government forces supported by AMISOM troops. This applies in particular to Somalis who can be presumed to be on Al-Shabaab's hit list.

2. Reasonableness of IFA/IRA

Whether an IFA/IRA is "reasonable" must be determined on a case-by-case basis, taking into account the personal circumstances of the applicant, including the impact of any past persecution on the applicant.[99] Other factors that must be taken into account include the safety and security situation in the proposed area of relocation; respect for human rights in that area, and the possibilities for economic survival,[100] in order to evaluate whether the individual would be able to live a relatively normal life without undue hardship in the area of relocation, given his or her situation.

In the case of Mogadishu, UNHCR considers that particular attention must be given to the extent to which the applicant can expect to receive genuine support from his or her immediate family or clan in the context of the general weakening of traditional protection mechanisms; availability of basic infrastructure and access to essential services in the proposed area of relocation; access to shelter in the proposed area of relocation; and the presence of livelihood opportunities.

Where the proposed area of relocation is an urban area where the applicant has no access to pre-identified accommodation and livelihood options, and where he/she cannot be reasonably expected to fall back on meaningful support networks, the applicant will likely find himself or herself in a situation comparable to that of urban IDPs. Under these circumstances, to assess the reasonableness of

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95 Human Rights Watch, *Somalia: New Al-Shabaab Attacks are War Crimes*, 16 April 2013, http://www.refworld.org/docid/517681204.html; AMISOM, African Union Mission in Somalia, *Losing Streak: Public Support Fades for Al-Shabab,* September 2011, http://amisom-au.org/2011/09/losing-streak-public-support-fades-for-al-shabab/.

96 Center for Strategic and International Studies, *Somalia Redux? Assessing the New Somali Federal Government*, August 2013, http://csis.org/files/publication/130819_Bryden_SomaliaRedux_WEB.pdf.

97 ACLED, *Country Report: Somalia,* April 2013, http://www.acleddata.com/wp-content/uploads/2013/04/ACLED-Country-Report_Somalia_April-2013.pdf.

98 UN Security Council, *Letter dated 12 July 2013 from the Chair of the Security Council Committee pursuant to Resolution 751 (1992) and 1907 (2009) concerning Somalia and Eritrea addressed to the President of the Security Council,* S/2013/413, 12 July 2013, http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2013_415.pdf.

99 UNHCR, *Guidelines on International Protection No. 4: "Internal Flight or Relocation Alternative" Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees, HCR/GIP/03/04*, 23 July 2003, http://www.refworld.org/docid/3f2791a44.html, paras. 25-26.

100 Ibid., paras. 24, 27-30.

the IFA/IRA, adjudicators need to take into account the scale of internal displacement in the area of prospective relocation, and the living conditions of IDPs in the location, as well as the fact that many IDPs are exposed to various human rights abuses, including forced evictions.

D. Considerations on the Relationship between the International Protection Needs of Asylum-Seekers from Somalia and the Recently Concluded Tripartite Agreement Governing Future Voluntary Returns from Kenya to Somalia

The recently concluded tripartite agreement governing future voluntary returns from Kenya to Somalia[101] does not affect the above assessment of international protection needs of asylum-seekers from Somalia. As with other countries,[102] the fact that some Somalis may choose to return spontaneously despite the less than ideal circumstances does not change the fact that many Somalis[103] continue to flee in search of international protection, either for 1951 Convention reasons or for reasons that may bring them within broader international protection criteria.

Any assistance provided by UNHCR for spontaneous return to Somalia would be aimed at supporting individuals who, being fully informed of the situation in their places of origin, choose voluntarily to return. Any future role of UNHCR in the facilitation of voluntary repatriation movements to Somalia and any future involvement by UNHCR in efforts aimed at sustainable reintegration for returnees and IDPs in Somalia should not be construed as implying an assessment on the part of UNHCR that Somalia is safe for every individual, regardless of personal profile or personal circumstances. It should be noted in this regard that voluntary repatriation and forced return are processes of fundamentally different characters, engaging different responsibilities on the parts of the various actors involved.

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[101] *Tripartite Agreement Between the Government of the Republic of Kenya, the Government of the Federal Republic of Somalia and the United Nations High Commissioner for Refugees Governing the Voluntary Repatriation of Somali Refugees Living in Kenya, 2013,* 10 November 2013, http://www.refworld.org/docid/5285e0294.html.

[102] Such as, for example, Afghanistan; a country which has signed tripartite return agreements with UNHCR and a number of countries, including for example with Pakistan.

[103] See figures quoted in Section II.A.6 above.