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Exclusion

GUIDANCE NOTE
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In the context of Somalia, numerous circumstances may require consideration of the potential applicability of exclusion gounds.

Relevant circumstances could include:

- **Crimes committed by state forces and state-affiliated forces**

Read more in the common analysis

- **Crimes committed by non-state armed forces**

Read more in the common analysis

- **Criminal activity**

Read more in the common analysis

- **Other types of violence**

Read more in the common analysis

General guidance with regard to the assessment of such circumstances in light of the relevant provisions of the QD is provided in the next sections.

Article 12(2)(a) and Article 17(1)(a) QD

The ground ‘crime against peace’ is not likely to be of relevance in the cases of applicants from Somalia.

Violations of international humanitarian law by different parties in the current and in past conflicts in Somalia could amount to war crimes, such as the deliberate and systematic attacks on hospitals, the deliberate indiscriminate attacks on civilians, etc.

Relevant situations include the civil war (1988-1991) and the non-international armed conflict between the Somali government and Al-Shabaab. Furthermore, fighting between the ISS and Al-Shabaab amounts to a non-international armed conflict.

Reported crimes such as murder, torture, and rape by the different actors could amount to crimes against humanity when committed as part of a widespread and systematic attack against the civilian population.

Some acts in the current and past conflicts, such as extrajudicial killings, torture, forced disappearance, could amount to both war crimes and crimes against humanity.

Especially (former) members of the SNA, the SPF, the NISA, as well as FMS security forces and anti-government armed groups, in particular Al-Shabaab and ISS, can be implicated in acts that would qualify as war crimes and/or crimes against humanity.

Crimes committed in the context of clan militias clashes, in particular in the civil war in the past, could also give rise to considerations under Article 12(2)(a) QD/Article 17(1)(a) QD.

Article 12(2)(b) and Article 17(1)(b) QD

In the context of Somalia, criminality and breakdown in law and order in some parts of the country make the ground of ‘serious (non-political) crime’ particularly relevant. In addition to violence and murder related to family and clan disputes, some examples of particularly relevant serious crimes may include human trafficking, extorsion/illegal taxation, piracy etc.

Violence against women and children (for example, in relation to domestic violence or in the context of forced and child marriage) could potentially amount to a serious (non-political) crime.

Performing FGM/C is a serious (non-political) crime. A careful examination of all relevant circumstances of the case, including those related to the individual responsibility should take place.

In some cases, the crimes in question could be linked to an armed conflict or could be committed as a part of a systematic or widespread attack against a civilian population (e.g. kidnapping of recruits, taxation to finance the activities of non-state armed groups), in which case they should instead be examined under Article 12(2)(a)/Article 17(1)(a) QD.

Article 12(2)(c) and Article 17(1)(c) QD

(Former) membership in armed groups such as Al-Shabaab and ISS could trigger relevant considerations and require an examination of the applicant's activities under Article 12(2)(c)/Article 17(1)(c) QD, in addition to the considerations under Article 12(2)(b)/Article 17(1)(b) QD.

The application of exclusion should be based on an individual assessment of the specific facts in the context of the applicant's activities within that organisation. The position of the applicant within the organisation would constitute a relevant consideration and a high-ranking position could justify a (rebuttable) presumption of individual responsibility. Nevertheless, it remains necessary to examine all relevant circumstances before an exclusion decision can be made.

Where the available information indicates possible involvement in crimes against peace, war crimes or crimes against humanity, the assessment would need to be made in light of the exclusion grounds under Article 12(2)(a)/Article 17(1)(a) QD.

Article 17(1)(d) QD

In the examination of the application for international protection, the exclusion ground under Article 17(1)(d) QD (danger to the community or the security of the Member State) is only applicable to persons otherwise eligible for subsidiary protection.

Unlike the other exclusion grounds, the application of this provision is based on a forward-looking assessment of risk. Nevertheless, the examination takes into account the past and/or current activities of the applicant, such as association with certain groups considered to represent a danger to the security of the Member State or criminal activities of the applicant.

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