

**Human Rights Council****Eighteenth session**

Agenda item 10

**Technical assistance and capacity-building****Report of the independent expert on the situation  
of human rights in Somalia, Shamsul Bari\****Summary*

The unending saga of human rights deprivations in Somalia over the past two decades have now been compounded by another humanitarian crisis. The devastating drought currently ravaging the Horn of Africa, compounded by conflict and the denial of humanitarian assistance, has resulted in a declaration of famine in two regions of South-Central Somalia. Already in the course of the independent expert's sixth visit to Somalia, in February 2011, the drought had taken a heavy toll on livestock and food reserves. The full impact of the drought can be seen on the Somali population, a large number of whom have been forced to flee their homes in search of food and succour. Deaths caused by malnutrition have been documented among new arrivals in refugee camps in Kenya and Ethiopia and into Mogadishu. The United Nations has already warned that, unless urgent measures are taken to increase the response, the famine will spread to the whole of southern Somalia within the next two months. This should not be allowed to happen and become another blot on the conscience of mankind.

Apart from the drought and famine, the armed conflicts between Islamist insurgents and the Transitional Federal Government, supported by the troops of the African Union Mission in Somalia (AMISOM), continues to cause deaths and injury to the civilian population. Indiscriminate shelling and firing in urban areas, and suicide and improvised explosive attacks by the insurgent group Al-Shabaab, are the main causes.

Recent offensive has resulted in territorial gains for AMISOM and Transitional Federal Government forces. On 6 August 2011, Al-Shabaab announced its withdrawal from positions it had held in Mogadishu for nearly two years. Although Al-Shabaab has been under military pressure in Mogadishu from the combined operations of AMISOM and Transitional Federal Government forces for some time, its sudden withdrawal came as a surprise.

\* The present report was submitted after the deadline in order to include the most recent developments.

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## I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 15/28, in which the Council, inter alia, renewed the mandate of the independent expert for one year and requested him to report to the Council at its eighteenth session. The present report covers the period from September 2010 to July 2011.

2. The independent expert undertook his sixth and seventh field visits to Somalia and neighbouring countries from 15 to 26 February, and from 3 to 8 July 2011, respectively. During the first trip, he visited Djibouti to participate in the orientation session of Somali delegates involved in the preparation for the universal periodic review for Somalia, due in May 2011. He then visited Kenya, from where he made a short visit to Mogadishu (the airport only), followed by travel to Somaliland, Puntland and Gulmudug. In July 2011, the independent expert visited Mogadishu again, this time travelling outside the airport region to visit Government officials at Villa Somalia. He also visited the Dadaab refugee camps in Kenya, which houses the largest number of Somali refugees in the world, making it the world's largest concentration of refugees.

3. The most lasting impression left in the mind of the independent expert from these two visits was the devastating effects of the drought that has engulfed Somalia and the region since late in 2010. While in February the deleterious effects of the drought were observed more in its impact on livestock, a large number of which had perished, six months later the effects were evident on human beings, large numbers of whom were displaced from their homes and forced to seek refuge in other areas in the country or in neighbouring countries. At the time of writing, the drought situation had worsened a great deal and has become a famine already in two regions of Somalia. The United Nations has warned that famine will spread to all eight regions of southern Somalia within two months if decisive action is not taken immediately.

4. The independent expert would like to put on record his deep gratitude to all United Nations and non-United Nations staff **that** helped him during his two visits to Somalia. He was particularly impressed by their dedication and hard work, in the most difficult circumstances, to cater to the needs of the Somali people. They deserve to be warmly recognized and commended by the international community.

5. The information contained in the present report is based on discussions with people the independent expert met during his sixth and seventh trips to Somalia and the immediate region. They include the Vice-President of Puntland, the new Prime Minister of Somalia and several Government ministers and senior officials in all the places he visited, United Nations country team members, important citizens and members of civil society. In addition, a large number of reports and other documentation prepared by the United Nations and non-United Nations agencies were consulted. Most of the information relating to development in the human rights and humanitarian fields, including developments relating to the political and security situation, was culled from United Nations reports. An effort has been made to provide a comprehensive picture of important developments in Somalia in order to properly contextualize the human rights situation for readers.

## II. Drought and famine and the humanitarian situation

6. While in 2010 the food security situation in the Horn of Africa saw some improvement thanks to two consecutive seasons of good rainfall and above-average crop production, the lack of rainfall in late 2010 and in 2011 has led to a rapid and serious increase in vulnerability and food insecurity.

7. Loss of livestock, decreasing pastoralist incomes, poor harvests and high food prices in the pastoral and agricultural zones of Somalia have severely affected household access to food. In June, the United Nations estimated that almost 3 million people in Somalia faced food insecurity, almost one third of the overall population. In July, the United Nations estimated that acute malnutrition rates were over 20 per cent in the entire southern Somalia, reaching 38 per cent in Bay, Bakol and Gedo regions.

8. The devastating effects of the drought have been compounded by the ongoing armed conflict and insecurity, extreme underdevelopment, including in terms of infrastructure and the denial of humanitarian assistance by Al-Shabaab in the areas it controls. As a result, in July 2011, the United Nations declared a famine in Bakol and the Lower Shebelle regions of Somalia.

9. Drought and conflict-related displacement from southern Somalia and refugee flows into Ethiopia and Kenya steadily increased over the reporting period; in an average month in 2011, some 15,000 Somalis flee their country and arrive in Kenya and Ethiopia. According to the Office of the United Nations High Commissioner for Refugees (UNHCR), in June 2011 alone, an estimated 54,000 refugees fled to Kenya and Ethiopia from Somalia, which represents three times the number of people who fled in May.

10. While conflict has been a fact of life for most Somalis for years, it is the drought that has taken them to breaking point. Totally destitute women and children walk for days to reach camps in Kenya and Ethiopia. According to UNHCR, more than 80 per cent of those fleeing Somalia are women and children. Men and boys are left behind to look after what is left of their possessions, or prevented from fleeing by Al-Shabaab when not already recruited to fight the jihad. The death toll of displaced Somalis continues to increase as many travel in last-minute desperation when food reserves have run dry, leaving them to make the journey with no resources.

11. In July, Al-Shabaab allowed the operations of actors such as the United Nations Children's Fund (UNICEF) and the International Committee of the Red Cross (ICRC) in its territories, but maintained its ban on such agencies as the United Nations Political Office for Somalia (UNPOS), the World Food Programme (WFP) and the United Nations Development Programme (UNDP) and several international non-governmental organizations. Already in April 2010, the Security Council designated Al-Shabaab for targeted sanctions for its obstruction of humanitarian aid; credible sources have indeed reported that it Al-Shabaab has extorted payment from humanitarian entities that work in areas it controls. Given these precedents and the claim by the Al-Shabaab spokesperson that the humanitarian emergency situation is "totally, 100 per cent wrong and baseless propaganda" fabricated by the United Nations for political purposes, the independent expert is concerned at the real scope of the opening announced by Al-Shabaab.

12. Overcrowding in receiving locations such as Dadaab is severe and is resulting in refugees not getting the assistance they need. A similar situation is found in Mogadishu, where reportedly 1,000 displaced people arrive daily. There is reportedly an upsurge in sexual violence against women.

13. The United Nations, international and national non-governmental organizations are reportedly working to respond to the crisis. However, as recognized by the United Nations in its reports, the overextended humanitarian aid, in particular in Mogadishu, is struggling to cope with the large influx of internally displaced persons. While the humanitarian community has increased efforts to meet people's urgent needs in all affected areas, there is real concern that programmes may not be sustainable beyond the short term because of lack of funding.

14. International efforts to deal with the drought situation have been compounded by the fact that not only Somalia but the whole of Horn of Africa is experiencing the most severe

food crisis in the world today. Over 10 million people in the drought-stricken areas of Djibouti, Ethiopia, Kenya, Somalia and Uganda are severely affected, with no likelihood of improvement until 2012.

15. Furthermore, humanitarian funding for Somalia is negatively affected by anti-terrorism legislation in some donor countries that considers any form of assistance reaching an organization identified as associated with “terrorism” an indictable offence. As a result, some donor States have avoided funding humanitarian activities that might lead to aid leakage to Al-Shabaab. In Somalia, since early 2008, the United Nations has been engaged in negotiations with various donor countries seeking exemptions from prosecution in the case of lifesaving food and non-food assistance, but to no avail. The independent expert highlights the necessity of adequate funding to sustain the humanitarian effort and ensure a proper response.

16. Following his two recent trips to the region, the independent expert drew the attention of the international community through two press releases (one in March 2011, the other in July) to the terrible consequences of the drought in Somalia. In his latter statement, the Special Rapporteur on the right to food, Olivier De Schutter, was a joint signatory. They warned that unless immediate measures were taken, the situation would worsen. The independent expert was pained to discover that, despite clear warnings by all concerned, the international response was far from satisfactory.

### **III. Developments in the political sector**

17. The political stand-off between the President of the Transitional Federal Government and the Speaker of the Transitional Federal Parliament took a serious turn in 2011. It threatened to bring political progress towards ending the transition to a standstill. The Speaker continued to maintain that elections for the Presidency, the Speaker and Speaker’s deputies should be held before the end of the transition, on 20 August 2011, while the President, citing security concerns and the need to carry out key transitional tasks, wanted elections to be postponed for a year. The confrontation reached a peak on several occasions, such as on 9 May, when Somali members of Parliament were prevented from leaving Mogadishu to attend a workshop to discuss modalities for elections, and on 19 July, when a shoot-out took place in Villa Somalia between guards of the President and of the Speaker.

18. The Security Council expressed its most serious concern at the political standstill among the Transitional Federal Institutions. The International Contact Group on Somalia met in Kampala, in June 2011. Participants urged the Somali leadership to reach consensus and complete the critical transitional tasks, most notably the constitution-making process through a credible and inclusive consultation process.

19. Intense efforts by regional leaders and the United Nations resulted in the Kampala Accord, which was signed on 9 June 2011. The Accord provided for the postponement of elections for 12 months from August 2011, the resignation of the Prime Minister within 30 days, the appointment and endorsement by Parliament of a new Prime Minister and Cabinet, and an undertaking by the Transitional Federal Government and the Transitional Federal Parliament to work together with the international community to establish a roadmap with benchmarks, timelines and compliance mechanisms for the implementation of priority tasks. The Transitional Federal Institutions, with the support of UNPOS and the United Nations country team are reportedly working on the said roadmap, which is expected to be adopted before the end of August 2011. An improvement in the security situation and progress in the adoption of the Constitution are central to the roadmap.

20. Following the announcement of the Accord, demonstrations were held in Mogadishu against the President, the Speaker and the facilitators of the Accord, including the Special Representative of the Secretary-General for Somalia, which lasted for two days, during which at least three demonstrators died.

21. Subsequently, a new Prime Minister, Abdiweli Mohamed Ali, was endorsed by Parliament on 28 June with an overwhelming majority. His nomination was also positively received by most key players. A new Cabinet was endorsed by Parliament on 23 July, with 397 votes in favour. The 18-member Cabinet consists of all new appointees, chosen on the basis of the 4.5 formula and includes representatives from Ahlu Sunnah Wal Jama'a.

#### **IV. Military advances and developments in the security sector**

22. In Mogadishu, African Union Mission in Somalia (AMISOM) and Transitional Federal Government forces maintained the significant gains made in early 2011, and further increased their area of control to include Bakara Market in May. The forces now fully control eight districts in Mogadishu. This has led to a significant improvement in the security situation.

23. Al-Shabaab appears to have been weakened by rumours that senior leaders colluded in the killing of a senior commander and al-Qaida representative at a roadblock in Mogadishu, on 8 June. It appears to have been further weakened by the loss of senior officials and by drone strikes near Kismaayo in June and July. Continuing recruitment and taxation by the group suggest its capabilities have been reduced by fighting on several fronts. Occasional clan attacks against Al-Shabaab suggest growing opposition.

24. Consequently, Al-Shabaab has increased its use of asymmetric warfare tactics against AMISOM and Transitional Federal Government TFG forces, including suicide bombings against a military position on 30 May, the seaport on 9 June, and the assassination of the Minister of the Interior and National Security, Abdishakur Sheik Hassan, on 10 June, by his own niece.

25. Since the signing of the Djibouti Agreement in 2008, the international community has provided assistance to the Transitional Federal Government to develop security and justice sector institutions. The Joint Security Committee and its working groups continue to strengthen the security coordination structures established within the Office of the President and the Prime Minister.

26. The Transitional Federal Government military has reached the estimated strength of 10,000 men; its police have reached 7,000. However, there are concerns that the Transitional Federal Institutions remain under-supported in some key security areas and that additional funds are necessary to make basic security a priority. At the same time, lack of effective command and control structures and poor discipline among some Transitional Federal Government troops are a serious concern and have resulted in recurring violence.

27. One trend of significant military and political significance that has emerged over the past month is the desertion of Al-Shabaab fighters. Some deserters are re-absorbed into communities, while others, estimated to be about 130, have surrendered to AMISOM/Transitional Federal Government forces and are currently accommodated in National Security Authorities facilities. In his talks with the Prime Minister, the independent expert encouraged the Transitional Federal Government, to develop, with United Nations support, the legislative and policy provisions necessary to cater for such and similar other persons.

## **V. Developments relating to human rights in South-Central Somalia**

### **A. Protection of civilians**

28. The protection of civilians remains a major concern in Mogadishu and other areas in the South, where fighting has been intense. In mid-February, AMISOM and the Transitional Federal Government launched a major offensive to expand Government control over Mogadishu, with a second front along the border with Ethiopia and Kenya, causing further displacement. In February alone, the fighting resulted in the displacement of 24,000 people countrywide, 6,000 of whom in Mogadishu districts.

29. In Mogadishu, an increase in fighting results in an increase in civilian casualties, as testified by the surge in under-five casualties in Mogadishu in the period from March to May 2011. According to the World Health Organization (WHO), in May 1,590 people with weapon-related injuries were admitted to the three main hospitals in Mogadishu, almost half of whom were children under five. Most suffered from blast-related injuries. Military operations conducted in highly-populated urban areas, failure to distinguish between civilians and combatants, deliberate and indiscriminate attacks, including the use of improvised explosive devices and suicide attacks by Al-Shabaab, account for a significant number of civilian deaths and injuries. The independent expert is extremely concerned at the impact of a military offensive in Mogadishu at this time of crisis and displacement.

30. AMISOM has taken some preventive measures to limit civilian casualties, such as a policy of no-indirect fire and the identification of no-fire zones, although specialized equipment and other measures are still needed. Some AMISOM personnel received training on international humanitarian law and protection of civilians in December, and further training is envisaged. AMISOM also carried out investigations into two separate incidents where its troops apparently carelessly opened fire against passers-by. As a result, three soldiers are serving prison sentences in Uganda. The independent expert encourages the African Union and the United Nations to strengthen their cooperation on issues of protection of civilians and recommends that the effectiveness of the African Union/United Nations working group to serve as a mechanism for coordination in this key area be reinforced.

31. Poor command and control over Transitional Federal Government forces and the loose integration of soldiers with militia and clan-based affiliation have led to a series of incidents resulting in violence not directly resulting from the conflict. On 30 January, for example, clashes between Transitional Federal Government police and a Transitional Federal Government special security unit near Banadir Hospital killed at least 16 people and injured 56 others. The Government publicly regretted the incident and arrested five individuals. Four persons were reportedly killed on 19 July in a shootout in Villa Somalia between guards of the President and of the Speaker. Reports of Government forces harassing and using violence against civilians have also been made. On 19 July, a student was shot dead by Government soldiers in Wabeeri district after he resisted the stealing of his computer. Al-Shabaab, on the other hand, continues to perpetrate serious violations of humanitarian and human rights law, including summary executions of civilians associated with the Government, unlawful arrest and detention and acts amounting to torture and other inhumane, cruel and degrading practices, such as flogging, amputation and stoning.

## **B. Child protection**

32. The widespread and systematic recruitment and use of children in armed conflict in Somalia continues to be a matter of utmost concern. Al-Shabaab continues its policy of active child recruitment. In May and June, it reportedly recruited over 180 children in Lower Juba; systematic recruitment from Bay and Bakol was also documented. Schools are increasingly targeted for recruitment. The Transitional Federal Government has publicly reiterated its policy of not recruiting children into the Somali national forces. However, no effective mechanism is in place to prevent such recruitment, as made evident by the identification in the Bihanga military training camp in Uganda of 46 underage recruits. In April, the minors were repatriated into Mogadishu, but only six of them have been reintegrated into civilian life with United Nations support. The whereabouts of the remaining 40 are unclear, and there are reports that they are still hosted in the Government Al-Jazeera Camp. The independent expert urges the new Cabinet to appoint a focal point for human rights and children and armed conflict issues on the basis of the positive example given by the Farmajo Government, and looks forward to concrete progress in the development and adoption of the action plan, as required by the Security Council in its resolution 1612 (2005).

33. According to United Nations monitors, in May and June, 463 grave violations against children involving primarily child recruitment and the killing and maiming of children in Mogadishu were reported. Child soldiers are often used in the frontline.

## **C. Rule of law**

34. The weakness or virtual collapse of the structures designed to administer justice, including law enforcement and the protection of human rights, continues to impede progress towards the establishment of formal mechanisms for the rule of law. Given this situation, a range of non-State customary or religion-based (sharia) mechanisms are in place to deliver judicial and legal services to the population. At present, the judiciary in Mogadishu is housed in only a few buildings and house courts, and has limited personnel in need of further professional development. In April 2011, UNDP conducted the first judicial training in years. The six-month programme was aimed at judges, prosecutors and judicial support staff.

## **D. Freedom of expression and opinion**

35. No journalist was killed in the period under consideration. However, journalists have continued to suffer injuries in the context of the ongoing armed conflict, and are subjected to arbitrary or unlawful arrests, threats and other forms of intimidation. Al-Shabaab reportedly continues to place unlawful and arbitrary limits on freedom of opinion and expression, including by blocking radio signals and prohibiting listening to certain radio stations and news. Failure to obey these orders has been met with punishments to both media house staff and individuals caught listening to banned stations.

36. Cases of interference by the Transitional Federal Government with freedom of opinion and expression were also reported. Notable cases include the arrest and detention of two Shabelle Media personnel for three days in Mogadishu, only for them to be released without charge. In March 2011, Radio Kulmiye was closed by the National Security Agency for 48 hours, then allowed to resume broadcasting by the authorities. In June, Government forces stormed and stopped the operation of Jubba radio, a local FM station based in Mogadishu, for a few hours.

37. The National Union of Somali Journalists reported to the independent expert that, on 22 May, its offices were raided and robbed by four armed men, and alleged that Government forces extended no protection to Union staff and offices. The independent expert was unable to verify these claims.

38. The independent expert hopes that the Transitional Federal Government will work closely with the media in the critical context of the transition period and the constitution-making process. He would likewise expect the media to work professionally, with due respect for the ethics and principles governing the freedom of expression and opinion at this critical period in their country's history.

## **E. Women's rights**

39. Domestic violence, sexual violence and such harmful traditional practices as female genital mutilation are some of the most common violations of women's rights reported across all areas of Somalia.

40. A number of other violations remain invisible, and discrimination in all aspects of life overlooked. Deteriorated infrastructure and health-care services have an exponential impact on women's health, with the effect that Somalia has among the highest maternal mortality and morbidity rates in the world. Women have also lower education levels, including at primary level, face work discrimination and greater poverty, the impact of which should be carefully evaluated when considering that around 70 per cent of Somali homes have women as household head.

41. Access to justice and equality before the law remains a challenge, as exemplified in cases of sexual violence that are settled by tribal elders who disregard the opinion and will of the victim, including with forced marriages between the victim and the perpetrator. In the course of the universal periodic review, several delegations focused on the urgent need to improve the human rights situation of women and children. The Transitional Federal Government delegation committed to eradicating female genital mutilation, and it was recommended that the practice be criminalized and awareness-raising campaigns conducted. Other recommendations on women's rights concerned the urgent need to address violence against women and to include women in political life and the peace process.

## **VI. Universal periodic review of Somalia**

42. In May 2011, the Human Rights Council reviewed the report of Somalia on the human rights situation in the country.<sup>1</sup> Somalia was represented at the session of the Working Group on the Universal Periodic Review by three women Ministers, one from Puntland. This, together with the fact that this was the first review of Somalia and engagement with a human rights review mechanism in two decades, drew a great deal of attention in the Council.

43. The large number of delegations participating in the review expressed general appreciation for the efforts of the Transitional Federal Government to present its report, and recognized the particular situation of Somalia. Linkages between the political and the human rights situations were highlighted, and the Government was called upon to pursue the peace process and expand its outreach across clan lines.

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<sup>1</sup> A/HRC/WG.6/11/SOM/1.

44. The situation of women and children, the eradication of female genital mutilation, violence against women, women's participation in political and public life, child recruitment, the situation of journalists and human rights defenders, besides the poor degree of enjoyment of core elements of economic and social rights, such as education and health, were all identified as areas where action was required. Other recommendations pertained to the adoption and ratification of international instruments, the finalization of the Constitution with strong human rights provisions, the abolition of the death penalty and the development of the required institutions, including the creation of a national human rights commission, the strengthening of the judiciary and others.

## **VII. Human rights situation in Somaliland**

45. The independent expert visited Somaliland late in February 2011, and had useful meetings with Government Ministers and senior officials. He held meetings with United Nations officials and members of the civil society. He subsequently received information from individuals by e-mail.

46. In Somaliland, a degree of relative stability and functioning institutions have permitted some positive developments. In January 2011, the Act establishing the Somaliland National Human Rights Commission was promulgated by the President, and an Acting Chairperson was appointed. In July, seven Commissioners were also approved by Parliament. The Act meets basic international standards. However, the independent expert is concerned at the likelihood that the very limited human resources available to the Commission will de facto prevent it from carrying out its mandate effectively. The independent expert welcomes the work of UNPOS supporting the Commission, and invites the international community, and United Nations agencies in particular, to coordinate and intensify their support for the Commission. The independent expert is also pleased that Somaliland has launched a five-year justice strategy to address its shortcomings in an open and cooperative relationship with the international community.

47. The National Union of Somali Journalists reported that, over the past several months, authorities in Hargeisa have stepped up legal action against journalists and news media organizations, including charges of defamation, libel, false news and insults. The independent expert has not been able to verify the report; nevertheless, he is concerned that acts amounting to slander and defamation are dealt with through criminal legislation and carry a detention sentence. He therefore urges the Somaliland authorities to bring existing legislation into line with human rights so that such forms of conduct are dealt with as civil matters.

48. With regard to the situation of women, the fact that two women Ministers and one deputy were included in the Cabinet of 26 Ministers formed by President Silanyo should be considered a milestone. It is, however, also important that women's representation be strengthened at lower levels and a quota system be considered. The gender policy officially adopted by the Parliament under the previous Government was in the process of being implemented.

49. Cases of sexual violence, even after being reported to the Police, continue to be taken out of the formal legal process and adjudicated through the customary system. Nonetheless, violence against women is either on the increase or increasingly reported, despite the attached stigma. The independent expert was informed that only two police stations in Hargeisa have in place a women's desk staffed by female police officers. It is apparent that this policy needs to be substantially strengthened to contribute to promoting women's access to justice.

50. The prevalence of female genital mutilation and circumcision in Somaliland is almost universal. A total of 98 per cent of women aged between 15 and 49 have undergone the procedure, with 77 per cent of them subjected to the most severe form. There is no national law against female genital mutilation, although efforts have been made in the recent past to introduce relevant legislation. Moreover, there is no national policy or strategy for the eradication of this practice. The Government and many civil society organizations have initiated different efforts and outreach programmes to encourage communities to abandon the practice. In June 2011, religious leaders and the Minister for Religious Affairs issued a public declaration in which they stated that the practice did not have its basis in religion, and called for the abandonment of the practice. Most agreed that unless there was a Government policy to criminalize the act, mutilation will continue.

51. With regard to the participation of Somaliland in the universal periodic review process of Somalia, which was due in May 2011, the Minister for Labour told the independent expert that Somaliland was willing to cooperate with the Transitional Federal Government on the review. The relations of the previous Government with the Transitional Federal Government were poor, but the present Government has changed its approach. The Minister added, however, that the approach of the United Nations to the issue of Somalia/Somaliland was a violation of the right to self-determination by the people of Somaliland.

## **VIII. Human rights situation in Puntland**

52. The independent expert visited Puntland on 23 and 24 February and had useful meetings with the Vice President and some members of the Puntland cabinet. He also met with the United Nations team, as well as members of the civil society in Garowe and Galkayo. The information on Puntland presented below is thus based on discussions held during that trip and information subsequently provided by different sources.

53. The overall security situation in Puntland remains relatively calm. However, since the beginning of 2011, there have been waves of violence and assassinations, mostly in Galkayo, Bossaso and areas around Galgala. Assassinations have targeted businessmen, elders, religious leaders, judicial officials and security and law enforcement officials. While some of these acts should be regarded as common criminal matters, others appear to be either clan-revenge killings or conducted by the Atam militia, reported to have close ties with Al-Shabaab. There are reports of peace talks between President Farole and Atam which have apparently resulted in preliminary agreements, including an announced amnesty. The independent expert welcomes these steps, but urges all parties to reflect the necessary balance between peace and justice and integrate core international law principles, such as on the limits to the permissible scope of amnesty laws.

54. The Government of Puntland has taken some measures to reduce violence and insecurity, including the deployment in April 2011 of additional security forces in Galkayo and the imposition of a night-time curfew in Bossaso, which was revoked in May. Some of the measures taken to address insecurity, however, appeared arbitrary and violated due process rights. For instance, in June, following the assassination of a former army colonel in Bossaso, security forces conducted a search operation that resulted in more than a 100 people being arrested.

55. Nonetheless, killings, assassinations and other violent acts continued to be reported, and the Government has been widely criticized by sections of society for failing to address the problem. In June, the Governor of the Bari region resigned owing to the growing insecurity in the region and the reportedly poor cooperation of the central administration to address the insecurity. In July, a new Minister for Security was appointed.

56. With regard to the situation of internally displaced persons, a concern in previous reports, a decrease in the number of forcible transfers of displaced males from Puntland towards the Galkayo area was noted. The independent expert recognizes the legitimate concerns of the Puntland authorities about infiltration of militant forces from the South, but, as expressed in his meeting with the Puntland authorities, he is concerned that an over-reaction to such concerns may in some cases result in serious human rights violations.

57. The engagement of the United Nations with the Government on a policy for internally displaced persons seem to have acquired new vigour, but the general humanitarian situation of displaced persons remains precarious in many ways, particularly with respect to access to adequate housing, food and water, health and sanitation. Protection concerns remain, and cases of sexual and gender-based violence among the displaced, as well as within host communities, are prevalent. However, owing to the stigma attached to this type of violence, coupled with a weak criminal justice system, victims continue to use traditional structures to settle such cases, which encourages impunity.

58. In Galkayo, the independent expert was briefed by the Galkayo Education Centre for Peace and Development on its programmes to combat sexual and gender-based violence. Such violence takes place while women are involved in earning a livelihood for sheer survival, washing clothes, at the water well, fetching wood or in the house itself. According to the Centre, there is no recognition by the authorities of the critical nature of this type of violence, with the effect that prevention and response are inadequate. Significantly, the Centre reports that, of the 104 cases reported to the police in 2009, none had reached sentence at the time of the independent expert's visit in February 2011.

59. The President of Puntland acknowledged the weak state of the criminal justice system during his opening remarks at the commencement of the twenty-sixth session of the Puntland Parliament. However, the decision made by the President in June 2011 to summarily dismiss some 20 judges to "clean up" the judiciary is likely to have a negative impact on its independence. It also seems to contravene provisions of the Puntland Constitution, which accords the power of dismissing judicial officials to the Judicial Service Council.

60. The exercise of freedom of expression remains a challenge, in particular among journalists, who reportedly face harassment and arbitrary arrest by authorities. For instance, on 29 June 2011, Puntland police arrested a journalist working for Hiiraan Online at his office in Bossasso for reportedly publishing a "false news report". The journalist appeared in court on 30 June, where he was charged for "jeopardizing the security of Puntland and publishing false news" in accordance with the Somali Criminal Code. He was convicted and sentenced to a year of imprisonment, but also reportedly threatened by the authorities with deportation to Ethiopia because of his Ogadeni clan background. The handling of such conduct through criminal prosecution and restriction of right to liberty remains a problem in Puntland. The independent expert welcomes the request made by the Puntland authorities to the UNPOS human rights unit for assistance in the development of legislation compliant with human rights standards.

61. The independent expert welcomes the appointment in June 2011 of the Human Rights Defender to head the human rights institution in Puntland. The independent expert considers the establishment of human rights institutions compliant with human rights standards an invaluable step in the promotion of a human rights culture at the national level. The independent expert has been informed that the UNPOS human rights unit is providing technical assistance to facilitate its full establishment, and looks forward to the continued engagement of the United Nations system in this key area.

62. The independent expert also expresses his appreciation for the steps taken to expand the party system in Puntland and to advance the process of democratization. On 17 July

2011, nine members of the Puntland electoral commission were sworn into office. The commission will be responsible for preparing the necessary electoral legislation, organizing a referendum on the Constitution, the creation of political parties and conducting municipal elections.

## **IX. Human rights situation in the regions of Sool, Sanaag and Cayn**

63. The regions of Sool, Sanaag and Cayn lie at the border between Somaliland and Puntland and have been the object of a territorial dispute between the two administrations for the past 20 years. Puntland claims these two regions on basis of clan affiliation; Somaliland claims them on the basis of pre-independence colonial borders.

64. Reports of fighting between the Somaliland army and the Sool Sanaag Caynabo militia, at times backed by the Puntland army, are common. In February 2011, for example, there was heavy fighting in the Buuhoodle area, the combined effect of which, together with the drought throughout Somalia, was the displacement of nomadic populations from the area in anticipation of the fighting. There were no reports of civilian casualties as a result of the fighting, but this account is disputed by Sool Sanaag Caynabo sympathizers. The dispute over the regions is also conducted through political violence, as assassinations or attempted assassinations of Somaliland officials in Las Anod have been numerous, targeting police and judicial officials in particular. Such acts are often followed by a spate of arbitrary or unlawful arrests and detentions by the Somaliland administration.

65. The fact that the Sool and Sanaag regions are believed to hold significant oil deposits and that contracts for oil exploration have already been signed by Puntland is likely to fuel the conflict between the two administrations.

## **X. Situation in Gulmudug State**

66. During his visit to the region in February 2011, the independent expert met with the Gulmudug authorities in South Galkayo. The Speaker of Parliament, representing the President of Gulmudug and members of the cabinet, briefed the independent expert at length and focused on the drought and the situation of internally displaced persons. The Speaker drew the independent expert's attention to the devastating effects of the drought on the people and livestock of the region. He claimed that about a million livestock were already dead. If the drought continued, many human lives would also be lost soon. He added that there were 25,000 internally displaced persons living in 23 camps in South Galkayo. According to the Speaker, security standards were fair, but livelihoods were suffering. The Government required more assistance from the United Nations to protect and promote the rights of internally displaced persons, especially economic, social and cultural rights. He also connected the phenomenon of piracy to poverty in Gulmudug and lack of economic opportunities, explaining the need for income generation and development intervention in the region.

## **XI. Situation in Somalia**

67. Since his appointment in May 2008, the independent expert has made seven visits to Somalia and the region. A constant feature of his reports submitted to the Human Rights Council on the visits has been his frustration that, despite the efforts made over the years, no end to the Somali crisis was in sight. Because of the complex, prolonged nature of the conflict, the situation has see-sawed between progress and regress.

68. There were times when the independent expert was encouraged by some positive developments, but discouraged soon thereafter. While he thus swayed between optimism and pessimism, however, he has never given up hope. He still strongly believes that, despite many setbacks, the conflict in Somalia, like all conflicts, will come to an end sooner rather than later. He hopes that, in the not too distant future, the people of Somalia will be able to wake up from their long nightmare to find that normality has returned to their country. For this to happen, the international community must stay the course until the end and the Transitional Federal Institutions remain committed. The most recent trips of the independent expert have once again raised similar hopes, which he wishes to share with the Council.

69. While finalizing the present report, the independent expert learned about the withdrawal of Al-Shabaab from Mogadishu, a development that presents the Somali peace process with a major opportunity to move forward. For the first time in nearly two decades, with the exception of the brief rule by the Union of Islamic Courts, Mogadishu will come under an internationally-supported central authority. A critical element at this stage is the need for an immediate injection of resources to the various players on the ground. This must be considered in conjunction with the need to address the existing humanitarian crisis sparked by the drought in the region.

70. During his visit to the Dadaab refugee camps in Kenya in early July, the independent expert spoke to newly arriving refugees from Somalia to learn about the circumstances that led them to flee. There was nothing new about what they said about the painful conditions in their country, except that this time these were compounded by the drought. They described how drought had gradually destroyed the livestock and all other means of their livelihood and how helpless they felt in the absence of any help from the authorities. They also mentioned how, during their long journeys, sometimes lasting over a month, they were helped in all possible ways by ordinary Somalis on the way, many of whom helped them carry their small children on their laps over long distances. In the face of such solidarity, the independent expert felt that the basic ingredients of national unity are there in Somalia to be put to use for nation-building before and after the war.

71. Most of those with whom the independent expert talked in Dadaab had come from territories controlled by Al-Shabaab. Since the latter had adopted a policy of not allowing the United Nations or other international agencies to bring assistance to areas they controlled, the people living there were left with no outside assistance, while Al-Shabaab too was unable or unwilling to provide for their needs. As a result, the population felt betrayed by them.

72. It may be recalled that, on previous occasions when the independent expert talked to refugees, in Kenya or Yemen, who came from Al-Shabaab controlled areas, most did not feel as strongly against them as they did this time around. The refugees were now very vocal about their disapproval of Al-Shabaab and its policies. This should be a warning to Al-Shabaab, and an opportunity for the Transitional Federal Government to be seized. The fact that Al-Shabaab recently decided to lift its ban, however temporarily, against outside assistance may be interpreted as their increasing concern about how people perceive the movement.

73. The independent expert had another positive impression from his talks with some youths in Dadaab refugee camps, some of whom had stayed for over two decades. They expressed gratitude to the international community for making it possible for them to obtain a good education during their stay in Kenya. They were now ready to go back to Somalia, if the opportunity came, to contribute to the education of their compatriots, who have long been denied this opportunity. Since the independent expert had discussed such a possibility with the Prime Minister during his talks the previous day in Mogadishu, this is a possibility to be explored. He is confident that such well-educated men and women refugees could not

only contribute to nation-building in Somalia but also become important players for confidence and peacebuilding. To begin with, they could help fulfil the dream of the new Prime Minister, Abdiweli Mohamed Ali, who told the independent expert that his Government wished to open at least one school and one hospital every month in Somalia.

74. The independent expert found his meeting with the new Prime Minister of Somalia and his cabinet colleagues in early July in Mogadishu to be very encouraging. The new Prime Minister has clearly brought some vitality to the Government. The fact that he was endorsed by an overwhelming majority of Somali Members of Parliament, a rare phenomenon, is a positive sign. He understands well the key challenges of governance in Somalia at this critical juncture of its history. His commitment to deal with them in a robust manner made a positive impression on the independent expert.

75. The independent expert agreed with the Prime Minister that the expectations of the international community from the Transitional Federal Government must be based on realistic considerations, keeping in mind the needs, capacity and resources of the Government. He also agreed that there was a need to clearly spell out the commitments of both the international community and the Government and, once obtained, to stick to them. However, the independent expert emphasized that, in view of the long history of distrust of the international community about the ability and willingness of the Government to ensure an efficient and corruption-free system of governance in Somalia, there was a need to establish trust and confidence on both sides. In this respect, the independent expert was pleased to learn from the Prime Minister that his Government was committed to a financial control mechanism to ensure proper utilization of international assistance. He would like to see the international community take up the offer of the Prime Minister to be a member of the Financial Integrity Board that the Government intends to set up.

76. Once trust is established, it is hoped that the international community will be encouraged to provide the Transitional Federal Government and the people of Somalia with assistance commensurate to their needs. The independent expert was pained to learn from the United Nations that the 2011 Consolidated Appeal for the Annual Programme for Somalia has to date been only half-funded. Taking into account the additional needs caused by the prolonged drought, the shortfall is predicted to be about 70 per cent. This will be a sad state of affairs.

77. The independent expert learned from the United Nations that, because of insufficient funding, it was unable to respond properly to the enormous needs caused by the unprecedented drought in Somalia. This is unfortunate not only because of its impact on famine relief, but also because it means fewer funds at a critical time, when the transition period is expected to conclude in a year's time, when the Transitional Federal Government will yield its place to a constitutionally established Government. The independent expert cannot over-emphasize the point that there is now an important opportunity for the international community to work closely with the new Government and take advantage of the momentum created.

78. The independent expert also believes that the time is ripe now for the international community to work together with the Government to implement the commitment made by the Transitional Federal Government at the universal periodic review of Somalia, held in May 2011. The Government should be commended for its commitment to promote and protect human rights in Somalia even in the midst of war. It must now be helped to turn its commitments into reality. The role of the international community and the United Nations is critical in this regard.

79. An important point emerged from the discussions held by the independent expert with the AMISOM Force Commander at Mogadishu Airport on 26 February 2011. The Commander reminded the independent expert about the visit in 2009 of the Under-

Secretary-General for Political Affairs to Somalia, in which he made a commitment to establish the footprint of the United Nations in Mogadishu. He argued that, in the absence of the United Nations, which was the main stakeholder of international efforts in Somalia, AMISOM was compelled to perform functions, including political work, not related to its mandate. He elaborated on the importance of the presence of the United Nations in Mogadishu and argued that the security situation there was no worse than in Afghanistan, where the United Nations was deployed.

80. The independent expert informed the Force Commander that he had made the same point in many of his reports to the Human Rights Council. In his subsequent talks with members of civil society, the independent expert received the same message from them. Many argued that non-governmental organizations working on human rights in Mogadishu were often targeted by the insurgents (as much as the latter targeted the Government), but received no AMISOM protection. They felt that the presence of the United Nations in Mogadishu would make a difference.

81. During his latest visit to Mogadishu, however, the independent expert was pleased to learn that the presence of the United Nations there had increased significantly and preparations were going ahead to place more United Nations staff in Mogadishu. The independent expert considered this to be a very positive development. He was particularly pleased to learn that the new Deputy Special Representative of the Secretary-General for Somalia had decided to take up residence in Mogadishu in the near future. This will give a much-needed boost to all others working for the transition of Somalia from conflict to peace.

## **XII. Recommendations**

### **A. Transitional Federal Government**

82. The recent withdrawal of the Al-Shabaab forces from Mogadishu should be seized upon by the Transitional Federal Government as an unique opportunity to demonstrate to the people of Somalia that not only have its efforts and those of the African Union and the international community borne fruit at last, but that the Government and the people of Somalia now have an opportunity to work together and move forward to the return of normality in Somalia. It is imperative that the Transitional Federal Government win over the whole-hearted support of the people so that it can stand up to the efforts of the insurgents to topple the Government through unconventional means, in which they would need the support of the people to succeed.

83. An equally important task should be to ensure that the terrible drought that has engulfed Somalia receives adequate attention both from the Transitional Federal Government and the international community. This is an opportunity for the Government to display its commitment to the welfare of the people and its leadership, and to draw international attention to the plight of the people and their needs at this critical hour. In this effort, the Government should consider involving the people, including elders, which is likely to contribute to peace and reconciliation as well.

84. The independent expert supports most of the recommendations made by participating States at the universal periodic review of Somalia,<sup>2</sup> and recommends that the Government decide, through a process of broad consultations, on how to go about implementing them and develop its own road map in this regard.

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<sup>2</sup> A/HRC/18/6.

85. As the number of recommendations made during the universal periodic review is quite large, the Government should consider grouping or prioritizing them into categories, on the basis of the time required to implement them (such as short-term, medium-term and longer-term). The recommendations should be quickly disseminated to the people for their views and suggestions; this will be useful to ensure their support for the process. At the same time, the establishment of a ministerial task force to review and agree on the categorization and road-mapping would be useful.
86. The Transitional Federal Government should establish appropriate mechanisms to communicate with the Somali people on a regular basis. This is essential to involve and motivate them in the affairs of the State, which in turn is essential for good governance, including obtaining their cooperation in many areas. To facilitate communication with the people, good use should be made of the sophisticated communications equipment reportedly received by UNPOS from New York to raise public awareness in the constitution-making debate.
87. An important confidence-building initiative of the Government should be the establishment of a national human rights commission, in compliance with Paris Principles, which has long been under consideration. Efforts must be made to consult with and seek help from Puntland and Somaliland authorities, who have acquired some experience in this regard.
88. The Government should strengthen policy measures relating to human rights in line with the road map of the universal periodic review, including the adoption of a human rights action plan, improvement of the administration of justice and ensuring human rights and international humanitarian law training for the security sector, including the judiciary and police and armed forces.
89. The Government should ratify the core human rights conventions, including the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of Persons with Disabilities, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Rome Statute and the Convention against Transnational Organized Crime and the protocols thereto, to demonstrate its commitment to human rights in all aspects of life.
90. The Government should take advantage of the constitution-making process, which offers an important opportunity to strengthen human rights protection by enshrining fundamental rights as principles underpinning all provisions, including the creation of an environment conducive to free debate, dialogue and reconciliation. The Prime Minister must succeed in completing the process by August 2012, the date of the end of the transition period. It is critical that Somalia have a Constitution by broad consensus to open a new page of its history as a normal State.
91. The amnesty law that the Transitional Federal Government intends to table for adoption by the Parliament with regard to individuals who surrendered to Government and AMISOM forces, and other similar situations in the future, must be based on human rights and humanitarian law principles. As many of the deserters are reportedly minors, help from UNICEF would be useful.
92. The Government should consider appropriate measures to respond to the report by WHO that 43 per cent of the 933 weapon-related injuries reported by the three main Mogadishu hospitals in recent months were to children under five, compared to 3.5 per cent in April. The measures should be aimed at reducing or ending such occurrences in the shortest possible time.

93. The Government should bear in mind that accountability for civilian casualties in the context of the armed conflict and for loss of life resulting from the excessive use of force is critical for the proper respect of human rights and humanitarian law. While war and conflict are a serious impediment to credible investigations, it is necessary to at least establish mechanisms that strengthen the commitment of the Government and start the process. The mechanisms should be credible, transparent and impartial, in keeping with applicable international law.
94. The Government must adopt a strong human rights-based approach to security sector reform, with a particular focus on the identification of cases of violence against women, protection of victims and evidence-gathering. At the same time, it is vital that permanent, effective mechanisms are established to hold the perpetrators of such egregious violations, be they members of the armed forces, rebels or regular citizens, fully accountable.
95. The Somali authorities at the national and subnational levels should consider establishing police stations near the camps for internally displaced persons, including women's desks staffed by female police officers.
96. The Transitional Federal Government should set up a fool-proof system to ensure that its policy of not recruiting children into the Somali national forces is strictly enforced by all concerned and the age limit is fully respected through strengthened vetting processes. The Government, together with AMISOM, must publicize its policy of zero tolerance on the use of children in armed conflict as often and as widely as possible, and ensure its strict observance with the support of UNICEF, under the oversight of a multipartite commission.
97. The Transitional Federal Government should take the measures necessary to stop all attacks against journalists and media organizations, and empower media workers to make their contribution at this critical juncture of the transition process and constitution-making. Media workers should behave professionally and abide by the ethics and principles governing freedom of expression and opinion.
98. The Government should launch a national awareness campaign on the situation of Somali women, and consider setting up specific funding channels to support local organizations involved in the protection of women's rights and to provide assistance to victims of sexual and gender-based violence and discrimination.
99. The Government should consider inviting refugees from camps in neighbouring countries with the necessary background to return home to help in its efforts to open schools and hospitals, as foreseen in the Prime Minister's vision of opening one school and one hospital a month in south-central Somalia.
100. The independent expert commends the Prime Minister's expressed wish that Transitional Federal Government forces should gradually take over the protection of Somali institutions and citizens, bearing in mind that Somalia cannot depend for ever on AMISOM to ensure its security.
101. The Transitional Federal Government should take all measures necessary to address the lack of effective command and control structures and poor discipline among some Government troops, which have resulted in recurring violence.
102. While all parties to the conflict should respect their obligations under international humanitarian law and human rights law, the Transitional Federal Government should take the lead. All those who perpetrate abuses against the civilian population, in transgression of such obligations, should be held accountable in a timely and transparent manner.

103. The Government should consider reappointing a focal point for human rights and children and armed conflict issues, as was done by the previous Government, and take concrete measures for the development and the adoption of the action plan required by the Security Council in its resolution 1612 (2005).

## **B. Somaliland**

104. The Government of Somaliland should ensure necessary resources for the Somaliland National Human Rights Commission to carry out its mandate effectively, in particular monitoring and educational and complaint-hearing of functions.

105. The Government should consider strengthening measures that contribute to promoting women's access to justice. More female police officers should be stationed in important police station in Hargeisa and elsewhere, as necessary.

106. As all acts amounting to slander and defamation are currently dealt through criminal legislation and carry a detention sentence, Somaliland authorities should consider bringing existing legislation into line with human rights so that such forms of conduct are dealt with as civil matters.

107. The Somaliland and Puntland authorities must resolve their territorial disputes over the Sool, Sanag and Cayn regions by peaceful means. Somaliland should allow access of the international community, including the United Nations, to these regions to provide much needed humanitarian assistance to the drought-affected population. The Somaliland authorities should facilitate the visits of human rights agencies to monitor and investigate allegations of human rights violations committed by State and non-State actors on the ground.

## **C. Puntland**

108. Puntland authorities must take care in adopting measures to address insecurity so that they are not arbitrary, and respect due process rights. Situations like the one created in June, following the assassination of a former army colonel in Bossasso, in which security forces conducted a search operation resulting in the arrest of more than one hundred people, should be avoided.

109. The Government must recognize the critical nature of sexual and gender-based violence, as reported by the Galkayo Education Centre for Peace and Development in South Galkayo, and ensure proper response and prevention. The fact that, of the 104 cases reported to the police in 2009, none had reached sentence at the time of the independent expert's visit in February 2011, must be considered seriously.

110. The request by the Puntland authorities to the UNPOS human rights unit for assistance in the development of legislation compliant with human rights standards is a good initiative and should be followed up with similar cooperation in other areas.

## **D. The United Nations and the international community**

111. It is sad that the drought that has been slowly but steadily spreading death and devastation over different parts of Somalia for the past six months has not received due attention from the international community. The fact that the consolidated appeal for funds by United Nations agencies for their Somalia programme has been only half funded can be said to have contributed to this sad state of affairs. It is imperative that

the international community urgently contribute the necessary funds to the Transitional Federal Government and the United Nations to avert further disaster.

112. The independent expert commends the decision of the Government of Kenya to keep its borders open for Somali refugees to seek asylum on its territory. Equally commendable is its decision to allow the extension of the Dadaab refugee camps to accommodate more Somali refugees. The independent expert urges the international community to provide Kenya with assistance to compensate local communities for the extra burden that they have to bear in this regard.

113. United Nations agencies and their international partners should integrate the relevant universal periodic review recommendations in their planning and programming, and provide the Government of Somalia with the technical and financial support in the implementation of the recommendations.

114. The United Nations and the international community, together with the African Union, should ensure appropriate funding to speed up the establishment of a civilian casualty tracking system and a fire direction centre within AMISOM so that these mechanisms can be set up as soon as possible.

115. The efforts of UNICEF and its partners to support the implementation of programmes aimed at preventing the recruitment of children by armed groups and forces, and the reintegration of children previously associated with armed groups and forces, must be fully supported by the international community.

116. Member States should consider taking part in supporting the Prime Minister's vision of opening one school and one hospital a month. One way of doing so could be for individual States to sponsor one or more such schools and hospitals.

117. The African Union and the United Nations should strengthen cooperation on issues relating to protection of civilians and ensure that the effectiveness of their joint working group to serve as a mechanism for coordination in this key area is promptly reinforced.

118. The UNPOS human rights unit, which is crucial to the promotion and protection of human rights in Somalia and for coordination among all United Nations agencies on human rights issues, has suffered from frequent staff turnover in the past three years. Utmost attention must be paid to ensure staff stability in the unit in order to avoid work and planning disruptions.

119. The recent withdrawal of Al-Shabaab from Mogadishu makes the international community's engagement with the Transitional Federal Government even more important at this critical time. There is now an added need for greater international presence in Mogadishu to prevent any vacuum that could undermine the capital's stability and allow it once again to descend into warlordism. Most importantly, the international community should consider deploying an international protection force to facilitate the work of the United Nations and other international actors in Mogadishu.