

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	898
Land:	Somalia
Kilde:	UN Human Rights Council
Titel:	Situation of human rights in Somalia. Report of the Independent Expert on the situation of human rights in Somalia
Udgivet:	14. juli 2021
Optaget på baggrundsmaterialet:	2. september 2021



General Assembly

Distr.: General
14 July 2021

Original: English

Human Rights Council

Forty-eighth session

13 September–1 October 2021

Agenda item 10

Technical assistance and capacity-building

Situation of human rights in Somalia

Report of the Independent Expert on the situation of human rights in Somalia

Summary

The present report, submitted pursuant to Human Rights Council resolution 45/27, covers the period from 1 July 2020 to 30 June 2021. Owing to the coronavirus disease (COVID-19) pandemic and the ensuing travel and movement restrictions, the Independent Expert on the situation of human rights in Somalia, Isha Dyfan, was unable to visit the country in April 2021 as initially agreed with the Government. The report is based on extensive desk research and information made available to the Independent Expert by actors working in the area of human rights in Somalia both inside and outside the country.

The Independent Expert notes the earlier momentum on the part of the Government of Somalia for the promotion and protection of human rights and regrets the recent regression from that position with regard to women and children's rights. The lack of progress on these fundamental issues has hindered the finalization of legal and policy reforms that underpin national reconstruction and development. The impact of the political stalemate on human rights has made the road to recovery even longer. Nevertheless, the signing of the agreement between the Federal Government of Somalia and the federal member states on 27 May 2021 is a welcome development, which gives renewed confidence in the political leadership of the country and hope for its commitment to the holding of peaceful, transparent, inclusive and credible elections.

The protracted delay in enacting human rights laws and policies and appointing members to crucial human rights institutions puts into question the political will of the Somali authorities to advance progress in the field of human rights. The increase in the number of unlawful killings, life-changing injuries and loss of property, as well as the loss of opportunity by the most vulnerable, especially youth, minorities and the marginalized, fuels conflict, undermines reconciliation and diverts resources from development.

In 2020, the Human Rights Council requested that the Independent Expert develop a human rights transition plan with clear benchmarks and indicators. The current political crisis has not been conducive to the holding of wide-ranging consultations. Nonetheless, the Independent Expert held consultations with the Permanent Representative of Somalia to the United Nations Office and other international organizations in Geneva, the Chair of the Somaliland National Human Rights Commission and representatives of civil society organizations, research institutes and United Nations funds, agencies and programmes. She



also met with the Special Rapporteur of the African Commission on Human and Peoples' Rights in charge of Somalia.

In the report, the Independent Expert has made several recommendations, including on the need to: (a) review cases and release journalists, media workers and human rights defenders arbitrarily arrested and unlawfully detained during the performance of their duties; (b) complete the enactment of long-standing bills and conduct transparent appointments to human rights institutions to protect women and children's rights; and (c) finalize the constitutional review process. The Independent Expert has also suggested areas that might require more financial investment and capacity-building by increasing and reallocating budgets to implement the security transition plan; guaranteeing workers' rights; strengthening the rule of law; and building wells and other basic infrastructure essential to the realization of human rights. Progress on the implementation of these benchmarks and indicators should be closely monitored and updates provided to the Human Rights Council for action.

Contents

	<i>Page</i>
I. Introduction	4
II. Recent developments.....	5
A. Political developments.....	5
B. Security situation	6
C. Humanitarian situation.....	7
III. Human rights challenges	7
A. Promoting security, peace and reconciliation for the protection of civilians in conflict	7
B. Strengthening the rule of law, accountability and transitional justice	10
C. Ensuring respect for freedom of opinion and expression, assembly and association	11
D. Promoting women's rights and gender equality in all aspects of society	12
E. Ensuring respect for children's rights and promoting youth empowerment	14
F. Promoting economic, social and cultural rights.....	14
G. Specific considerations	16
IV. International cooperation.....	17
V. Conclusion and benchmarks for progress in improving the situation of human rights	17

I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 45/27, by which the Council extended the mandate of the Independent Expert on the situation of human rights in Somalia for a period of one year. In the same resolution the Council also requested the Independent Expert to report to it at its forty-eighth session and to the General Assembly at its seventy-sixth session.

2. The report, which covers the period from 1 July 2020 to 30 June 2021, is based on information gathered from a variety of sources through a call for contributions issued in March 2021,¹ as well as interviews with various interlocutors, including the Permanent Representative of Somalia to the United Nations Office and other international organizations in Geneva, the Chair of the Somaliland National Human Rights Commission, representatives of civil society organizations, research institutes and United Nations funds, agencies and programmes, as well as from open-source information such as government statements, publicly available official documents and news articles. The Independent Expert also met with the Special Rapporteur of the African Commission on Human and Peoples' Rights in charge of Somalia. The Independent Expert wishes to express her appreciation to all stakeholders who contributed to the report.

3. Somalia has continued to engage with the international human rights system, in particular with respect to its reporting obligations under the United Nations treaty body system. In October 2020, Somalia submitted its initial report under the International Covenant on Civil and Political Rights, initially due in 1991, after having already submitted reports under the Convention against Torture and the Convention on the Rights of the Child in 2019. On 6 May 2021, Somalia participated in the third cycle of the universal periodic review and presented its country report.² During the review, 101 member States took the floor and provided 273 recommendations. The Independent Expert welcomes the full engagement by Somali civil society actors throughout the process. The outcome of the report will be adopted at the forty-eighth session of the Working Group on the Universal Periodic Review. She also welcomes the election of the Permanent Representative of Somalia to the United Nations Office at Geneva to serve as one of the Vice- Presidents of the Bureau of the Human Rights Council, representing the African States Group until the end of 2021.

4. The Independent Expert issued two letters through the special procedures mechanism. On 1 September 2020, the Independent Expert and eight mandate holders issued a communication expressing concern that a number of provisions in the draft bill on sexual intercourse-related crimes were incompatible with the obligations of Somalia under international and regional human rights law and contravened its Provisional Constitution of 2012.³ On 28 January 2021, the Independent Expert, together with four other mandate holders, issued a communication on the poor conditions in Somaliland prisons and on allegations of the indefinitely prolonged and arbitrary detention of five inmates in the Hargeisa Central Prison, whose imprisonment has continued during the coronavirus disease (COVID-19) pandemic despite the fact that they have finished serving their prison sentences.⁴ To date, no response has been received to either communication.

5. The Independent Expert continued to enjoy some level of cooperation with the Somali authorities, as evidenced by the acceptance of her proposed visit through the good offices of the Permanent Representative of Somalia to the United Nations Office at Geneva. However, owing to measures and travel restrictions related to the coronavirus disease (COVID-19) pandemic, the Independent Expert was unable to undertake her planned mission to Somalia from 1–10 April 2021, as agreed with the Government of Somalia. Moreover, the prospect of undertaking the visit prior to the finalization of the report was further hindered by the

¹ See www.ohchr.org/EN/HRBodies/SP/CountriesMandates/SO/Pages/CallForContributions.aspx.

² A/HRC/WG.6/38/SOM/1.

³ See OL SOM 1/2020. Available at

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25523>.

⁴ Ibid.; see also AL SOM 1/2021 and AL OTH 6/2021. Available at

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25871>.

unpredictable political and security situation in the country. The Independent Expert looks forward to the opportunity to visit Somalia as soon as it is reasonable to do so.

6. The roll-out of the Oxford/AstraZeneca vaccine through the COVID-19 Vaccine Global Access (COVAX) Facility since 16 March 2021, as well as the establishment of new COVID-19 testing laboratories in the country are positive developments. However, the COVID-19 pandemic continues to pose significant challenges to the enjoyment of human rights in Somalia. It has further exacerbated protection risks, in particular in areas where the capacity of the Government to protect human rights is limited. The Independent Expert has received reports of an increase in reported cases of sexual and gender-based violence and forced evictions amid the pandemic.

II. Recent developments

A. Political developments

7. The reporting period was marked by the delay in the parliamentary and presidential electoral processes at the federal level, which were scheduled to culminate in presidential elections on 8 February 2021. At the state level, in November 2020, presidential and parliamentary elections took place, amid some tensions, in Hirshabelle.

8. Parliamentary and local council elections in Somaliland took place on 31 May, with allegations of the arrest and arbitrary detention of opposition candidates and their supporters as a means of pressuring them to withdraw from the electoral process. At the regional level, relations between Somalia and some of its neighbours have worsened, including allegations of undue interference in its internal affairs,⁵ although recent reports suggest possible steps towards reconciliation.⁶

9. The Independent Expert welcomes the efforts to resolve the political stalemate between authorities at the Federal and state levels and to bring about an agreement on the most viable electoral model and outstanding contentious issues regarding the holding of elections. On 17 September 2020, at a conference held in Mogadishu following a series of consultative meetings, an agreement on those issues was reached; that agreement has yet to be implemented. The Independent Expert deplores the loss of lives following violent incidents on 19 February 2021 during an armed exchange between government security forces and security teams employed by the opposition, including the excessive use of force by government forces to disperse protesters.⁷

10. On 25 and 26 April 2021, protests erupted in Mogadishu against the House of the People's "special law" adopted on 12 April, to extend the President's term by two years. Violence ensued, resulting in a number of civilian casualties and the displacement of close to 100,000 civilians.⁸ The Independent Expert takes note of the annulment of the term extension on 1 May and the conclusion of the conference of the National Consultative Council on electoral issues, convened from 22 to 26 May 2021 by the Prime Minister to finalize discussions on the implementation of the agreement of 17 September 2020 and the proposals of the Baidoa Technical Committee for the holding of indirect elections.

11. The Independent Expert urges the Somali authorities to abide by the new agreement and to hold indirect elections within the specified time frame in order to avoid a further deterioration of the situation and the risk that human rights violations might occur as a result.

⁵ See <https://issafrica.org/iss-today/kenya-somalia-dispute-threatens-an-embattled-horn-of-africa>.

⁶ See www.aljazeera.com/news/2021/5/6/somalia-restoring-ties-with-kenya-after-nearly-six-months; see also S/2021/485, para. 13.

⁷ See <https://unsom.unmissions.org/statement-special-representative-secretary-general-james-swan-security-council-situation-somalia>.

⁸ See https://reliefweb.int/sites/reliefweb.int/files/resources/HC%20statement_surge%20in%20displacement%20Mogadishu%2028%20April%202021%20Final.pdf.

B. Security situation

12. The security situation in Somalia is of major concern, with frequent complex attacks carried out by Al-Shabaab and other groups. Al-Shabaab remains the primary security threat; the group employs indiscriminate weapons, including improvised explosive devices (IEDs) and other tactics to terrorize the population. As highlighted by the Panel of Experts on Somalia in its final report to the Security Council in September 2020, “the threat posed by Al-Shabaab to peace, security and stability in Somalia goes beyond the impact of the group’s conventional military action and asymmetric warfare to include sophisticated extortion and ‘taxation’ systems, child recruitment practices and an effective propaganda machine.”⁹

13. During the reporting period, multiple security incidents were recorded: recently, on 10 May 2021, at least six people were killed when a suicide bomber attacked a police station in Mogadishu.¹⁰ On 9 March 2021, six mortar rounds landed within the perimeter of the Aden Adde International Airport in Mogadishu¹¹ and at least 20 people were killed and 30 wounded by a suicide car bomb outside a restaurant near the port in Mogadishu on 5 March 2021.¹² These are not isolated incidents but regular occurrences in the country, despite efforts by Somali security forces and the African Union Mission in Somalia (AMISOM) to protect civilians, recover territory and restore stability and security across the country.

14. The Independent Expert notes the recommendations of the Security Council-mandated independent assessment of international support to the whole security environment in Somalia post-2021 circulated in January 2021. She concurs with the findings of the independent assessment, in particular that a reconfigured AMISOM is the most viable option for providing an international security force capable of guaranteeing Somalia’s stability, protecting the country against Al-Shabaab and other threats and enabling the Somali security forces to effectively assume full responsibility for national security. She urges the Security Council to consider enhancing the predictability, sustainability and flexibility of financing for the proposed reconfiguration of AMISOM, including through United Nations assessed contributions for this purpose.¹³ She regrets that the African Union and AMISOM did not engage with this process and looks forward to the findings of the independent assessment of the African Union, which was being finalized at the time of the drafting of the present report.

15. In February 2021, the Government, in partnership with AMISOM and international partners, transmitted the revised security transition plan, which includes several strategic objectives towards the goal of the full assumption of security responsibilities by Somali security forces by the end of 2023. In the plan, it is foreseen that Somali institutions and security forces will be better able to carry out force generation and plan, execute and sustain combined security operations.¹⁴ It also foresees that the Somali institutions and security forces will be equipped under civilian oversight mechanisms, in compliance with human rights standards and the rule of law.¹⁵

16. During the reporting period, the United Nations and its partners continued to provide support and training to the AMISOM and Somali security forces to improve compliance with international humanitarian and human rights law. However, the lack of financial resources, low levels of force generation and limited capacity and capability, combined with high defection and attrition rates and the politicization of the security forces, were of concern during this period. The withdrawal of AMISOM forces is expected to create security vacuums, which will continue to be exploited by Al-Shabaab, clan militias and other groups. The Independent Expert calls on the United Nations and its partners to ensure that the support

⁹ S/2020/949, summary, p. 3.

¹⁰ See www.reuters.com/world/africa/suicide-bomber-kills-six-police-officers-somali-capital-police-2021-05-10/.

¹¹ See <https://unsom.unmissions.org/un-envoy-somalia-condemns-mortar-attack-aden-adde-international-airport-area-0>.

¹² See www.aljazeera.com/news/2021/3/5/at-least-20-killed-by-suicide-car-bomb-blast-in-somalia.

¹³ See S/2021/260.

¹⁴ Revised Somali security transition plan (2021), p. 13.

¹⁵ Ibid., p. 17.

provided is compliant with the requirements of the United Nations human rights due diligence policy.

C. Humanitarian situation

17. As a result of a number of contributing factors, including the COVID-19 pandemic, a desert locust infestation, floods, water shortages and pre-drought conditions, the humanitarian situation in Somalia remains dire. The heavy *gu'* season rains and floods across Somalia in early May have affected an estimated 166,000 people, involving the death of several people and the displacement of 66,000 persons in 27 villages in the Middle Shabelle region.¹⁶ The internally displaced population in Somalia is estimated at more than 2.6 million, all of whom face serious risks of marginalization and forced evictions. Estimates suggest that 3.5 million Somalis will be facing crisis and emergency food security conditions throughout 2021, with children constituting over 60 per cent of those in need.¹⁷ In the 2021 humanitarian response plan, it is estimated that 5.9 million Somalis are in dire need of humanitarian assistance. The plan, however, remains severely underfunded, leaving the population in a state of extreme vulnerability.

18. The Independent Expert was informed that there has been a significant reduction in humanitarian access both for aid workers and civilians during the reporting period. Targeted violence against humanitarian workers and assets continued to obstruct the ability of humanitarian workers to reach persons in need, including essential medical personnel. Between 1 July 2020 and 1 March 2021, a total of 210 access incidents impacting humanitarian operations were recorded, in which five humanitarian workers were killed, five injured, two abducted and one detained or temporarily arrested.¹⁸ On 27 October 2020, Al-Shabaab shot and killed two humanitarian aid workers participating in a polio vaccination campaign organized by the United Nations Children's Fund (UNICEF), the World Health Organization (WHO) and the Federal Ministry of Health and Human Services in Kahda district, Mogadishu. In addition, humanitarian organizations have been confronted with arbitrary taxation and undue interference in the management of their operations. The Independent Expert encourages the Somali authorities to adopt a harmonized regulatory framework for humanitarian action at the federal and state levels.

19. The Independent Expert welcomes the establishment of a committee to investigate the circumstances surrounding the abduction and killing of seven health workers from a local non-governmental organization (NGO) and an individual in the Middle Shabelle region on 27 May,¹⁹ and calls on the Somali authorities to promptly investigate all attacks and incidents against humanitarian workers and operations.

III. Human rights challenges

A. Promoting security, peace and reconciliation for the protection of civilians in conflict

20. The Federal Government of Somalia and its international partners have put a number of measures in place to protect civilians, including: the training of security forces in international humanitarian and human rights law; and the elaboration of laws and policies, such as the draft national protection-of-civilians policy and the national counter-terrorism bill, which was endorsed by the Council of Ministers in 2017 and introduced for first reading

¹⁶ United Nations, Office for the Coordination of Humanitarian Affairs, "Somalia: 2021 Gu' season floods update No. 3", 26 May 2021. Available at https://reliefweb.int/sites/reliefweb.int/files/resources/SOM_210526_Flash%20Update%20%233.pdf.

¹⁷ Humanitarian Needs Overview Somalia, 2021, p. 7. Available at www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/20200903_hno_somalia.pdf.

¹⁸ Responses to questionnaire.

¹⁹ S/2020/798, para. 16.

in Parliament in 2019. The national counter-terrorism bill, which is currently under review by the Government, is not human rights-compliant. The Independent Expert urges the Somali authorities to swiftly adopt the protection-of-civilians policy and the national counter-terrorism bill and to ensure their full compliance with international human rights norms and standards.

21. While encouraged by the above-mentioned efforts, the Independent Expert remains concerned by the high number of civilian casualties as a result of the ongoing armed conflict, frequent terrorist attacks and inter-clan conflict over land control and other resources. She was informed that from 1 July 2020 to 31 March 2021, the United Nations documented 860 civilian casualties, comprising 396 killed and 464 injured, 53 per cent of which were perpetrated by Al-Shabaab, 20 per cent by unidentified armed elements, 17 per cent by Somali security forces, 8 per cent by clan militias and 1 per cent by AMISOM elements. Al-Shabaab continues to carry out targeted and indiscriminate attacks against civilians and civilian objectives using IEDs, suicide attacks, targeted assassinations and executions of individuals suspected of working with or spying for the forces of foreign Governments. Abductions of clan elders, aid workers, business owners, women and children continue to be carried out by Al-Shabaab. Air strikes by international forces have also resulted in civilian casualties. The United States African Command (AFRICOM), which is responsible for its military operations in Africa, continued to use drones and manned aircraft to carry out air strikes against Al-Shabaab, killing and injuring civilians without provision of redress for victims.²⁰ AFRICOM has issued its civilian casualty assessment report and has established an online civilian casualty reporting portal, which allows civilians to report incidents of civilian casualties. However, investigations to ensure accountability for such attacks are inadequate.²¹

22. The conflict has also resulted in grave violations committed against children. According to the United Nations country task force on monitoring and reporting, between 1 July 2020 and 31 March 2021, 4,200 grave violations, affecting 3,226 children (2,540 boys, 686 girls), were verified. Of that number, 1,584 children were recruited and used in combat roles, 860 children were killed or maimed and 362 children were victims of rape and other forms of sexual violence. In addition, there were 34 attacks on schools (31) and hospitals (3), involving the abduction of 1,350 children, and in 10 incidents humanitarian access was denied. In addition, 161 children were arrested and detained by federal and regional government security forces for alleged association with armed groups. In 2020, the United Nations verified that conflict-related sexual violence had been perpetrated against 400 girls, 12 women and 7 boys by clan militias and Al-Shabaab, the Somali Police Force, the Somali National Army, regional forces and unknown armed elements.

23. Stakeholders reported an intensification and increase of armed conflict among clans and sub-clans over agricultural landownership, pasture and water resources, as well as revenge killings and struggles for political power, accounting for 199 casualties (133 civilian deaths and 66 injured).²² Inter-clan clashes in Jubbaland, Galmudug and South-West State resulted in civilian casualties and massive displacements. Revenge clan killings and atrocities were so serious that military interventions were required to separate the factions and reconciliation meetings were held among clan elders and local populations to defuse and mediate disputes. Conflict took place between the Galjel and Shamta-Alemod clan militia over the control of checkpoints in Wanlaweyn district, leaving 24 dead, including 20 civilians.²³ Reconciliation initiatives undertaken by State authorities, civil society organizations and traditional clan elders using traditional justice practices discriminate against minority clans and women. In areas where there is no Government control there is no protection of civilians. For example, Al-Shabaab set fire to buildings in several districts,

²⁰ Human Rights Watch, "Submission to the universal periodic review of Somalia", 2021, para. 12; see also Amnesty International, *The State of the World's Human Rights*, 2020/21. Available at www.amnesty.org/download/Documents/POL1032022021ENGLISH.PDF.

²¹ Amnesty International, *The State of the World's Human Rights*.

²² Responses to questionnaire.

²³ United States Department of State, "2020 Country reports on human rights practices, Somalia". Available at www.state.gov/reports/2020-country-reports-on-human-rights-practices/somalia/.

including in Leego, Yaaq Biri Weyne and Baladul Amin. There have been no investigations or reconciliation initiatives undertaken by State authorities or civil society actors.²⁴

24. The Independent Expert welcomes the efforts led by the Federal Ministry of the Interior, Federal Affairs and Reconciliation to implement and operationalize the 2019 National Reconciliation Framework and the National Reconciliation Plan to address the most heinous crimes that have taken place during the conflict in Somalia. The implementation of a capacity-building programme on conflict mapping to provide staff at the state and federal levels with detailed information about the magnitude of conflicts, root causes, drivers, trends and main actors, perpetrators and victims is a positive step. In consultation with stakeholders, the Government is also developing an amnesty law to regulate the conduct of the process for the granting of amnesties.²⁵ Nevertheless, the relationship between the Federal Government and the federal member states has continued to deteriorate owing to the failure to agree on the modalities for federalism, the sharing of resources and autonomy for the federal member states, as well as on the modalities for the electoral process. The Government must ensure that a reconciliation process in the context of transitional justice adopts a multidimensional approach, is gender responsive and prioritizes community engagement, including the most marginalized groups.²⁶

25. Arbitrary arrests, unlawful detentions, acts of harassment and intimidation of civilians by security forces, politicians and local authorities across Somalia have continued without accountability. The United Nations reports that between 10 February to 7 May 2021, a total of 110 individuals were arbitrarily arrested and detained, including 25 Al-Shabaab suspects, 9 politicians, 9 clan elders, 6 business persons, 2 religious leaders, 19 journalists and 25 alleged clan militia members suspected of being involved in the killing of a mother and her two children and the injury of another child in the Middle Shabelle region on 8 November 2020. Some of the individuals arrested and detained have been released, while the others remain detained without charges.²⁷

26. The authorities have continued to carry out executions issued by military courts, despite the encouraging voting record of Somalia in the General Assembly in favour of a moratorium on the death penalty. According to the United Nations, between 5 November 2020 and 7 May 2021, the authorities conducted 12 executions, 6 in Somaliland, 3 in Mogadishu, 2 in Jubbaland and 1 in Puntland.²⁸ Amnesty International reported that of the executions carried out in Puntland in 2020, two were of individuals who were convicted of the rape and murder of a girl. A third man, convicted along with the other two, was spared execution following a negotiation of “blood money” (financial compensation) between his family and that of the deceased.²⁹ Al-Shabaab also executed 12 civilian men for alleged espionage for the Government and foreign forces, often after unfair trials.³⁰ On 27 June 2021, Puntland authorities carried out a mass execution of 21 members of Al-Shabaab by firing squad in Galkayo, Garoowe and Qardho town. The Independent Expert is concerned that in many of the death penalty cases, fair trial procedures and due process guarantees, including the presence of defence council, are not followed. Although appeals against death sentences by law can be made within 30 days, in instances when defendants confess their membership to Al-Shabaab they are executed within days.³¹

²⁴ Responses to questionnaire.

²⁵ A/HRC/WG.6/38/SOM/1, para. 21.

²⁶ Legal Action Worldwide, “Transforming the legacy of Somalia’s conflict to ensure long-term stabilization”, policy brief, 2020.

²⁷ S/2021/154, para. 46; and S/2021/485, para. 47.

²⁸ S/2021/154, para. 45.

²⁹ See Amnesty International, Global report on death sentences and executions, 2020. Available at www.amnesty.org/en/documents/act50/3760/2021/en/.

³⁰ S/2021/485, para. 46.

³¹ See United States Department of State, 2020 Country Reports on Human Rights Practices, Somalia, sect. 1. Available at www.state.gov/reports/2020-country-reports-on-human-rights-practices/somalia/.

B. Strengthening the rule of law, accountability and transitional justice

27. The Independent Expert welcomes the meeting of the Security and Justice Committee and its decision to meet regularly in order to accelerate the development of the justice sector in Somalia in line with key commitments in the Mutual Accountability Framework of 2020 on security and justice. Unfortunately, the concerns highlighted in the previous report of the Independent Expert regarding the justice sector, namely weak legal and constitutional frameworks, weak capacity in the police as an enforcement mechanism and alleged corruption in the statutory court, persist. This has fuelled strong competition from sharia courts and alternative dispute mechanisms and is undermining the judicial branch.³²

28. Efforts to operationalize the Anti-Corruption Commission and the Judicial Service Commission, including the appointment of its members by the President of Somalia, while welcome, have proven controversial, including allegations of nepotism. Moreover, this is the fourth year that the National Human Rights Commission has been inoperative due to the non-appointment of members because the parties could not agree on proposed members submitted for approval to the cabinet. The Independent Expert regrets that, despite many calls for the operationalization of the National Human Rights Commission, this matter remains pending. She calls on the Somali authorities to adopt fair, transparent and inclusive nomination and appointment process to institutions and reiterates her call for the expedited establishment of the National Human Rights Commission.

29. The constitutional review process remained stalled following the issuance of a decree by the President of Somalia deferring the review to the next Parliament. It is promising that the timetable set for the completion of the drafting of the Constitution is June 2022 and that the Prime Minister has recently announced the new timeline for the parliamentary and electoral processes, which will take place within 60 days of the national consultative conference on electoral issues.³³

30. In its report for the third cycle of the universal periodic review, the Government of Somalia stated that the limited capacity of the judiciary was a significant impediment to the protection of human rights in the country.³⁴ Several pieces of national legislation on women's rights, children's rights and criminal law to prevent discrimination and strengthen accountability remain incomplete. The review of the 1964 Penal Code, which has been ongoing for more than five years without any significant progress, has now been postponed until 2022. This means that prosecutions of journalists under a law that undermines fundamental rights and curtails freedom of expression will continue. A similar trend of postponement and inaction is observed with regard to the bills on sexual offences and female genital mutilation. In the absence of an effective and reliable statutory court system, an alternative dispute resolution mechanism is rapidly growing across the country. By some estimates, more than 80 per cent of all civil and criminal cases in Somalia are settled through the traditional *xeer* system, which is seen as effective, fast and compliant with sharia law.³⁵ Attempts to align alternative dispute mechanisms with statutory courts are yet to be realized.³⁶ The draft road map for the transfer of jurisdictional competence over high risk and serious criminal cases from military to civilian courts awaits endorsement by the Federal Ministry of Justice.³⁷ Military courts continue to adjudicate on civilian cases instead of transferring those cases to civilian courts. This practice is of grave concern, especially as military courts rarely allow legal representation or right of appeal.

³² Heritage Institute, 2021, "Rebuilding Somalia's Broken Justice System", p. 26, sect. 8. Available at www.heritageinstitute.org/wp-content/uploads/2021/01/Justice-Report-Jan-6-.pdf.

³³ See www.reuters.com/world/africa/somalia-hold-indirect-election-oct-10-pm-says-2021-06-29/.

³⁴ A/HRC/WG.6/38/SOM/1, para. 25.

³⁵ Heritage Institute, 2021, "Rebuilding Somalia's Broken Justice System", p. 28. Available at www.heritageinstitute.org/wp-content/uploads/2021/01/Justice-Report-Jan-6-.pdf.

³⁶ *Ibid.*, p. 3.

³⁷ Somalia Partnership Forum, Mutual Accountability Framework, 2021 (see <https://unsom.unmissions.org/somalia-partnership-forum-ends-somali-government-and-international-partners-agreeing-priority>).

31. An agreement has been reached by Somalia and its international partners on a justice and corrections model and the Government has expressed its commitment to implement an inclusive consensus-based justice and corrections model rooted in the rule of law and enshrined in the Provisional Constitution. No progress has been made in finalizing this crucial document to guide the functioning of the police and prisons.³⁸ As a result, security transition operations have been stalled because of a lack of operational support from the police and Federal Darwish forces.³⁹ A joint monitoring visit by the United Nations representatives and stakeholders to prisons in Puntland identified protection gaps, including periods of prolonged detention and the absence of health care, education, clean water and adequate food services, which did not meet the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).⁴⁰

32. These shortcomings mean that access to justice cannot be extended to newly recovered areas, such as Sahib and Bariire, that the rights of Somalis in these areas remain unprotected⁴¹ and that no formal justice institutions exist in Al-Shabaab controlled areas.

C. Ensuring respect for freedom of opinion and expression, assembly and association

33. In 2020, the Government of Somalia approved several amendments to the 2016 Media Law to enhance the legal framework to protect freedoms of opinion and expression. Unfortunately, key areas of the amended law continue to curtail freedoms of opinion and expression and constitute violations of international law as identified in the previous report of the Independent Expert. No interim measures have been put in place to address these gaps and to protect journalists. Journalists and other human rights defenders continue to be targeted by the security forces, politicians and Al-Shabaab at local, state and federal levels when they report on political, economic and social issues, including alleged corruption by government officials. The Annual Report of the National Union of Somali Journalists, which focused on incidents in 2020, alleges 2 targeted killings of journalists in Afgoye, 33 cases of the arrest, detention and unlawful imprisonment of journalists and 113 cases of intimidation, harassment and threats against journalists in Somalia in the course of their work. None of these cases have been investigated nor have the perpetrators been held to account. The report observes that these alleged violations have resulted in a culture of self-censorship in media houses and self-preservation on the part of individual journalists.⁴²

34. The report also states that judicial authorities continue to apply the outdated criminal penal code against journalists, thus depriving them of constitutional guarantees under the Provisional Constitution by using a code that is slanted against independent journalism and freedom of expression. The report highlights that 99 per cent of cases brought against journalists resulted in convictions that largely mirrored the political entity or persons behind the charges, heightening prospects of the imprisonment of journalists.⁴³

35. Although military courts do not have jurisdiction to try civilians, on 17 March 2021, a journalist was sentenced to three years imprisonment by the Military Court of Appeal in Garoowe.⁴⁴ He had been arrested in December 2020 following a post on social media. He was subsequently released on 22 March after a special pardon from the President of Puntland. On 29 July 2020, the Banadir regional court sentenced Abdiaziz Ahmed Gurbiye, chief editor

³⁸ Ibid.

³⁹ See <https://reliefweb.int/report/somalia/somali-government-and-international-partners-meet-improve-security-and-rule-law>.

⁴⁰ General Assembly resolution 70/175; see also responses to questionnaire.

⁴¹ See <https://reliefweb.int/report/somalia/somali-government-and-international-partners-meet-improve-security-and-rule-law>.

⁴² National Union of Somali Journalists, “Between a Rock and a Hard Place: Journalists in Peril in Somalia, State of Media Freedom Report”, 2021, pp. 8–13. Available at www.nusoj.org/wp-content/uploads/2021/05/STATE-OF-MEDIA-FREEDOM-REPORT-%E2%80%933-May-2021-.pdf.

⁴³ Ibid., p. 14.

⁴⁴ S/2021/485, para. 48.

of the Goobjoog Media Group, to six months' imprisonment and a fine on charges of insulting a government body and publishing "fake news" related to the response of the Government to the COVID-19 pandemic. His prison sentence was subsequently commuted. Since July 2020, one journalist has been reported killed and two injured. Al-Shabaab has claimed responsibility for the death of the journalist, who was killed for allegedly spying for Puntland intelligence. In March 2021 an officer in the Somalia National Army shot and injured a television camera operator and journalist working for a local radio station. In another incident, the Somali Journalists Syndicate reported that, in August 2020, officers of the National Intelligence and Security Agency had raided and ordered the closure of Radio KAAH, a privately owned independent radio station in Mogadishu, and detained the director. In December 2020, Jubbaland security officials blocked and prevented 11 journalists from covering an event where the Jubbaland state president, Ahmed Mohamed Islam (Madobe), was addressing parliament and government supporters in Kismayo. Presidential security officers threatened to shoot if journalists approached the event hall, forcing 11 journalists to leave.⁴⁵ According to the 2020 Annual Impunity Report issued by the Committee to Protect Journalists, Somalia ranks first in its global index of countries where journalists are slain with impunity: 26 murders of journalists since 2010 remain unsolved.⁴⁶

36. To address the insecure situation in which journalists and media workers operate, the Federal Ministry of Information is engaging with the Office of the Attorney General to strengthen cooperation regarding detained human rights defenders and journalists and to accelerate action in cases where journalists are detained because of their work. The Government reported that a draft policy to address attacks on and arbitrary detention of journalists is under development.⁴⁷

37. In September 2020, the Government announced the appointment of a Special Prosecutor to investigate and prosecute those responsible for the alleged killings of more than 50 journalists, whose cases had been submitted to the Office of the Attorney General. Those cases have not yet been investigated, which raises doubts about the functioning of the Special Prosecutor's office and its capacity to bring to justice those who perpetrate crimes against journalists.⁴⁸

38. The Independent Expert is concerned that, despite the amended Media Law and commitments made by President Mohamed Abdullahi Mohamed "Farmajo" to stem the violence perpetrated against journalists, she has continued to receive information of human rights violations and abuses targeting journalists and human rights defenders for their work. The Independent Expert continues to recommend a review of the amended Media Law and the 1964 Penal Code and the prioritization of the work of the Special Prosecutor.

D. Promoting women's rights and gender equality in all aspects of society

39. The failure of the Government of Somalia to make progress in addressing violations against women and girls and promoting gender equality during the period under review is a lost opportunity. In the context of the ongoing chronic civil conflict and insecurity, ethnic tensions and increased militarization, the situation of women in Somalia has been characterized by systemic violence.⁴⁹

40. The Independent Expert notes that the multiple recommendations, and the commitment of Somalia, to ratify the Convention on the Elimination of All Forms of Discrimination against Women and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, to enhance the legal framework for the protection of women and girls, remain outstanding. The Independent Expert is concerned

⁴⁵ Somali Journalists Syndicate, Annual Report 2020: State of Press Freedom in Somalia, p. 26. Available at <https://sjsyndicate.org/2021/02/03/state-of-press-freedom-in-somalia-in-2020-threats-and-violence-against-journalists-on-the-rise-with-total-impunity/>.

⁴⁶ See <https://cpj.org/reports/2020/10/global-impunity-index-journalist-murders/>.

⁴⁷ A/HRC/WG.6/38/SOM/1, para. 30.

⁴⁸ Human Rights Watch, Submission to the Universal Periodic Review of Somalia, October 2020, paras. 33–36.

⁴⁹ Strategic Initiative for Women in the Horn of Africa (<https://sihanet.org/>).

about progress in this area, because of the attempt by the federal Parliament, in 2020, to replace the draft 2018 Sexual Offences Bill with a new draft bill on sexual intercourse-related crimes. A similar attempt was made in Somaliland in August 2020, when a bill on rape, fornication and other related offences was submitted to the Lower and Upper Houses of parliament without consultation. Those bills violate the international and regional human rights obligations of Somalia.⁵⁰ Advocacy by national and international stakeholders, including local civil society groups, demanding a review of the bill on rape, fornication and other related offences in Somaliland and reversion to the original draft 2018 Sexual Offences Bill to comply with international human rights law and standards are yet to bear fruit.⁵¹ Somalia is urged to reverse such regressive steps.

41. Somali women and girls continue to suffer from sexual violence, including rape, both as a weapon of war in the ongoing conflict and in domestic settings. Violence against women and girls, including sexual violence, has increased in the context of the COVID-19 pandemic during which family members have been forced to spend more time at home grappling with uncertainties and economic loss. The United Nations has documented over 100 cases of conflict-related sexual violence, mostly against girls, perpetrated by Somali security forces, Al-Shabaab and militia members in 2020.⁵² Data on gender-based violence in 2020 showed a marked increase in the number of cases of rape reported: 871 in 2020 compared to 651 in 2019. In Somaliland, the Human Rights Commission reported a 4 per cent increase in sexual violence in 2020 compared to 2019.⁵³ In September 2020, the case of a 19-year-old student who was gang raped and pushed to her death over the sixth-floor of a building in Mogadishu gained national prominence; the case stands as an example of numerous similar incidents of rape that have gone unreported.⁵⁴ Reports received by the Independent Expert also suggest that the incidence of female genital mutilation and cutting have also increased; nurses reported receiving higher than normal requests for such procedures during school closures, and traditional practitioners have reportedly been knocking on doors to offer their services. Stakeholders report that in July 2020, 20 girls were allegedly subjected to the practice, leading, in some cases, to serious injuries that required hospitalization.⁵⁵

42. The Government of Somalia has emphasized the importance of efforts by the Special Prosecutors, two of whom are women in the Office of the Attorney General, which seek to: build better case-monitoring systems on violence against women and girls; combat the traditional settlement of criminal cases among police, perpetrators and victims' families; and raise awareness among traditional elders of women's rights, backed by legal aid. Nevertheless, stakeholders report that women struggle to access justice both for sexual violence cases and on other issues because of Somalia's overlapping plural legal system, which does not favour women.⁵⁶

43. The anticipated parliamentary and presidential electoral processes in 2021 presented important opportunities for progress on women's representation and participation in public life, given the adoption of the Somali Women's Charter in March 2020.⁵⁷ However, despite massive advocacy campaigns mounted by civil society groups, national and international stakeholders, women parliamentarians and local women's groups, the Federal Electoral Law of 2020 did not include a 30 per cent minimum quota for women's representation, which is evidence of how deeply patriarchal the political system remains.⁵⁸ Instead, an agreement was reached to adopt a 30 per cent representation mechanism, the implementation of which, in the delayed election process, remains unclear. A quota provision for women and minorities was also rejected by the authorities in Somaliland for parliamentary and local elections in May 2021, on grounds that it contravened article 8 of the constitution of Somaliland on

⁵⁰ See <http://news.un.org/en/story/2020/08/1070022>.

⁵¹ See A/HRC/45/52 and Corr.1.

⁵² See www.un.org/sexual-violencein-conflict/countries/somalia/; and <https://www.hrw.org/world-report/2021/country-chapters/somalia>.

⁵³ Responses to questionnaire.

⁵⁴ See <https://allafrica.com/stories/202009120358.html>.

⁵⁵ Responses to questionnaire.

⁵⁶ See <https://sihanet.org/joint-statement-the-sexual-offences-bill-must-be-urgently-revived/>.

⁵⁷ A/HRC/WG.6/38/SOM/1, paras. 44–45.

⁵⁸ Strategic Initiative for Women in the Horn of Africa (<https://sihanet.org/>).

equality. However, political parties agreed to nominate 18 women and 3 representatives of minorities to contest seats in both parliamentary and local council elections. At the time of writing of the present report, nominations were being made by the political parties.

E. Ensuring respect for children's rights and promoting youth empowerment

44. Children and youth constitute the majority of Somalia's population, with over 70 per cent of the population under age 30 and 58 per cent aged 20 or less.⁵⁹ The right to education was greatly impacted following the closure of the schools because of the COVID-19 pandemic. More than 80 per cent of Somali children are currently out of school, with no learning alternatives; internally displaced persons and refugees have been the most affected.⁶⁰ In addition, reports indicated that 35 per cent of children have experienced violence at home and there has been an increase in the incidence of child labour. The limited training and economic opportunities for youth, despite some efforts by the Government with the support of the United Nations and other partners,⁶¹ including through the implementation of the 2017 youth policy, is also of concern. On the political front, while the majority of youth engage in debates on social media, the indirect electoral model is not conducive to participation.

45. The Independent Expert welcomes initiatives taken to safeguard the rights of the child, including through capacity-building, training and awareness-raising campaigns on child protection and on the prevention of sexual and gender-based violence. She notes that the Government has taken steps to revise policies and guidelines on age verification and minimum standards for children in detention. She also welcomes the UNICEF-supported reintegration programmes for children formerly associated with armed forces and groups.

46. The Independent Expert is deeply concerned by recent amendments to the 2018 Child Rights Bill, which have significantly undermined progress made since the ratification of the Convention on the Rights of the Child in 2015. She also notes that the Juvenile Justice Bill was approved by the Cabinet in December 2020 and is awaiting parliamentary approval. While the Juvenile Justice Bill improved the protection afforded to children in conflict with the law and is in line with the Convention on the Rights of the Child, it fails to address the issue of children associated with armed groups or armed elements designated as terrorist groups. She reiterates that children deprived of their liberty for alleged association with armed groups should be treated as victims and handed over to child-protection actors, in line with the 2014 Standard Operating Procedures for the reception and handover of children separated from armed groups.

47. The Independent Expert urges the Somali authorities to adopt a strong legislative and institutional framework to safeguard the rights of children and to put in place mechanisms to promote youth empowerment.

F. Promoting economic, social and cultural rights

48. Economic, social and cultural rights are part of Somalia's reconstruction reform measures in the ninth national development plan (2020–2024). The Government has also developed the Somalia recovery and resilience framework and the national protection policy to address these challenges. In March 2020, Somalia achieved its decision point under the Heavily Indebted Poor Countries Initiative and the International Monetary Fund approved the three-year programme for Somalia under the extended facility. However, in the context of the COVID-19 pandemic, economic and social disparities among vulnerable populations have deepened, leading to an increase in housing evictions; lack of progress in the area of women's and children's health; and reduced social service delivery in terms of water and

⁵⁹ Horn Population Research & Development, "Vulnerability assessment in Somalia", September 2020, p. 23. Available at www.unicef.org/somalia/media/2381/file/Somalia-vulnerability-assessment-MoLSA-September-2020.pdf.

⁶⁰ Ibid., p. 38.

⁶¹ S/2021/485, paras. 37–40.

sanitation. The Independent Expert has also received information on violations of labour rights.

49. At the onset of the COVID-19 pandemic, the lack of medical facilities to isolate and treat patients was of great concern because of the limited capacity of the public health infrastructure, exacerbated by insecurity and attacks against medical facilities and health workers.⁶² In October 2020, Al-Shabaab shot and killed two humanitarian aid workers in Mogadishu who were participating in a polio vaccination campaign organized by the United Nations and the Ministry of Health. In March 2021, a civilian driver was killed when a landmine planted by the roadside in Mogadishu exploded while he was driving a COVID-19-awareness vehicle belonging to the Banadir regional administration.

50. The COVID-19 pandemic has disproportionately impacted health-care workers. At least 1,150 health-care workers were reported to have been infected with COVID-19 due to lack of personal protective equipment in the early stages of the pandemic, further depleting the limited number of trained staff. The Government has established a national professional health council, a drug regulatory authority and a national institute for health. Civil society stakeholders, in their universal periodic review submissions, noted that the Government's efforts have not reduced the high rate of mortality and maternal mortality and emphasized the need for increased trained medical staff and access to quality health care for vulnerable populations. The Independent Expert recommends that the Government prioritize the delivery of health-care services to rural areas by trained professional staff.

51. Protecting the right to adequate housing is a commitment made by the Government of Somalia in the ninth national development plan (2020–2024), designating it “an essential service”. The Government promised to develop a national housing policy and a national urban policy that take into account the specific needs of women and internally displaced persons as part of the reconstruction process.⁶³ In Somaliland, the government has also adopted an urban land management law and has established land tribunal committees in the main cities, which are awaiting implementation. Vulnerable communities, including internally displaced persons and the urban poor, remain exposed to state actors and private landowners who have, despite the national eviction guidelines, continued to forcibly evict tenants and internally displaced persons.⁶⁴ Advocacy by civil society groups and humanitarian actors have led to suspension of some evictions on grounds of the COVID-19 pandemic. Nevertheless 171,266 people were forcefully evicted in 2020, leaving vulnerable populations destitute.

52. Having access to safe drinking water and sanitation is central to enjoying an adequate standard of living and health. Yet millions of Somalis still do not enjoy these rights. The Government, with the support of the international community, has rehabilitated water catchments, amended soil and made water conservation efforts. It has also committed to finalizing and implementing the national water resources strategic plan, in coordination with the federal member states.⁶⁵ However, in the absence of a water, sanitation and hygiene for all policy, and given the findings of the joint multi-cluster needs assessment in 2020, estimates for 2021 indicate that 4.6 million people will either be in catastrophic, severe or extreme need of humanitarian assistance due to lack of access to water or functional sanitation, resulting in diarrhoeal diseases. The protracted crisis, compounded by the COVID-19 pandemic, floods and droughts, has exacerbated the water, sanitation and hygiene needs of the Somali population. An assessment conducted in areas affected by water shortages indicates that women and children are at increased risk of being subjected to female genital mutilation, sexual violence, harassment and abuse, given the difficulty in terms of access to water sources and poor protection.⁶⁶ The cost of buying water is exorbitant, beyond the means of ordinary Somalis, especially those in IDP settings and rural and the urban poor. Addressing access to water has the potential of reducing inter-clan conflict over agricultural

⁶² Responses to questionnaire.

⁶³ Government commitment in the 2021 Mutual Accountability Framework.

⁶⁴ Responses to questionnaire.

⁶⁵ 2021 Mutual Accountability Framework.

⁶⁶ S/2021/485, para. 58.

land and water resources. The Government needs to accelerate practical steps to fulfil the right of every Somali to clean potable water.⁶⁷

53. Worker's rights in Somalia are protected by the Provisional Constitution (article 24 (1–5)) and the Labour Code as supported by the Federation of Somali Trade Unions and regulated by the Ministry of Labour and Social Affairs. The Federation observed that while there has not been any Government interference with worker's rights to unionize, the rights of workers have been violated by employers. A recent case brought by the Federation against one employer alleges that a poor working environment resulted in severe occupational health and safety incidents, including serious injuries to workers. Furthermore, the employer did not provide adequate health care or compensation to staff who had sustained injuries. Other allegations include the intimidation of staff and demeaning treatment of staff by company managers to prevent them from participating in collective bargaining to negotiate improvements in unfair wages, benefits and working conditions.⁶⁸ Civil society organizations, in their universal periodic review submissions, reported that internally displaced persons, manual labourers and domestic workers are sometimes abused and not paid for their work. The Independent Expert recommends that the Government inspect and survey working environments and working practices that affect workers' health, as well as investigate allegations of violations of human rights to ensure that employers uphold worker's rights.

G. Specific considerations

Persons with disabilities

54. Estimates suggest that persons with disabilities make up approximately 15 per cent of the Somali population.⁶⁹ Over the years, organizations of persons with disabilities have actively fought for recognition and for the ability to enjoy their basic human rights without discrimination. The ratification of the United Nations Convention on the Rights of Persons with Disabilities in 2019 was met with great enthusiasm, both domestically and abroad. The Independent Expert notes that, in January 2021, the Council of Ministers approved the appointment of five commissioners to lead the National Disability Agency, that three out of five commissioners are women and that the National Disability Rights Bill is currently in the process of finalization.⁷⁰ However, serious concerns have been expressed over the lack of consultation in the Agency's selection process.⁷¹

55. The Independent Expert regrets the lack of tangible progress in the daily lives of persons with disabilities, who continue to suffer from multiple forms of discrimination, both in the private and public spheres, including societal stigma, barriers and exclusion, which affect their abilities to enjoy their rights, including their rights to: education; work; participation in public affairs; information; equality and non-discrimination; and access to essential services. Women and girls with disabilities, owing to their vulnerability, often experience higher rates of sexual violence.

56. The COVID-19 pandemic has heightened protection risks for persons with disabilities, including their increased exposure to violence, abuse and exploitation. The pandemic has also exacerbated a number of pre-existing health conditions and economic risks.⁷² The Independent Expert urges the Somali authorities to adopt the National Disability Law as a matter of priority in order to increase protections for persons with disabilities. She also urges humanitarian and development actors and donors to pay particular attention to the needs of persons with disabilities in the design and implementation of programmes and interventions.

⁶⁷ Provisional Constitution of Somalia, article 27 (1).

⁶⁸ Federation of Somali Trade Unions, "Favori's Abundant Abuses: Working in Unsafe and Unfair Conditions".

⁶⁹ See www.somalidisability.org/somalia-covid-2019-and-how-its-affecting-people-with-disabilities/.

⁷⁰ A/HRC/WG.6/38/SOM/1, para. 37.

⁷¹ Responses to questionnaire and consultations.

⁷² Responses to questionnaire.

Minorities and marginalized communities

57. The Independent Expert notes the efforts taken to address discrimination and promote the civil, political, economic, social and cultural rights of minorities and marginalized communities, including through the creation of dedicated programmes to cope with the impact of the COVID-19 pandemic. However, despite these efforts and constitutional guarantees, minorities and marginalized communities continue to be excluded from the mainstream of society in Somalia. These communities are at the mercy of majority clans and face significant barriers in the enjoyment of their basic human rights. Those living in camps for internally displaced persons, in particular women and children, suffer from extreme poverty, hunger and malnutrition, inadequate access to health care and education, and are at an increased risk of further displacement due to inter-clan conflicts and climate shocks.

58. The Independent Expert is also concerned at the lack of religious freedom, in particular in Somaliland, where the promotion of any religion other than Islam is prohibited under article 5 of the Somaliland constitution. For instance, on 5 October 2020, a married couple that had converted from Islam to Christianity was arrested and charged with apostasy under sharia law. The couple was subsequently deported to Mogadishu.⁷³ On 4 April 2021, the Attorney General of Somaliland filed charges against six individuals for offences against the state religion and for inciting others to disobey laws relating to public order; three were also charged with apostasy.⁷⁴

IV. International cooperation

59. The role of international and regional organizations in advancing human rights in Somalia has been critical. The Independent Expert acknowledges the efforts and capacity-building activities of the international community in response to the COVID-19 pandemic, locust infestation and the water crisis. Those contributions in terms of financial resources, technical assistance and advisory capacities to develop legal and policy frameworks, institutions, security and reconciliation mechanisms in support of the national vision is laudable, especially in the context of the ongoing conflict, the self-imposed political stalemate and impacts of climate change. The status of the implementation of the commitments by the authorities and international partners is tracked through the annual Mutual Accountability Framework, including commitments to the progressive realization of human rights. Although the 2020 Mutual Accountability Framework report in the area of justice suggests a mixture of commitments achieved, partially achieved and non-performance, the Independent Expert is encouraged by the promising recommitment by the parties to take specific actions in 2021. She is concerned, however, that the delayed electoral processes could postpone meaningful progress in addressing human rights dimensions, as set out in the commitments.

60. The Independent Expert strongly encourages the international community to continue to support the Somalia Joint Programme on Human Rights and the Joint Security Sector and Governance Programme. She calls for increased support for local authorities, civil society organizations and grass-roots organizations towards the achievement of meaningful and lasting progress in the realization of human rights.

V. Conclusion and benchmarks for progress in improving the situation of human rights

61. **The Independent Expert notes the earlier momentum on the part of Somali authorities for the promotion and protection of human rights. However, she regrets the recent regression in terms of the protection of women and children's rights, which is hindering the acceleration of legal and policy reforms that underpin national**

⁷³ United States Department of State, Somalia 2020 International Religious Freedom Report, Executive Summary, p. 5 (available at www.state.gov/wp-content/uploads/2021/05/240282-SOMALIA-2020-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf).

⁷⁴ See <https://defenddefendg/updates-from-april-2021/>.

reconstruction and development. The impact of the political stalemate on efforts to prevent violations of human rights and abuses against civilians and the most vulnerable has made the long road to recovery even longer. Nonetheless, the signing of the agreement between the Federal Government and federal member states on 27 May 2021 is a welcome development, renewing hope in Somalia's political leadership and in its commitment to holding peaceful, transparent, inclusive and credible elections.

62. The protracted delays in enacting human rights laws and policies and appointing members to crucial human rights institutions puts into question the political will of Somali authorities to advance the protection of human rights. The inaction on the part of the Government on human rights has resulted in increased violations and abuses against civilians, emboldened perpetrators and left victims without redress. The increased number of unlawful killings, life changing injuries and loss of property, as well as loss of opportunity by the most vulnerable, especially youth, minorities and the marginalized, fuels conflict, undermines reconciliation and diverts resources from development.

63. The Independent Expert welcomes the adoption of the revised security transition plan by Somali authorities as an important benchmark for progress in the area of human rights and justice and requests the continued support of the international community for the implementation of the plan through contributions to the trust fund. Increasing and deploying a professional Somali National Army and Police Force will enhance protection for civilians, including human rights defenders and journalists, and will further reduce the ability of Al-Shabaab to commit atrocities.

64. The Independent Expert recognizes that, in the context of the COVID-19 pandemic, the political impasse and climate shocks, economic progress will slow down, reducing the Government's financial capacity to increase institutional development, and she takes note of the estimated economic growth rate of 2.9 per cent. Nevertheless, the continuing inaccessibility of clean water, sanitation and hygiene, which affects 4.5 million Somalis, and the unavailability of health care in rural areas are serious concerns that need to be remedied urgently.

65. Although there have been a few interventions to release journalists, media workers and human rights defenders from unlawful detention and arbitrary arrest, this practice identifies Somalia as a country where such individuals are not safe to pursue their professions. The Independent Expert urges the Somali authorities to take robust action to protect journalists, media workers and human rights defenders and to prevent their arbitrary arrest and detention.

66. In line with Human Rights Council resolution 45/27, the Independent Expert, in collaboration with the Federal Government of Somalia, national stakeholders and civil society organizations, proposes the following benchmarks and indicators to monitor progress in the improvement of the situation of human rights in Somalia (see paras. 68–74 below). The proposal adopts the timeline set out in the ninth national development plan (2020–2024), including the approach to integrate human rights and gender equality principles throughout all areas of the plan. The objective of these proposed benchmarks is to meet the minimum requirements to address the human rights challenges identified herein and in other reports, which could have a cascading impact on all rights. The proposal is not intended to be exhaustive, given the context of the COVID-19 pandemic and the political situation in Somalia. The proposal is designed to align with and draw from existing plans, such as the revised security transition plan, the ninth national development plan (2020–2024) and the commitment in the Mutual Accountability Framework, in order to maximize the efforts of the Federal Government, national stakeholders and international partners in targeting human and financial resources to implement these plans concurrently.

67. The Independent Expert reiterates her call upon national authorities to establish processes for the collection, analysis, tracking and reporting of data on human rights as well as a multi-stakeholder monitoring and evaluation mechanism for the conduct of a midterm and a final assessment of these proposals. The Independent Expert recommends that progress on the implementation of these benchmarks and indicators

be closely monitored and that updates provided to the Human Rights Council for action.

Benchmark 1: increased protection of civilians in conflict

68. The indicators associated with benchmark 1 are as follows:

- (a) Accelerate and expand human rights training to all national security forces, police forces and others by at least 20 per cent over the course of the implementation of the benchmarks and indicators, in compliance with the human rights due diligence policy, and conduct an annual assessment of progress;
- (b) Strengthen the Somali police force through adequate financing and training, as well as through the provision of equipment, to enable it to provide protection to the civilian population and improve its investigation and prosecutorial capabilities; and remove the mandate of the National Intelligence and Security Agency to conduct civilian policing functions;
- (c) Expand the deployment of security forces to all recaptured areas through force generation and reduce violent incidents and casualties by at least 5 per cent annually;
- (d) Strengthen the sanctions regime by naming individuals and groups and imposing travel and other restrictions on them to ensure accountability of non-State actors engaged in human rights violations;
- (e) Strengthen peace and reconciliation mechanisms in line with human rights standards for resolving conflict among the leaders of the Federal Government and federal member states and reduce clan violence by at least 5 per cent annually;
- (f) Conduct prompt investigations into cases of the alleged killing, injuring or sexual exploitation of civilians and report on disciplinary measures taken against soldiers found guilty of perpetrating such acts;
- (g) Adopt a moratorium on death penalty executions;
- (h) Ensure that all bilateral forces fighting in Somalia are held accountable for civilian casualties by conducting thorough investigations and paying reparations for deaths and injuries caused to the civilian population;
- (i) Establish a casualty-tracking system and ensure accountability for their deaths;
- (j) Establish an independent accountability mechanism for security forces;
- (k) Implement a national programme for disengaged fighters by 2022.

Benchmark 2: strengthened justice, rule of law and accountability mechanisms

69. The indicators associated with benchmark 2 are as follows:

- (a) Revive the 2018 Jowhar agreement on modalities for an integrated statutory justice and corrections system in Somalia;
- (b) Finalize the constitutional review process and adopt a constitution that complies with international human rights norms and standards by the end of 2022;
- (c) Establish a federal justice act to regulate and manage the justice system of Somalia, including enforcement powers;
- (d) Establish a fair and transparent process for selecting, vetting and appointing of members of the justice sector, including the Judicial Service Commission, the National Human Rights Commission, constitutional courts and anti-corruption commissioners, to reduce corruption and build confidence in the legal system;
- (e) Accelerate the adoption of all pending bills by the end of 2022, including the original 2018 Sexual Offences Bill, the Female Genital Mutilation Bill, the Juvenile Justice Bill and the Child Rights Bill, in line with human rights law and standards;

- (f) Increase the justice sector budget towards the development of gender-responsive human resources management and capacity-building;
- (g) Pursue transitional justice through diverse local peace committees, guided by accountability for grave human rights violations and amnesty legislation;
- (h) Implement the new police and corrections model by 2024.

Benchmark 3: ensuring respect for freedom of opinion and expression, assembly and association

70. The indicators associated with benchmark 3 are as follows:

- (a) Release journalists, media workers and human rights defenders in detention and in prison;
- (b) Review the 1964 Penal Code by 2022;
- (c) Ensure that human rights violations and abuses perpetrated against journalists and human rights defenders by security agencies, police and other State and non-State actors, such as intimidation, harassment, killings and arbitrary arrest and detention, are thoroughly investigated and prosecuted, that victims are compensated and reparations are awarded;
- (d) Review the 2020 amended Media Law in line with Somalia's international obligations to human rights standards by 2022.

Benchmark 4: promoting women's rights and gender equality in all aspects of society

71. The indicators associated with benchmark 4 are as follows:

- (a) Ratify the Convention on the Elimination of All Forms of Discrimination against Women and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa and harmonize national laws to better protect women and girls;
- (b) Undertake a legislative review to repeal discriminatory laws against women and girls;
- (c) Urgently adopt the original 2018 sexual offences bill;
- (d) Increase access to justice for women and apply the 30 per cent minimum quota representation for women in elected and appointed positions, including in the recruitment of women as professional and administrative staff in the Federal State justice system;
- (e) Integrate gender justice training into the curriculum for all justice actors and conduct training for all staff by the end period of the plan;
- (f) Improve women's political participation in public life by establishing a road map for the implementation of the Somali Women's Charter, including adopting the 30 per cent minimum quota standard on women's representation and participation in public life, including electoral processes;
- (g) Empower women by increasing the enrolment and retention of girls in schools by 2 per cent annually and by increasing business and job training opportunities for women by 2 per cent annually for the duration of the plan.

Benchmark 5: demonstrated commitment to safeguarding the rights of children and promoting youth empowerment

72. The indicators associated with benchmark 5 are as follows:

- (a) Adopt the comprehensive Child Rights Bill, in line with the Convention of the Rights of the Child, by 2022;

(b) Ratify the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and the African Charter on the Rights and Welfare of the Child;

(c) Treat children deprived of their liberty for alleged association with armed groups as victims and ensure that they are handed over to child protection actors, in line with the 2014 Standard Operating Procedures for the reception and handover of children separated from armed groups;

(d) Invest in a nationwide education system by 2022 and provide access to primary education to all children, including girls;

(e) Establish 50 skills development centres to empower youth across Somalia and intensify efforts to promote and ensure their access to employment opportunities, internships, vocational training and apprenticeships;

(f) Ensure the participation of youth in various political, peace and security processes;

(g) Prioritize strategic investment in the health, education and empowerment of young people to harness and accelerate the demographic transition.

Benchmark 6: improved access to health care, water, sanitation, hygiene and an adequate standard of living

73. The indicators associated with benchmark 6 are as follows:

(a) Fulfil the commitment to improve access to integrated health and nutrition services through the Essential Package of Health Services by increasing the Government budget allocation by 15 per cent as recommended by the Abuja Declaration on HIV/AIDS, Tuberculosis and Other Related Infectious Diseases;

(b) Accelerate the building of 100 water wells, catchments for the collection and storage of water in rural areas, at schools and in domestic settings to improve sanitation and hygiene by 20 per cent by 2024;

(c) Immediately adopt a moratorium on forced evictions and provide adequate compensation and viable relocation or local integration options to reduce evictions by 50 per cent by 2024;

(d) Adopt the revised Labour Code, conduct inspections and produce annual compliance report on labour standards by public and private entities in furtherance of accountability;

(e) Implement the national strategy on durable solutions.

Benchmark 7: demonstrated commitment to protecting the rights of persons with disabilities and minorities

74. The indicators associated with benchmark 7 are as follows:

(a) Adopt a comprehensive legislation to eliminate all forms of discrimination by 2022, and address the exclusion of persons with disabilities and accelerate efforts to remove barriers that hamper their enjoyment of various rights;

(b) Adopt the National Disability Law and operationalize the National Disability Agency by 2022;

(c) Take all necessary measures to eliminate discrimination against minority clans and marginalized communities and promote their participation and representation in political structures and decision-making bodies by establishing a quota for the representation of minorities;

(d) Release those detained for their faith or belief and uphold the rights of individuals to practise their religion, as enshrined under article 17 (1) of the 2012 Provisional Constitution of Somalia.

