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Report of the independent expert on the situation of human rights in Somalia, Shamsul Bari*

Summary

Intensified fighting in Mogadishu beginning late August between armed militant groups, Al-Shabaab and its allies, and the Transitional Federal Government (TFG) forces supported by AMISOM has led to serious worsening of the human rights and humanitarian law situation in Somalia. More civilians were killed or injured during this period than at any other time in the recent past.

The drawing of the fighting into areas populated or frequented by civilians, and the use of imprecise mortars by all parties causing severe casualties and property damage continued to be a matter of serious concern. There have been persistent allegations that heavy retaliatory mortar fire by AMISOM troops has been responsible for many civilian casualties.

The recruitment, training and use of children in the conflict, especially by the armed militants, continued unabated. While recruitment of girls has been rare and is generally regarded as socially unacceptable, there are documented accounts of girls working for armed opposition groups, particularly in cooking and cleaning. Girls are also brought in to transport detonators, for logistics, and intelligence collection, though they do receive weapons training as well. The lack of schooling for children has made them especially vulnerable for recruitment by armed groups.

In territories controlled by armed insurgents, many civilians do not have access to humanitarian aid and they are at increasing risk of being punished under arbitrary interpretations of sharia law. Journalists and civil society activists have seen their space for work restricted by threats, intimidation, arbitrary arrests and killings.

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

The situation of human rights defenders deteriorated significantly. They have been targeted by all actors involved in the conflict. Key media outlets and individual journalists have come under attack. Many journalists, who were targeted, arbitrarily arrested, subjected to kidnapping and targeted killings, fled the country to seek refuge in the neighbouring countries.

In Puntland and Somaliland, the situation remained more stable, with functioning authorities in both. In Somaliland, the successful holding of peaceful presidential elections in June and the inauguration of a new President have raised hopes for a new era, including with respect to human rights. In Puntland, the human rights situation deteriorated in the past few months, as a result of measures undertaken by the government to step up security in the face of increased infiltration by armed militants from the south. These included the forced transfer of some 900 male IDPs from Bossasso to Galkayo, restrictions on the media, including the imprisonment of a journalist for six years and other measures which are limiting the space of civil society.

Overall, Somalia continued to slide deeper and deeper into humanitarian crisis. Despite this, however, there are hopeful signs on the horizon. An effort has been made in this report to draw attention upon them. The report has argued for continued and intensified efforts of all concerned to sustain the positive developments.

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I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 12/26 of October 2009, in which the Council expressed its deep concern at the deteriorating human rights and humanitarian conditions in Somalia and renewed the mandate of the independent expert on the situation of human rights in Somalia (independent expert) for one year. The expert was requested to submit his reports to the thirteenth and fifteenth sessions of the Council. The present report covers the period from March to August 2010.

2. The independent expert undertook his fifth mission to Somalia from 26 July to 6 August 2010. This took him to Nairobi, Hargeisa in Somaliland, Garowe in Puntland and Kampala. He was unable to visit south-central Somalia and Mogadishu for security reasons. The visit to Uganda was undertaken primarily to visit the headquarters of the European Union Training Mission (EUTM) for Somali Security Forces. The independent expert had earlier also visited Rome on 6 and 7 July 2010 to discuss the human rights situation in Somalia with the Italian authorities and academic institutions for reasons mentioned below.

3. In Nairobi, the independent expert met the new Special Representative of the Secretary-General for Somalia, Augustine Mahiga, with whom he had extensive discussions on the situation in Somalia and possible areas of cooperation between them. The independent expert benefited from his talks with the United Nations Resident and Humanitarian Coordinator for Somalia, Mark Bowden, who briefed him on developments in the previous six months. He received extensive briefings from other members of the United Nations country team, including from the Head of Human Rights Unit of the United Nations Political Office for Somalia (UNPOS) who accompanied him during the whole trip. The meeting with senior officials of the African Union was extremely useful in better understanding the role of the African Union Mission in Somalia (AMISOM) and the circumstances under which it operate. Additionally, he met with representatives of donor Governments, a senior official of the International Committee of the Red Cross (ICRC), members of the non-governmental organizations (NGO) community and Somali citizens. Ministers of the Transitional Federal Government (TFG) were not available to meet the expert.

4. In Hargeisa, the independent expert was received by the new President of Somaliland, Mohamed Mahmud Silanyo. He was honoured to meet the President so soon after his formal inauguration. He benefited from the views of the President on, inter alia, the situation of Somalia as a whole.

5. In Puntland, the independent expert met with the President of Puntland, Abdirahman Farole, and certain ministers and senior officials of his administration. Discussions with them centred primarily on the prevailing security situation in the region and its impact on internally displaced persons (IDPs). The independent expert visited IDP settlements in Garowe.

6. In both Puntland and Somaliland, he had extensive discussions with members of the United Nations country team, the NGO community and some local citizens.

7. In Kampala, the independent expert met with senior officials of the Ugandan Ministries of Foreign Affairs and Defence who provided him with the Ugandan perspective on the situation in Somalia. He also met with members of the United Nations country team in Kampala, some civil society organizations (CSOs) and a large number of Somali nationals, refugees and diaspora residing in Uganda. An important aspect of his Uganda trip was the briefings he received from EUTM on the training provided by them to new recruits of the Somali Security Forces, including on human rights and humanitarian law.

8. In Rome, the independent expert had useful talks with senior officials of the Government of Italy on the human rights and humanitarian situation in Somalia. They discussed possible new activities which could be undertaken by the international community to improve the situation. Useful discussions also took place with Italian academics and scholars on Somalia. The independent expert was invited to address the Human Rights Committee of the Italian Senate, following which address useful exchanges took place. The participation of the Italian Permanent Representative in Geneva in the meetings demonstrated the country's abiding interest in improving the human rights situation in Somalia.

9. The independent expert also benefited enormously from his talks with the Somali Ambassador in Rome, former Somali Prime Minister Nur Hassan Hussein Adde. The Ambassador had also arranged for a meeting at his office with members of the Somali diaspora living in Italy, with whom the independent expert had most useful discussions. Both the meetings were enhanced by the presence of the Somali Permanent Representative to the United Nations in Geneva, Yusuf Ismail Bari-Bari. The independent expert's understanding of the conflict in Somalia was greatly enhanced by his talks with the two ambassadors. He is immensely grateful to them.

10. The information contained in this report, particularly on the human rights and humanitarian law situation in Mogadishu and south-central Somalia, is based on the independent expert's talks with the above-mentioned persons and reports from United Nations agencies and NGOs. The independent expert also consulted some recent publications on developments in Somalia and daily media reports. Since he was not able to visit the areas concerned, he tried to cross-check relevant information, wherever possible, with refugees and IDPs who recently arrived from the war zone.

11. The focus of this report is primarily on developments since the last report of the independent expert to the Council in March 2010. The report is structured under the following headings/chapters: the human rights and humanitarian law situation in Mogadishu and other parts of south-central Somalia; human rights in Somaliland; human rights in Puntland; some reflections on recent developments; and recommendations.

II. Human rights and humanitarian law situation in Mogadishu and other parts of south-central Somalia

12. The human rights and humanitarian law situation in Somalia continued to be extremely precarious during the reporting period. The violence which has long stalked Somalia continued unabated, particularly in Mogadishu, making it perhaps the worst anthropogenic humanitarian crisis in the world today. And yet it continues to receive the least attention from the international community.

13. An effort has been made in the following paragraphs to put together selected information on the human rights and humanitarian law violations which occurred during the reporting period. It is intended to convey the scale, nature and type of violations which have been taking place though it is far from exhaustive, given the constraints on human rights monitoring due to the lack of access to the area.

A. Conflict-related violations

14. At the time of writing, heavy fighting which had broken out in Mogadishu on 23 August 2010 was again taking its toll on the civilian population. ICRC reported hospitals being "swamped" with war-wounded. Among the victims was a veteran journalist killed by a stray bullet. Three students were reportedly among those who died when a roadside bomb

exploded. Four AMISOM soldiers also died in an attack directed at the presidential palace. The most egregious incident occurred on 24 August 2010 when suicide bombers attacked Hotel Muna, killing at least 32 persons, including 4 members of parliament, hotel workers and others. Observers described the incident, as part of which the two suicide bombers blew themselves up, as one of the most violent witnessed in the capital for some time. As the fasting month of Ramadan began on 11 August 2010, it was reported that the hardline militant groups Al-Shabaab, Hizbul Islam and Ahlu Sunnah Waljama'a had vowed to increase their attacks on TFG and AMISOM troops throughout the month.

15. These incidents added to the toll of suffering that Somalis have endured for so long. According to a report by the Elman Peace Center of Somalia,¹ the death toll rose in the first seven months of 2010 as a result of increased shelling and fighting. It stated that: "at least 918 civilians died and 2,555 others were injured in violence since January ... The death toll of the first seven months of 2010 is higher than that of the same period of 2009. Most of the casualties were caused by shelling by the warring groups in Mogadishu". Some 745 people died and 3,435 others were injured in the same period in 2010. While most of the casualties appeared to have been caused by violent attacks by the militant group Al-Shabaab and its allies, against TFG and AMISOM forces and retaliatory attacks by the latter, direct fighting between moderate Islamists, namely Ahlu Sunnah, and Al-Shabaab, combined with inter-clan clashes in central Somalia, also contributed to the higher number of deaths.

16. A press release from Médecins Sans Frontières (MSF) contained in the weekly report of the Protection Cluster Update of 6 August 2010 also provides a good description of the nature and scale of casualties caused by the continued fighting and shelling in Mogadishu during the first half of 2010. It stated that, of a total of 2,854 patients treated by MSF-sponsored medical teams at its hospital in Dayniile, Mogadishu, in the last seven months, 48 percent had suffered "war-related injuries". It further stated that: "in the 84-bed hospital, 64 percent of the war-wounded patients sustained serious blast injuries, largely consistent with continuous intensive mortar fire in the city residential areas. Notably, 38 percent of the people with war-related injuries were women and children under 14 years of age." The register of the surgical programme at the hospital, which began its operations in September 2007, showed that 50 per cent of the 11,888 patients to date have suffered "war-related injuries".

17. In addition, specific reports received by the United Nations from its partners listed more than 290 incidents during the period from January to June 2010 in which civilians were reportedly injured or killed as a result of failure of parties to the conflict, including TFG and AMISOM forces, to adhere to the principles of international humanitarian law relating to the protection of civilians. The waging of hostilities in urban areas – as provoked by Al-Shabaab – inevitably brings with it huge risks to the civilian population, particularly if the principles of international humanitarian law of proportionality, targeting of only military objects and the requirement to take precautionary measures to avoid civilian casualties are disregarded. Both TFG and AMISOM have suffered many fatal casualties as a result of attacks by Al-Shabaab.

18. In-depth interviews carried out by the Office of the United Nations High Commissioner for Refugees (UNHCR) and UNPOS of a cross-section of individuals who had fled south-central Somalia in recent months and taken shelter in the Dadaab refugee camps in Kenya confirmed the ongoing patterns of violations of international human rights and humanitarian law, including failure by the parties to protect civilian populations adequately and the use and recruitment of children and young people. The interviews also

¹ See http://www.elmanpeace.org/news-2009-Aug-5/22/death_toll_in_somali_fighting_rises_this_year_group.aspx

highlighted once again the severe nature of abuses committed in areas which are under the control of Al-Shabaab or other armed groups.

B. Abuses by armed groups in areas under their control

19. Between April and early July, United Nations human rights workers recorded reports of nine executions by firing squad or stoning by Al-Shabaab mostly for alleged spying or murder, five cases of amputation, mostly of suspected thieves, and the flogging or whipping of some 28 individuals on the orders of courts set up by these groups. Whatever the accusation against the persons concerned, these cases amount to violations of the right to life and physical integrity and the right to due process, given the summary nature of the proceedings against the accused. Often the punishments were carried out in public. In addition, seven cases of beheading were reported, including five workers allegedly killed in April 2010 because they were involved in reconstruction work at the Parliament.

20. Some of the reported violations occurred in the context of orders issued by Hizbul Islam and Al-Shabaab, restricting social behaviour or dress codes, such as bans on playing music or watching football issued by Al-Shabaab and Hizbul Islam. In one case, two people were allegedly shot dead on 12 June 2010 when they fled Hizbul Islam, which had raided a home in Mogadishu where fans were watching a football World Cup game and captured dozens of those present. In another case, three women were allegedly captured and beaten by Al-Shabaab for failing to wear the *abaya* in June.

21. A recent example of the nature of physical punishment being imposed by Islamist militants in areas under their control is the reported whipping with 50 lashes, imposed on 30 July 2010 on a 31-year-old man, originally from Gaalkacyo, who was arrested by members of Al-Shabaab when he was found chewing *khat* in Ayub, Warsheikh district. There have been reports of other more serious punishments meted out to “offenders” in Al-Shabaab-controlled areas, including one in which the tongue of a young man was allegedly cut out.

22. In a press statement released on 10 August 2010 after completion of his recent mission to the region, the independent expert urged the international community to “explore all possible means to stop summary executions, including beheadings of innocent people, amputations; floggings, whippings, forcible marriages of young girls to militiamen, the use of civilians as human shields, the imposition of strictest dress code for women and the prohibition of public mass media and the bans imposed on listening to music and public gathering, all with lack of due process.”² Threats and intimidation transmitted in person, by order or via mobile phones have become routine for many and form part of the panoply of measures used to impose the armed group’s power.

C. Right to freedom of expression

23. The media continued to be targeted, mostly by the insurgents Al-Shabaab and Hizbul Islam. In Mogadishu, media houses were caught between Hizbul Islam, who in April 2010 ordered all radio stations to stop playing music, and the Benadir Administration which threatened to close down any radio station that obeyed the music ban. One radio station was raided on 14 April 2010 by Hizbul Islam. Another local radio station was raided by Al-Shabaab on 21 May 2010 and equipment was taken away. At least three journalists were held briefly during this period by Hizbul Islam. Eight others were wounded when a

² See <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10269&LangID=E>.

bomb was detonated at a police building where Al-Shabaab was holding a press conference. There were also concerns about two incidents involving Government authorities and related to the ongoing conflict. A reporter and cameraman were reportedly detained and questioned after they took pictures of their colleague who was wounded in crossfire on 1 July 2010. Most serious was the arrest warrant issued against a Somali *New York Times* journalist after the newspaper published an article about the recruitment and use of children by Government forces in June.

D. Displacement of population

24. According to a UNHCR report, as a result of continued violence and insecurity, in the first seven months of 2010, almost 50,065 Somalis sought refuge in neighbouring countries and over 200,000 were internally displaced, mainly in south-central Somalia, in particular from Mogadishu.³ That makes Somalia the country generating the highest number of refugees in the world after Afghanistan and Iraq. As of the end of July 2010, there were 600,484 Somali refugees, mainly hosted by Kenya, Yemen, Ethiopia, Eritrea, Djibouti, Tanzania and Uganda. In addition 1.4 million Somalis were internally displaced within the country.⁴

25. A further indication of the desperation of the people living in war-stricken areas of Somalia was the flight of tens of thousands of people from the country who risked their lives by undertaking dangerous journeys across the Gulf of Aden to reach Yemen. Many died during the journey, while others were subjected to abuse and injured at the hands of unscrupulous smugglers. While there were some Ethiopians among them, the majority of persons attempting to use these routes were from Somalia. The rates of human smuggling continued to rise every year. While in 2007, 29,500 people tried to cross the Gulf of Aden, in 2008 the number rose to 50,000 – with more than 1,000 dying during the journey – and to 77,802 in 2009. Since January 2010, more than 21,000 individuals had crossed into Yemen.

26. Indeed, human trafficking, especially for the purposes of sexual exploitation and domestic servitude, both inside and outside the country, remains an issue of serious concern. In May 2010, the International Organization for Migration (IOM) issued a fact sheet highlighting the widespread nature of the problem and the vulnerability of IDPs, economic migrants, and especially women and children from very poor families relating to this practice. In collaboration with the Somaliland and Puntland authorities and civil society, IOM has developed counter-trafficking programmes.

E. Sexual and gender-based violence

27. While such violence is normally underreported, according to a likely confidential database kept by United Nations agencies, some 409 incidents of rape, attempted rape/sexual assault, forced prostitution and domestic violence took place in the period January to June 2010 in Somalia. Assessments conducted revealed that there was a high prevalence of sexual violence in IDP settlements, where victims were generally of minority clan origin, bereft of clan protection and often forced to engage in risky coping mechanisms.

³ See “UNHCR Somalia Briefing Sheet”, July 2010.

⁴ Ibid.

F. Child rights

28. Children continued to be disproportionately affected by the conflict in central and southern Somalia. Recruitment of children to be put on the front line remained an issue of major concern, as recent media attention highlighted the presence of children within the ranks of the forces linked to the Government, although the TFG has denied this. The majority of the reports of new instances of recruitment and training of children attribute responsibility to the anti-Government elements. On 15 June 2010, TFG President Sheikh Sharif Ahmed, in a public statement, instructed his Army Chief to investigate the alleged presence of children in the Armed Forces.

29. The Somali conflict impacted children more generally in and around Mogadishu. As an example, it was reported that on 4 July 2010, an explosion killed some staff of the Ministry of Finance. Government forces responded by storming the neighbouring Alhilal Primary and Secondary School in the Hamweyne District, where they arrested 19 students aged between 7 and 16 years. These children were subsequently released, but the incident demonstrated the extreme vulnerability of young people to the suspicion of being directly involved in the fighting.

30. Rape and other grave sexual violence against children continued to be a major protection concern. Impunity for the perpetrators of crimes against children, including sexual violence, remained common in all parts of Somalia. This was happening despite ongoing United Nations work with law enforcement entities and the judiciary in certain areas to ensure such cases are passed through the formal legal system. There was, however, no evidence to suggest that the parties to the conflict were systematically engaging in patterns of rape and other acts of sexual violence against children.

G. Right to food, nutrition and health

31. According to United Nations reports, the nearly countrywide good rains during the April–June *Gu* rainy season had improved the food security situation in Somalia, reducing the number of people facing a humanitarian crisis from 2.65 million to 2 million people, which is a 25 per cent of reduction from the previous season. However 2 million in crisis represents 27 per cent of the total population, which is still very significant and of great concern. This figure, based on the Food Security and Nutrition Analysis Unit (FSNAU) Post-*Gu* countrywide assessment released in August 2010,⁵ was a slight improvement from the beginning of the year when 3.2 million, or 43 per cent of the population, were in need of humanitarian assistance. Nevertheless, nationally, the number of acutely malnourished children was estimated to be 230,000, of which 35,000 are severely malnourished, the majority of the latter being in south-central Somalia.

32. The forced movement of people caused by the conflict, combined with the rains, had also limited people's ability to access clean water and basic health services. Thus, even though access to food may have improved for some, a "public health crisis" persisted in south-central Somalia. For example, there were 25,000 reported cases of acute watery diarrhoea from January to May 2010, the majority of which were children.

33. The FSNAU assessment confirmed deterioration in the rates of severe acute malnutrition from 4.6 per cent six months previously to 7.1 per cent in the Central region, which was most affected by the cumulative effects of drought, high food prices and

⁵ See "Somalia Humanitarian Crisis Eases but 2 Million Somalis Still Need Aid". Available from <http://www.fsnau.org/in-focus/somalia-humanitarian-crisis-eases-2-million-somalis-still-need-aid>.

displacement. One in six Somali children countrywide and one in five in south and central regions were malnourished, while in Mogadishu there was a notable increase in the number of admissions of malnourished children to feeding centres.

34. It was not clear whether the suspension of World Food Programme food assistance in 2009 in areas under the control of Al-Shabaab and its allies in the south-central region had a serious negative impact on the nutrition situation there. In the interim period, agencies were focusing on nutritional interventions such as supplementary and therapeutic feeding centres. Food aid was still continuing in Mogadishu, where many of the most vulnerable persons were located, and in some areas of Central and North Somalia, a total of nearly 1.8 million people were receiving some form food assistance.

H. Right to education

35. During two decades of conflict, almost two generations of Somali boys and girls have been denied the benefit of a full education. Existing education systems, already limited in their scope, have been severely affected by the conflict. Somalis have nevertheless managed to organize strong networks of independent and private schooling in many parts of the country. The traditional education system – Madrasas and Quranic schools – is filling the gap left by formal schooling.

I. Right to justice

36. The absence over many years of a central government left the Somali population mostly in the hands of clan-based local authorities with militia powers. Islamist insurgents subsequently joined the fray. Combined with inefficient or ineffective systems, this long left the civilian population without effective legal recourse. Under these conditions, there is no mechanism to bring justice to the victims or any measure of accountability for perpetrators of the crimes. This led to the prevalence of a culture of impunity and the breakdown of any value system that leads to respect for rule of law and human rights. The question of impunity is at the core of the ongoing conflict in Somalia. This probably was one of the most neglected aspects of the Somali conflict.

III. Human rights in Somaliland

37. The trip of the independent expert to Hargeisa, Somaliland, was very short mainly because of limited flight possibilities. However, despite his short stay, the independent expert was grateful to have been received by the new President of Somaliland, Mohamed Mahmud Silanyo, within two days of him assuming office. The assumption of office in Somaliland by the new President had created new hope not only for Somaliland but also for Somalia as a whole.

38. The independent expert told President Silanyo, inter alia, that the international community had high hopes that Somaliland would set an example of good governance for the region which would be based on principles of human rights and respect for the human person. He welcomed the President's decision to dismantle the much criticized regional security committees which had served as arbitrary instruments in the hands of the executive without due process. He added that the President would have the opportunity to revise the Somaliland Human Rights Commission Act that the previous Government had enacted and make it fully compliant with the Principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles).

39. The President said that he was aware of the many challenges facing his administration. He had inherited a very difficult economic and security situation. There were extremist groups operating in Somaliland which was a matter of great concern for his Government and people. He referred to the recent suicide bombing by Al-Shabaab in Kampala was a lesson for the entire region.

40. The President recalled that in his first public statement he made a commitment to dissolving the regional security committees so that the courts would be able to fully exercise their jurisdictions. He pledged to strengthen the rule of law and respect for human rights. He promised to review the human rights violations committed under the previous regime and to release immediately those who were innocent and being detained illegally without due process.

41. The independent expert felt that the inauguration of President Silanyo to the highest office in Somaliland had opened new opportunities for Somalia and the region as a whole. The international community should take full advantage of the situation and make sure that the new Government was helped in every ways possible so that it could fulfil his commitments to human rights. The importance of the success of Somaliland for the future of Somalia as a whole could not be overemphasized.

42. While in Hargeisa, the independent expert also had useful meetings with United Nations agencies, representatives of NGOs/CSOs, including the Centre of Research and Development from Mogadishu, and the President of the Parliamentary Committee for Human Rights and Justice. They all shared the optimism generated by the recent elections and change of Government.

IV. Human rights in Puntland

43. The trip of the independent expert to Puntland was equally short. He could only visit Garowe and could not go to Bossaso where the largest concentration of IDPs was located because of the recent attack that was launched by the “Atom armed group” against the Puntland forces around the Bossaso city. His meeting with Abdirahman Farole, President of the Puntland State of Somalia, was as usual most warm and cordial. As before, the President had asked a number of his senior ministers and officials to be present.

44. The independent expert complimented President Farole on the achievements of his Government since their last meeting two years previously. These include that the Government was able to pay the salaries of civil servants; the education curricula was being updated and harmonized with UNESCO standards; there had been improvements in the delivery of health services; an independent electoral commission had been set up; a new constitution had been adopted by the Puntland Parliament to be put to the people for a referendum; and efforts were continuing to combat piracy.

45. The independent expert then raised a concern about the recent forcible deportations by the Puntland authorities of some 900 IDPs from Bossaso to areas in the south. This, he said, was contrary to the long tradition of hospitality shown by Puntland to IDPs, as well as to its responsibilities under international law. Having said this, he also recognized that Puntland still hosted the largest number of Somali IDPs on its territory. In response, President Farole emphasized the changed circumstances created by the infiltration of Al-Shabaab elements in Puntland, particularly among the IDP population. He pointed out that his Government was spending bulk of its financial resources to meet security requirements and could not afford to take any risks. He cited the recent attacks in Galgala in the north, by an insurgent group linked to Al-Shabaab, as evidence that the security threats in Puntland were effective. He mentioned that three members of the Puntland Parliament had been

killed by this group which also aided pirates and was involved in human trafficking and weapons smuggling to Yemen.

46. On the forcible deportation of 900 IDPs to the south, the President underlined that only young men had been deported. He stated that his Government had found, after investigation, that many of these young IDPs had been kidnapped, brainwashed and trained by Al-Shabaab prior to being sent to Puntland with specific tasks. He noted that his Government had the responsibility to make sure that IDPs were not used to harm his people. He further underlined that following the deportations, his administration was liaising with the United Nations agencies to ensure humanitarian needs and respect for human rights of the IDPs in Puntland.

47. On piracy, President Farole mentioned that as a result of his administration's efforts, piracy-related activities had reduced by 70 per cent and most of the pirates had shifted from Puntland to the Central regions, north of Mogadishu and Kismayo. There were 400 pirates in Puntland prisons, including some listed by United States intelligence, which exceeded the capacity of the prisons. Clan elders had done a commendable job of sensitizing the youth to abandoning piracy. He was saddened to learn that despite the efforts of his administration, the International Maritime Organization had characterized Puntland, in a report, as a criminal state and a hub for piracy.

48. President Farole reiterated his displeasure that Puntland was not fully involved in the Djibouti peace process. He added, however, that he had written to the new Special Representative of the Secretary-General for Somalia to welcome his appointment and was looking forward to meeting and working with him. He welcomed UNPOS decision to open permanent offices in Puntland.

49. In his meetings with United Nations agencies in Garowe, the independent expert was informed about measures undertaken by the United Nations to deal with the IDP and refugee situation in Puntland, in particular to lessen the tension between the latter and the local population and the Puntland administration. The independent expert was particularly impressed by the useful work being done by the United Nations Development Programme's (UNDP) Rule of Law and Security Programme (ROLS) as well as the work of UNHCR to build upon existing UNDP interventions, which included support to local police administration in improving its capacity and infrastructure to deal with the situation on ground. The independent expert believed these measures were likely to promote a greater spirit of cooperation between the United Nations and Puntland authorities. He also believed that relations were likely to improve if some of the basic assistance needs of Puntland, which was genuinely faced with a serious security threat on its territory and did not have enough resources to deal with it, were properly met. He sincerely hoped that such cooperation would lead to the adoption and implementation of a national IDP policy which the Puntland Government was in the process of elaborating with support of the United Nations.

50. Following his meeting with the Government, the independent expert visited IDP settlements in Garowe and the new site where those IDPs would be relocated. He hoped that the new site would provide better amenities to the IDPs. The independent expert wished to underline that he was terribly pained to see the extremely poor living conditions of the IDPs at their present location in Garowe. He told the United Nations that while he could understand the quick airing of their concern about the deportation of IDPs referred to above, he could not appreciate their seeming lack of concern about the terrible living conditions of the IDPs.

V. Some reflections on recent developments

51. The human rights and humanitarian law violations in Somalia depict a grim picture indeed. The situation deteriorated further since the last report of the independent expert to the Human Rights Council. The fighting among the warring groups had intensified during the month of Ramadan, which led to a high number of casualties and massive displacement. Al-Shabaab and its allies had reportedly consolidated their stronghold on people under their control, imposing harsh laws and justice. Somalis continued to bleed and suffer terrible pain.

52. However, despite this grim reality, there appears to be a glimmer of hope. A faint light is slowly emerging at the end of the proverbial dark tunnel. TFG has survived despite serious onslaughts by the insurgents. Its Armed Forces, with the help of AMISOM troops, have managed to hold on to and defend areas of Mogadishu under TFG control. Thus the earlier fears that it might crumble under pressure did not materialize.

53. Since he was not able to visit areas under the control of the militants, the independent expert had no way of knowing how people there felt about them. However, he spoke to people who had recently fled such areas, including some Al-Shabaab fighters who had defected and sought refuge abroad, who all said that Al-Shabaab had little or no support from the general population and ruled through fear. Those who joined them were mostly forced or lured by money. The general population in fact strongly resented the harsh laws imposed upon them. They continued to hope against hope that, despite its shortcomings, TFG would eventually emerge as a viable Federal Government for Somalia.

54. If the above reading is correct, it should provide an added incentive for the United Nations and the international community to continue to back TFG and help it with greater vigour to grow into an effective Government which would not only be able to hold on to Mogadishu, albeit with the help of AMISOM, but also gradually extend its control through a combined military and political strategy.

55. Under such a strategy, TFG would gradually extend its present boundaries through recovering territories held by the insurgents, by political means and/or military, and establish its hold over them. The latter would be facilitated if TFG developed a positive image in the minds of the people by its hard work, dedication and honesty. Such an image would make it easier for them to be welcomed by the population of territories it recovered from the insurgents. However, to make it possible, it would need the support of the international community.

56. In March 2010, when the independent expert presented his report to the Council, he had not been so hopeful. But this time, for reasons mentioned below, he thought that the prospects for such an option had brightened. However, he feels that it would only work if the international community was ready to support the process both in the medium and the long term, keeping in mind that there could be no lasting short-term military solution for Somalia.

57. The medium to long-term perspective is based on the fact that almost twenty years of internecine warfare has caused so much of damage to Somalia – to its basic infrastructures, institutions, social structures, social values and norms and in the State itself – that it is not realistic to expect that they could be repaired in the short term. It would require a long process of steady rebuilding of the basic components of state-building, the foremost among which are trust and social cohesion, which have been key casualties of the conflict.

58. This optimism in the midst of continuing and intensified carnage can perhaps be justified on the following two grounds. First, Al-Shabaab's efforts to win over more

territories and to drive TFG out of Mogadishu appear to have failed. It has made no significant territorial gains in the last six months – in some places it is even said to have been bogged down in fighting with other Islamists. That it has turned to repressing people under its control is perhaps indicative that it is not at ease with them. That Al-Shabaab could not find volunteers from among Somalis and had to hire Kenyan mercenaries to do the job in Kampala could be interpreted as showing their inability to win over enough local Somalis to join their mission. In fact, most of their suicide bombers appear to have been recruited from abroad.

59. Second, according to United Nations sources, important developments are taking place in Mogadishu which are likely to enhance the credentials of TFG and the confidence of people in it. The strength and efficiency of the Somali Security Forces (SSF) is being bolstered; firm commitments have been made to increase the number and capacity of AMISOM troops which would enhance their ability to protect the Government and infrastructures in Mogadishu; important measures are being put in place to augment the capacity of Somali civil servants, the police, members of the correctional services and the judiciary; arrangements are made to ensure payment of the salaries of public servants. Significant progress has been made in preparing a draft Federal Constitution for Somalia which would be vetted by the people soon. All these steps, if followed up carefully, are likely to generate public confidence in TFG.

60. The independent expert was briefed on the above developments by those directly involved with the processes. In regard to the security sector, the developments included the increase in the number of Somali Security Forces (SSF), which is likely to rise further once those presently under training were inducted into the army. The independent expert was assured through his visit to the EUTM headquarters in Kampala that the new recruits were receiving professional training from expert trainers, including on human rights and humanitarian law. He was particularly heartened to learn that arrangements were being made to develop a proper command structure of SSF; the soldiers, both old and new, would have proper housing and other amenities and would be assured a proper salary. This would make a difference from the past when the soldiers had no barracks to stay in and were not paid regularly, resulting in slack discipline, abuse of power and, in many cases, even defections. They were now likely to be more aware about their professional responsibilities and their duty to respect human rights and humanitarian law.

61. The independent expert also learnt from the United Nations that important progress is being made to impart proper training to the police and to ensure their well-being through proper infrastructure-building and payment of salaries. Some of this had already been implemented. This would hopefully make the Somali Police Force effective, professional and accountable. If they are able to ensure the safety and protection of the lives and property of Somali citizens, the reputation of TFG would improve immensely. The projected 10,000-strong police force, trained to acceptable rule of law and human rights standards, would make a significant difference. The same is necessary for training of members of correctional services. Important progress had also been made in the judicial sector. Together, these measures are likely to yield positive results in terms of creating public confidence in the Government.

62. In regard to the drafting of the Federal Constitution, significant progress appears to have been made, as the Independent Federal Constitutional Commission, which was supported by UNDP, reportedly handed over the first draft to the TFG Minister for Constitutional Affairs in early August 2010. This could become an important milestone on the path to recovery if the draft is widely shared with the Somali people and their views are taken into account before a final version is put up for a referendum.

63. If only part of the optimism expressed above was true, it could be considered as significant progress. When one recalls that Somalia is not a high-profile operation and

international support thereto has at best been lukewarm, the achievements assume more significance. Added to that is the fact that Somalia remains one of the most dangerous places in the world in which to work. So the United Nations staff and those of many other international and local NGOs who have braved the difficult circumstances in Somalia to work there deserve to be especially commended.

64. As the independent expert has stated in his earlier reports, the resolution of the Somali conflict ultimately depends upon the meaningful participation of all Somali citizens in the process of reconciliation and nation-building. A way must be found which would facilitate such participation. In this respect, the independent expert was pleased to see the efforts of NGOs like InterPeace aiming to involve the general Somali public in discussing issues that concern them and to seek their views through a process of participatory action research. It is hoped that more such efforts would be supported by the international community.

VI. Recommendations

For the parties to the conflict

65. The parties to the Somali conflict must recognize that there can be no military solution to achieving their objectives. There may be occasional victories on the battlefields but these would not last without the support of the people. TFG, the insurgents, the warlords and everyone else concerned must negotiate a political settlement. The insurgents in particular must bear in mind that, contrary to their depiction of TFG, Somali citizens do not consider it to be the agent of the West or as infidels who must be ousted and replaced by an Islamic regime. The people know that not very long ago, members of the present TFG were themselves known as Islamic forces, fighting to oust the former TFG and its allies. Like them they too are supporting the use of sharia law as a foundation for the legislative framework in the country. Islam therefore cannot be a basis for solution of the Somali crisis.

66. Protection of civilians should be a matter of constant focus for all the parties concerned, particularly TFG. Addressing impunity should remain a key human rights concern of the Government. It should cooperate with the United Nations to document/register all ongoing violations of human rights and international humanitarian law. It should establish a strong accountability mechanism for the security forces. All the parties should also ensure that no recruitment and use of children in armed conflict takes place under any circumstances. The independent expert welcomes the dialogue that has been initiated between TFG and the United Nations Children's Fund (UNICEF) in this regard.

For TFG

67. TFG should bear in mind that it has been entrusted with the onerous responsibility of steering Somalia through the transition process as foreseen in the Transitional Federal Charter. It must demonstrate through its actions and utterances that it is able to lead the nation towards its declared goals. It should set out a clear vision and make it known to the people that it wishes to establish itself as the Government of the people and for the people and eventually to become a Government by the people.

68. TFG must not use security concerns to explain its inaction in areas where action is feasible. People recognize the security constraints but they do not understand

why the Government cannot show that it is at least making an honest effort. People wish to see them doing their best to weed out corruption, to deliver basic social services, such as in education, health, law and order, to raise internal revenue, to move out of total dependence upon outside help as soon as possible, to develop a framework of professional government servants, etc. Most importantly the people wish to see that the Government is dedicated to establish the rule of law and good governance.

69. While security must indeed remain a key preoccupation of TFG, winning the war against the insurgents will require that the Government wins the minds and hearts of the people first. In this regard, TFG will have to demonstrate that it not only cares for the people but has the political will to win the war by taking the people along with them, and that before, during and after the war, it is able to provide a Government that the people is able to consider to be their own. As stated at a recent gathering of Somali diaspora, “the Government should tend to defeat their opponents on the political front before they try to defeat them in the battle front. It should try to win the hearts and minds of the Somali people.”⁶

70. TFG must constantly look for ways and means to become a people’s Government and not that of particular interest groups or clans. The dos and don’ts in this regard, as identified by the Somali diaspora in a recent gathering, are: the Government must be a minimum and be effective; it must fight corruption, be transparent and accountable, display political will, avoid political patronage, help rebuild societal values and norms, get rid of weak or absent management system, procedure and practices, avoid misusing discretionary powers, must display professional integrity, shun tribalism, favouritism, nepotism and cronyism, avoid greed and establish the rule of law. This is a tall order but not impossible to achieve over a period of time.

71. TFG should recognize that the high rate of unemployment among Somali youth leads many young men to turn to radical Somali groups for help and employment. Job creation for the youth should, therefore, be given high priority. Joining the Al-Shabaab militias is currently the only and the most potential recruitment channel for the unemployed youth in the country.

72. TFG should expand the political dialogue to include all the so-called “spoilers”. More particularly it should give greater attention to shoring up local and grassroots peacebuilding processes and organizations. Grassroots organizations should be given a platform in state-building in Somalia. They are the ones who are doing the ground work and have direct and daily contact with the community.

73. TFG should give more attention to forge alliances with Somaliland and Puntland. They can not only play a significant role in bringing peace in the south-central region but are very much willing to do so. The new President of Somaliland has promised full support to the peace process in Somalia and the President of Puntland has expressed his willingness to work together with TFG on basis of the agreement recently signed between him and the Prime Minister of TFG.

74. With support from the international community, TFG should build capacity of the Ministry of Information so that it is able to keep the Somali people properly informed about matters of concern to them. In the war against insurgents people should be seen as allies.

⁶ Information from the ninth Horn of Africa Conference: Focus on Somalia – The Role of Democratic Governance vs. Sectarian Politics in Somalia, held in Lund, Sweden, on 4–6 June 2010.

For the United Nations

75. Of all the anthropogenic humanitarian crises that United Nations is presently dealing with, the crisis in Somalia is perhaps the most challenging. It also offers perhaps the most creative opportunities. If Somalia is the most “failed” State in the world today, the United Nations has the unique opportunity to steer its revival. Such an opportunity does not exist for the United Nations in Afghanistan, Iraq or elsewhere, where there are other “big” players to lead. The United Nations has thus a special responsibility for Somalia.

76. The United Nations should take the lead in raising and holding the attention of the international community on the terrible plight of the Somali people until a satisfactory solution has been found. It should not be lost sight of simply because there is no big power interest in Somalia today. Through its efforts and activities, the United Nations should constantly highlight the dangers of the Somali conflict spilling over in the region. In doing so, it must also highlight the positive developments arising from the military/security/counter-terrorism/insurgency strategy that it is trying to put in place in Somalia. It must continue its efforts to ensure that adequate resources, including in the security and military sectors, are in place to create and sustain positive progress towards the end of the transitional process in August 2011 and beyond, till Somalia springs back from a failed State to a revived State.

77. The United Nations must ensure greater integration and coherence among all agencies working for Somalia and make sure that all its activities are specifically focused on protecting and promoting human rights and humanitarian law. In this regard, the Human Rights Unit attached to UNPOS should be strengthened and upgraded so that it can fulfil its role to act as focal point for all United Nations activities in this field. It has unfortunately not been able to play this role effectively so far apparently because of cumbersome recruitment processes of the United Nations, as a result of which during the course of the last two years it had to make do with stop-gap arrangements. This must change and a special dispensation should be considered for Somalia, if necessary. Together with security, human rights and respect for humanitarian law must receive the highest attention from the United Nations in Somalia. To give more visibility to human rights concerns, a robust reporting strategy on human rights issues should be established.

78. OHCHR should offer help to TFG in developing its universal periodic review report which is due in 2011. While OHCHR has not been able to make much headway in building technical capacity of TFG in regard to human rights because of ground realities, the report could serve as a baseline to identify human rights needs of the Government.

79. OHCHR-UNPOS should ensure systematic documentation of human rights and humanitarian law abuses currently taking place in Somalia with a view to identifying the perpetrators. For this purpose, staff from the agencies should undertake regular visits to IDP camps in Somalia and refugee camps in neighbouring countries. A mechanism should be found to systematically document human rights violations, to make recommendations to ensure accountability and to follow up on such recommendations. IDPs and newly arrived refugees in neighbouring countries are an important source of information about the current situation in Somalia. The establishment of such a mechanism would send a strong message to the perpetrators of human rights and humanitarian law violations in Somalia that they are being watched and will eventually be made to account for their crimes.

80. The Secretary-General should consider the establishment of an Independent International Commission of Inquiry into human rights and humanitarian law

violations, or similar mechanism to investigate all abuses committed by all actors involved in the Somali conflict, including those committed in the past, and recommend ways forward for accountability.

81. The United Nations should take the lead to ensure technical support to increase AMISOM efforts to protect civilians, including proper equipment to the forces to minimize risks of civilian casualties. It is imperative for the success of its mission that AMISOM is seen by the local population as their friend, which unfortunately has not always been the case. In consultation with AMISOM, a strategy should be developed to address the allegations of indiscriminate and disproportionate response.

82. Innovative ways must be developed to ensure medical/health services for people in the war-affected areas. It is heartening to learn that the United Nations has managed to support hospitals to provide emergency services in seven regions of south-central Somalia and that nearly 800 health-care workers have been trained in various fields. But these efforts are not enough. There should be special coordination between all United Nations agencies involved in this field, and with AMISOM, which extends its medical services to the population within its reach.

83. Similar coordination is also necessary in the field of education which has been most affected by the conflict over the last two decades. It is heartening to note from United Nations reports that since the beginning of the year, access to emergency education was increased through the construction of classrooms, rehabilitation of learning spaces and installation of school tents and training of school teachers. But these are mainly in areas within the reach of the international community. What about those which are within the control of the militants? There is a need for innovative ways to promote education in these areas through arrangements with the local authorities and population. In this regard, rapport with Somali CSOs/NGOs is essential.

84. The United Nations should explore all possibilities to develop/maintain dialogue with all parties on the ground in order to improve humanitarian access to vulnerable areas and people. Where the United Nations is unable to operate, local arrangements should be made.

85. Specific and systematic focus must be given on sustainable livelihoods. Special attention should be given on creating jobs for the youth, keeping in mind that one way of combating terrorism is to deny terrorist organizations recruits. The lack of livelihood and alternative sources of income drives many youths to join the insurgents.

86. It is imperative that the United Nations offices for Somalia, presently based in Nairobi, are moved to safer places in Somalia itself as soon as possible. The United Nations and its personnel should be where the victims are. There are many relatively junior employees of the United Nations who have long been braving the situation in the field and doing a splendid job. There cannot be any reason why the senior officials could not also be there.

87. It is heartening to note that the United Nations itself has now suggested that significant "light footprint" should be established in Mogadishu by the end of 2010. Such a presence would boost the various efforts of the United Nations and TFG referred to above. However, should the situation in Mogadishu continue to be precarious over a longer period of time, alternative arrangements to operate from elsewhere within Somalia should be considered.

88. The announcement by the new Special Representative of the Secretary-General for Somalia that he intends to move United Nations offices, presently based in Nairobi, to Puntland and Somaliland by October 2010 is most welcome. While it may not be

possible to meet the deadline fully, the process should be set in motion in all earnest. It will be a tremendous psychological booster for the beleaguered Somali population.

89. Following the recent suicide bombings in Kampala, the situation of Somali refugees in Uganda has become more precarious. UNHCR/Uganda must give special attention to the particularly difficult reality facing Somalis in Uganda today. UNHCR and OHCHR should consider developing a cooperative mechanism to deal with human rights problems of refugees and others in similar situation whether in Uganda or elsewhere. Particular attention in this regard must be given to the protection of human rights defenders who were forced to flee their country.

90. The United Nations must give special attention to involving the Presidents of Somaliland and Puntland in the Somalia peace process. The commitment made by the new Special Representative in this regard is most reassuring. Particular attention must also be given to the security concerns of these two states. Strong, stable and prosperous Somaliland and Puntland could serve as beacons of hope for the rest of Somalia.

For AMISOM

91. While the expert recognizes that its troops have to serve under most difficult circumstances in Somalia, particularly when their opponents do not always respect the basic principles of humanitarian law, he emphasizes that AMISOM must nevertheless do everything possible to ensure that its troops respect those principles fully and take due care to avoid civilian casualties. In this respect, it should consider providing its troops with proper equipment that would help minimize the risk of civilian casualties.

92. The African Union and AMISOM should establish an investigation mechanism to conduct prompt, independent and impartial investigations into all allegations of violations of international humanitarian law by AMISOM personnel, including allegations of indiscriminate or disproportionate attacks, such as mortar firing or shelling in densely populated areas. Such a mechanism should ensure the confidentiality and the safety of potential complainants and witnesses, report its findings publicly and recommend disciplinary measures and the initiation of criminal proceedings against any personnel found to have been responsible for such violations.

93. The African Union and AMISOM should consider developing its military doctrine and concept of operations in situations like that of Mogadishu in consultation with the Department of Peacekeeping Operations, UNPOS, OHCHR, ICRC, relevant NGOs and others as appropriate.

For the international community

94. The international community must commit to funding all relevant United Nations activities at this critical juncture of the implementation of an international strategy for Somalia. It is worrying that, as of end of June 2010, the 2010 consolidated appeal for all United Nations activities in Somalia had only received US\$337 million, which is 57 per cent of the revised budget. The reduced funding has affected all non-food programmes, including health, nutrition, water, sanitation, agriculture and livelihood. Lack of fund would badly impact United Nations efforts for peace and reconciliation in Somalia.

95. The professionalism displayed by EUTM in ensuring training for all new Somali recruits, including in the field of human rights and humanitarian law, is most commendable. It is of utmost importance to ensure that, after the end of training and before deployment, the new soldiers are assured of a stipend for at least 12 months. It is important to remember that because of lack of proper remuneration, some members of SSF have in the past joined the ranks of the militants. A harmonized arrangement should be made to ensure that stipends/salaries are also guaranteed for all members of the police, correction services and the judiciary. It is unrealistic to expect public employees to serve without a salary, which appears to have long been the case in Somalia.

96. Somali human rights defenders work in most precarious security conditions. The international community should enhance its financial, logistical and political help them to enhance their security and protection and reinforce their capacity to carry out regular human rights monitoring and reporting.

97. All States and intergovernmental organizations providing assistance to TFG should support measures to end impunity in Somalia, including the establishment of an independent and impartial commission of inquiry or similar mechanism, to investigate and map crimes under international law committed in the country throughout the many years of conflict and recommend measures to ensure accountability.

98. To address its concerns about piracy in and around Somali waters, it is important for the international community to remember that piracy can only be effectively ended by setting up a functioning government in Somalia. The millions of dollars being spent on patrolling the waters around Somalia against piracy should be balanced by making funds available to build a viable Somali government. A multidimensional strategy that addresses the interlocking issues of piracy, illegal fishing and dumping of toxic waste in Somali waters should be considered.

99. The development of a team of capable civil servants in Somalia, who would be able to put public services back on their feet again, is of utmost importance. However, since education has been a main casualty of the long-running war, there would be a need for some quick fixes. For this, setting up residential schools/colleges in safer places in Somalia, such as in Puntland and Somaliland should be considered. Here, among others, students from the south-central region could be enrolled in significant numbers. Such an opportunity would provide an alternative to the youths to avoid joining the militants for survival. Another alternative would be to offer scholarships to Somali students/citizens for training abroad.

100. The international community should consider supporting projects aimed at bringing Somali professional groups, such as teachers and medical doctors, to Puntland and/or Somaliland for short-term refresher courses. The idea would be not only to enhance their capacity to deal with the type of emergency situations that they are faced with constantly, but equally importantly to give them an opportunity to relax and breathe freely, far-removed daily tensions. The Somali diaspora could be involved in these activities which would also help build people to people bridges in Somalia.

101. Governments hosting Somali refugees and asylum-seekers on their territories should not send back at least those among them who originate from south-central Somalia. In particular, Somali human rights defenders, journalists and other civil society actors are a category at particular risk. States should find creative ways to provide durable solutions for Somali civil society activists, including easily accessible asylum procedures, resettlement and funding to continue their work.

102. The stand-alone interactive dialogue scheduled to take place at the fifteenth session of the Human Rights Council offers an important opportunity for the United Nations and the international community to have an in-depth discussion on the situation in Somalia and to identify additional measures to deal with the humanitarian crisis there. As argued in this report, despite the gruesome killings and relentless violence that continue to characterize the situation in Somalia today, important progress appears to have been made in a number of areas of which advantage must be taken and built upon. The desired results may not be obtained in the short term. A longer period will be required. Until that time, the international community must renew its commitment to the people of Somalia and redouble its efforts to bring their seemingly unending nightmare to an end sooner rather than later.
