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Report of the Independent Expert on the situation of human rights in Somalia, Bahame Tom Nyanduga*

Summary

Since presenting his initial report to the Human Rights Council at its twenty-seventh session, the Independent Expert has undertaken two field visits to Somalia. The present report contains a review of the human rights situation in Somalia based on information obtained from consultations with various interlocutors during the two country visits and a review of information gathered from different sources. Overall, the situation of human rights in Somalia remains dire. Violations of freedom of expression, widespread reports of sexual violence and the continued use of the death penalty remain major concerns. Activities of the militant group Al-Shabaab disproportionately affect the civilian population and pose a threat to sustainable peace in Somalia. Reports of civilian casualties and displacements in the context of military operations conducted against Al-Shabaab persist. Similarly, the humanitarian situation is alarming and yet funding to meet humanitarian needs in Somalia appears to be declining. As the Federal Government of Somalia advances its political and stabilization agenda, it is vital that human rights are placed at the core of this process so as to ensure a sustainable peace.

* The present report was submitted after the deadline as it had been submitted late to the Office by the Independent Expert.



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I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 24/30, in which, *inter alia*, the Council renewed the mandate of the Independent Expert on the situation of human rights in Somalia for two years. The Council requested the Independent Expert to continue his engagement with the Government of Somalia, civil society and the United Nations Assistance Mission in Somalia (UNSOM) with a view to assisting Somalia in the implementation of its human rights obligations, Council resolutions and accepted universal periodic review recommendations, and in the process of establishing an independent human rights commission.

2. The report covers the period from September 2014 to September 2015. During that period, the Independent Expert undertook two field visits, from 4 to 13 December 2014 and from 20 to 29 May 2015. He visited Nairobi, Mogadishu, Kismayo, Garowe and Hargeisa and held extensive consultations with ministers and senior officials from the Federal Government of Somalia, including the legislature and judiciary; ministers of the Interim Jubba Administration; the President of Puntland; ministers and senior officials of both Puntland and Somaliland; the Special Representative of the Secretary-General in Somalia and Head of UNSOM and his staff; the United Nations country team; the Special Representative of the Chairperson of the African Union Commission for Somalia and Head of the African Union Mission in Somalia (AMISOM) and his staff; staff of the British Embassy in Somalia; and representatives of the media and international and local civil society organizations.

3. The present report contains a review of the human rights situation in Somalia based on information obtained by the Independent Expert during his consultations with the interlocutors mentioned above. He also consulted reports of United Nations agencies and international and national non-governmental organizations as well as media reports.

4. The Independent Expert received communications from individuals on various human rights concerns. The Independent Expert addressed letters to the Federal Government of Somalia and AMISOM drawing their attention to varied allegations of human rights violations and urging them to take measures to address such allegations. He also exchanged ideas with the Special Rapporteur on violence against women, its causes and consequences; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and the Special Rapporteur on the human rights of internally displaced persons, on coordination of action and interventions to address human rights concerns relating to their respective thematic mandates.

II. Human rights in the context of the political and security situation in Somalia

A. State-building process

5. The Federal Government of Somalia is working, with the support of the United Nations, the African Union and bilateral cooperating partners, to improve the human rights situation and to achieve the goals outlined in its Vision 2016 plan for democratic transformation. This includes holding democratic elections by August 2016, translating the provisional Constitution of Somalia into a permanent document and creating federal states, as stipulated under the provisional Constitution.

6. Political tensions within the Government continue to arise, affecting government business and affecting smooth progress on the political and federalism agenda of the country as well as the confidence of international partners assisting stabilization efforts in Somalia. In December 2014, Prime Minister Abdiweli Sheikh Ahmed resigned. He was the second Prime Minister to resign after the adoption of the 2012 provisional Constitution. Most recently, in August 2015, the parliament voted to impeach the President. The Speaker of the federal parliament has initiated negotiations with the parties involved. As a result of the delays in implementing the overall political timeline, coupled with security challenges, consensus has now been reached that it will not be possible to conduct democratic elections in Somalia by 2016 as planned.

7. There have also been delays in the constitutional review process. Although members of the Independent Constitutional Review and Implementation Commission were appointed by parliament in June 2014, misunderstandings around the roles and responsibilities of the key national implementing institutions affected progress in implementing their mandate. This was further compounded by the resignation of the Chairperson of the Commission in May 2015. Following the appointment of the new Chairperson to the Commission in July 2015, preparations to start the constitutional review process are under way.

8. Efforts to establish permanent governance structures in Somalia are also being undermined by the clan system, upon which Somali culture and traditional governance system is based. Conflicts between clans regarding representation and participation in governance institutions and structures have at times contributed to delays in making progress towards their establishment or diminished their effectiveness. In some parts of the country, conflicts between clans have led to violence resulting in civilian injuries and deaths.

9. In Somaliland, the announcement in May 2015 by the House of Elders (Guurti) that the term of the current Government would be extended and presidential elections postponed from June 2016 to March 2017 prompted widespread protests in the capital, Hargeisa, and in the cities of Berbera and Burao. Members of parliament opposed to the decision of the Council of Elders and those who publicly condemned the Government were arrested and detained.

10. Tensions between Puntland and Somaliland over the disputed regions in Sool and Sanaag continue and reports of armed clashes between security forces from Puntland and Somaliland with the involvement of militia resulting in civilian casualties and deaths remain a concern.

11. International support in the peacebuilding and State-building process in Somalia is coordinated through the New Deal Compact mechanisms. The New Deal Compact revolves around five peace and State-building goals: inclusive politics; security and rule of law; justice; economic foundations; and revenue and services. The goals of security and rule of law and on justice are very important to ensure that there is an impact on, and improvement in, the human rights situation in Somalia. Human rights are cross-cutting in the goals; however, the Independent Expert was informed that insufficient attention and resources had been allocated to the strengthening of human rights institutions throughout the country. Specific attention should be paid to the need to allocate adequate resources to the Ministry of Women and Human Rights Development, and the judiciary, both of which are critical to the promotion and protection of human rights in Somalia. The Ministry is accommodated in three rooms within the Ministry of Information building, has no furniture and the barest of space to work in. Such an environment is a reflection of the state of governance and the challenges that the people and the Government of Somalia face. Notwithstanding the great efforts by the Government, the Ministry is constrained by lack of capacity, which impacts the implementation of the human rights agenda, including the Human Rights Road Map and

Human Rights Council recommendations. It is crucial to emphasize the need for enhanced financial support for these institutions in the post-2016 Peace and State-Building Goals.

12. The finalization and adoption of a new Constitution clearly defining the powers of the Prime Minister and the President could help avoid political tensions. Similarly, it is important that politicians and institutions work within the confines of the provisional Constitution rather than their power bases within the clan system. It is necessary to ensure that federal institutions are strengthened on the basis of the principles of constitutionality and the rule of law. The Independent Expert wishes to emphasize the principle of inclusiveness and the centrality of human rights in the State-building process. During his meetings with authorities in Kismayo, Interim Jubba Administration, and Garowe, Puntland, the Independent Expert was informed of a lack of financial support as envisaged under the New Deal Compact. It is therefore critical to provide the necessary support to federal and regional authorities and to strengthen their respective human rights institutions.

B. Attacks by Al-Shabaab

13. The continued activities of the militant group Al-Shabaab constitute a long-term threat to achieving sustainable peace in Somalia. The Somalia National Army, supported by the forces of AMISOM, continues to liberate various parts of the country previously occupied by Al-Shabaab fighters. A new military operation, Operation Jubba Corridor, was launched in July 2015 to recover remaining Al-Shabaab strongholds in south-central Somalia. The operation is conducted by troops from the Ethiopian National Defence Forces and Kenya Defence Forces contingents of AMISOM, supporting units of the Somalia National Army.

14. Military gains by the Somalia National Army and AMISOM are usually counteracted by asymmetric combat techniques by Al-Shabaab, including the use of improvised explosive devices and complex terrorist attacks that disproportionately affect the civilian population. Al-Shabaab has launched terrorist attacks in Mogadishu and a surge in targeted killings. On 27 March 2015, Al-Shabaab attacked Hotel Maka al Mukarama, killing many innocent Somali civilians, including the Special Representative of Somalia to the United Nations Office and other international organizations in Geneva, Yusuf Mohamed Ismail “Bari Bari”.

15. On 10 July 2015, a complex attack on two hotels resulted in the deaths of 11 civilians, with more than 20 injured. On 26 July 2015, a truck was detonated in front of the Jazeera Palace Hotel and killed 15 people. A number of parliamentarians and politicians have been targeted by Al-Shabaab using improvised explosive devices or in drive-by shootings. The Independent Expert has also received several reports of extrajudicial executions of civilians by Al-Shabaab, who often accused them of collaborating with, or spying for, the Government or AMISOM. The civilians are often executed within a few hours after the conviction and sentence has been pronounced by an Al-Shabaab court. Executions are often conducted in public.

16. Despite military gains by AMISOM troops working in collaboration with the national forces, Al-Shabaab remains in control of some rural areas and supply routes. In areas under its control, Al-Shabaab has maintained its ban against operations by most humanitarian agencies. This denial of access to vulnerable populations along with the threats and attacks levelled against them by Al-Shabaab has made it virtually impossible for humanitarian organizations to reach vulnerable populations and exacerbates an already dire humanitarian situation. According to the Office for the Coordination of Humanitarian Affairs, attacks and threats against humanitarian personnel have increased and 60 incidents (deaths, injuries, abductions, arrests and detentions) involving humanitarians were recorded in the first five months of 2015.

17. While Somaliland and Puntland continue to enjoy relative peace and stability, reports indicate that increased military operations against the strongholds of Al-Shabaab in the south-central regions of Somalia are pushing the militants towards the north of the country and thereby exposing these regions to increased threats of terrorist attacks. One such attack was launched in Garowe, Puntland, in which four United Nations staff members were killed and five others seriously injured.

C. Military operations against Al-Shabaab

18. The Independent Expert continues to receive reports of civilian casualties and displacements in the context of military operations conducted against Al-Shabaab. Reports indicate that, in July 2015, 22 civilians were killed by AMISOM in two separate incidents in Marka, Lower Shabelle region. On 21 July 2015, 15 civilians, including women and children, were reportedly killed and 5 others injured. On 31 July 2015, 7 civilians, in Marka were killed. In the same month, 18 civilians were reportedly killed during operations by the Ethiopian National Defence Forces and the Somalia National Army in Bakool region and 13 others by Ethiopian National Defence Forces airstrikes in Bay region. On 8 August 2015, AMISOM troops reportedly killed five passengers and injured six others who had been travelling in a minibus in Hiraan region.

19. The Independent Expert expressed his concerns over these incidents to the Special Representative of the Chairperson of the African Union Commission for Somalia and Head of AMISOM and urged AMISOM to conduct investigations into the incidents and hold those found responsible accountable for their actions.

20. In response, the Special Representative of the Chairperson of the African Union Commission for Somalia informed the Independent Expert of the activities undertaken by AMISOM prior to commencing the operation in order to ensure compliance with international humanitarian law. These included issuance of a directive to operational commanders in which he detailed applicable international humanitarian law provisions, the AMISOM rules of engagement, the AMISOM standard operating procedures on the treatment of detainees; the review of Operations Eagle and Indian Ocean by the operational commanders with specific reference to lessons learned. Regarding the incident of 21 July 2015, the Special Representative reported that a three-member Board of Officers drawn from Burundi, Ethiopia and Zambia had been constituted to investigate the overall circumstances of the allegations. The Board of Officers had conducted interviews with local members of the Somali Police Force, the Somalia National Army and the National Intelligence and Security Agency and submitted a report. Civilians in Marka had not been interviewed as they had apparently refused to testify for fear of reprisals from Al-Shabaab. The report concluded that only five people, all Al-Shabaab members, had been killed.

21. With respect to the 31 July 2015 incident, the Special Representative of the Chairperson of the African Union Commission for Somalia reported that, on his instructions, the contingent concerned had conducted its own investigations and submitted a report to the Special Representative on 19 August 2015. Preliminary investigations had revealed that those killed in the incident included civilians from a particular house. The Special Representative subsequently convened a board of inquiry composed of members from AMISOM military, police and civilian components to investigate the overall circumstances of the incidents, including the number of AMISOM casualties and those missing in action as well as details of equipment lost or damaged; the number of civilian casualties; and post-incident action taken by the contingent against the officers involved in the incident with the members of the host community. On 21 August 2015, the Special Representative held a press conference in which he announced action taken to address the

31 July incident. The Special Representative also informed the Independent Expert that AMISOM had put in place a civilian casualty tracking cell.

D. Disengaged combatants programme

22. The national programme for disengaging combatants embarked on by the Federal Government of Somalia is aimed at disengaging fighters by means of a comprehensive process, with a view to rehabilitating and reintegrating them into the community. Several concerns have been raised with respect to how this programme is being implemented, including about the use of prolonged administrative detention and the handling of children in the programme. In Kismayo, reports indicate that the disengaged fighters are not held in one facility but are spread around in different locations, some of which have harsh living conditions, while in others, juveniles are detained with adults. During his visit to Somalia in December 2014, the Independent Expert learned that there were standard operating procedures for the reception and handling of former children fighters which required that children be handed over to the United Nations Children's Fund (UNICEF) within 72 hours. The National Intelligence and Security Agency often does not adhere to this requirement.

23. Following her mission to Somalia in August 2014, the Special Representative of the Secretary General for Children and Armed conflict voiced concern about the lack of transparent procedures for placing children in the Serendi Rehabilitation Centre in Mogadishu, where 55 children who had fought for Al-Shabaab were being held at the time of her visit. The Independent Expert was recently informed that all of these children had been handed over to UNICEF and that there were currently no children in Serendi.

III. Human rights situation in Somalia

A. Freedom of expression and of the media

24. During the period under review, the exercise of the right to freedom of expression continued to pose a challenge, particularly for journalists and the media. During his field visits to Somalia, the Independent Expert received reports of intimidation, arrest and prosecution of journalists and media company owners, and the confiscation and destruction of radio equipment, in August and September 2014. In 2015, three radio stations in south-central Somalia, namely, Shabelle, Risala and Sky, were shut down but later re-opened. Regional Administrations such as Puntland and Jubbaland have also ordered the closure of publishing houses. Journalists and media workers continue to receive threats to their lives, including from Al-Shabaab and suffer intimidation, arbitrary arrests and detentions. In south-central Somalia, the arrests and detentions are often carried out by officers from the National Intelligence and Security Agency. For example, on 3 April 2015, the Agency reportedly shut down Shabelle and Sky FM radio stations in Mogadishu and arrested and detained senior staff allegedly for airing the voice of an Al-Shabaab leader. The Agency had prohibited the airing of the voices of Al-Shabaab leaders even though no court had approved such an order. No charges were brought against the staff arrested and the Agency continued to hold them in detention for another 14 days after the Banadir Regional Court had ordered their release. Reports of illegal or arbitrary arrests and detention and harassment of journalists and the media were also made in Puntland and Somaliland. The Independent Expert communicated his concerns to the Federal Government of Somalia and emphasized the need to appreciate the important role played by the media in a democratic society and that the Government should respect freedom of expression and guarantee a safe environment for the media and journalists to practise their profession.

25. The National Union of Somali Journalists, the Media Association of Puntland and the Somaliland Journalist Association have been active in monitoring and reporting on violations against the media and journalists. These associations have also been collaborating with various partners, including the United Nations, to strengthen the professional capacity of their members. The Finnish Foundation for Media, Communication and Development has, for example, launched a three-year support programme for the Somali media sector to enhance professionalism and integrity among Somali journalists and has so far conducted training for journalists, media workers and editors in Mogadishu, Garowe and Hargeisa.

26. The Federal Government of Somalia has made little progress in enacting national media legislation that complies with international human rights standards. The draft Somali national media legislation, approved by the Council of Ministers in September 2014, covers a variety of issues, including media regulation, copyright and broadcasting, which would normally come under separate legislation. While an improvement on previous drafts, the draft legislation approved by the Council of Ministers still contains provisions that are problematic in terms of human rights standards on freedom of expression and of the press. Among other things, the draft legislation contains broad definitions that could be used to restrict media activities, places restrictions on those who can practise journalism, criminalizes defamation and imposes penalties that are disproportionate to offences. The draft legislation also has prohibitive licensing requirements which would have the effect of restricting the operation of media companies. The Independent Expert gathered that the comments aimed at making the bill human rights-compliant were submitted to the Federal Government by journalists' groups, the United Nations and other stakeholders.

27. In Puntland, concerns continued to be raised regarding some provisions of the media law enacted in July 2014. Following advocacy by the Media Association of Puntland, the Independent Expert learned that the Attorney General of Puntland had issued an advisory opinion to the Puntland Administration to review two articles of the legislation relating to accreditation of journalists and membership of the media council, as they are not in compliance with the Puntland Constitution.

B. Counter-terrorism legislation

28. Since the Federal Government of Somalia embarked on drafting anti-terrorism legislation, the United Nations has been providing technical advice aimed at ensuring that the legislation is human rights-compliant. The bill was adopted by the cabinet in May 2013, even though concerns had been raised about some of its provisions in terms of compliance with human rights principles. Upon submission to the parliament, the bill was sent to the Ministry of Security so that the provisions that needed to be aligned with the provisional Constitution and human rights standards could be addressed. Discussions on the bill continued throughout 2014 and, in May 2015, the bill, which had undergone several revisions, was approved by the cabinet and submitted to parliament for consideration during its sixth session.

29. Critical human rights concerns remain in respect of some of the provisions of the bill currently before parliament. For instance, the definition of terrorism, including terrorist offences, is overly broad, as are other provisions such as those on financing terrorism and terrorist training. The bill contains provisions that are not in line with the principle of legality and the right to fair trial and provides for the indefinite detention of foreign nationals suspected of involvement in terrorism; severe and intrusive prohibitions, including house arrests and arbitrary stop and search; criminalization of critics of the Government and the banning of non-violent political meetings; and the use of torture, inhumane and degrading treatment and the use of force to obtain confessions. Under this

legislation, public agencies enjoy a wide range of discretionary powers, with no oversight in the use of such powers. There are however calls in some quarters to pass this legislation quickly to enable the Government to crack down on groups such as Al-Shabaab.

C. Military justice, the death penalty and public executions

30. The Independent Expert has gathered that the military court system in Somalia exercises its jurisdiction not only over members of the military but also over civilians, on the basis of the interpretation that any person who takes up arms against the State, irrespective of whether he or she is a civilian or not, shall be prosecuted under military law. These courts also exercise jurisdiction over cases of piracy. The military court statutes, which date back to 1963, have not been amended to reflect the human rights standards and guarantees set out in the provisional Constitution and the international treaties to which Somalia is a party. Judges and prosecutors in military courts often have little knowledge of human rights and consequently there are concerns that proceedings before these courts do not meet fair trial standards. It is common for trials in such cases to be conducted expeditiously, within weeks, and sentences, usually the death penalty, to be meted out without delay. In August 2014, three individuals, allegedly involved with Al-Shabaab, were executed by firing squad in public after a military court found them guilty and sentenced them to death. The Chief Judge of the military court is reported to have stated that parents who fail to inform the security forces about their children being associated with Al-Shabaab will be arrested along with their children when captured, and that appropriate action will be taken against the parents in the courts. Similar instances of the application of the death penalty following trials in which individuals accused of being members of Al-Shabaab have been charged under the anti-terrorism law have been reported in Puntland.

31. Following the executions in August 2014, the Independent Expert addressed a letter to the President, Hassan Sheikh Mohamud, expressing concern about the possibility that suspects were not being accorded full fair trial guarantees and about the manner in which the executions were carried out, and recalled the commitment made by Somalia during the universal periodic review to place a moratorium on the use of the death penalty and work towards its abolition. The Independent Expert is concerned that overreliance on military justice and its application to civilians undermines the establishment of a credible justice system and the rule of law in Somalia.

32. Generally, the death penalty continues to be applied throughout Somalia, including in Somaliland. According to information received, 22 executions were carried out in 2014 (21 in south-central Somalia and one in Puntland) and, as at June 2015, there had been 16 executions (6 in south-central Somalia, 6 in Somaliland and 4 in Puntland). The Independent Expert was informed by the Chief Justice and the Speaker of the Federal Parliament that, under Sharia, the death penalty is a lawful punishment. In April 2015, after nine years of observing a de-facto moratorium on the death penalty, Somaliland executed six prisoners who had been on death row for several years. In a media statement in February 2015, the Somaliland Deputy Minister of Interior stated that all convicted prisoners on death row would be executed since their being alive constituted a threat to peace and security, as the victims' families were likely to seek revenge.

D. Participation of women in decision-making and political processes

33. Although they account for more than 50 per cent of the population, women in Somalia are not adequately involved in, or represented in, the political and decision-making processes, mainly owing to cultural and religious barriers. While Somaliland has a national gender policy, neither the Federal Government of Somalia nor Puntland has yet developed

one. The Federal Government of Somalia commenced consultations for the policy in September 2015 during which participants called for the launch of a national gender policy formulation process. The United Nations is supporting the Ministry of Women and Human Rights Development and Somali women's organizations to advocate for the inclusion of women in decision-making positions and their participation in political processes at the federal and regional levels. Negotiations with federal, regional and local authorities regarding the participation of women in the central regions state formation resulted in 64 seats being secured for women in the newly formed Galmudug state assembly. Similarly, two women were appointed as members of the National Independent Electoral Commission, one of whom was selected to chair the Commission. In Somaliland, there are only four women ministers and none in the House of Elders. The Independent Expert learned that, as in other parts of Somalia, women in Somaliland experience marginalization and do not enjoy equal participation in the governance structures. For example, the Independent Expert was informed that women are not represented in the Somaliland judiciary as their appointment has been blocked by traditional and religious elders.

E. Sexual and gender-based violence

34. Sexual violence is still widespread across Somalia. The main perpetrators of sexual violence are unidentified armed men, although reports have also implicated the Somalia National Army and the Somali Police Force and clan militia as well as Al-Shabaab. Most rape and sexual assault cases reported involved women and girls from minority clans or internally displaced women and girls. In Somaliland, the Independent Expert gathered that there had been a rise in reports of gang rape by youths. Interlocutors with whom the Independent Expert met attributed the rise in incidents of gang rape to youth unemployment. The survivors of the gang rapes were reportedly reluctant to report the rapes to the police owing to fear of stigma.

35. Generally, there is still an underreporting of rape and sexual assault cases owing to fear and stigma. This is further compounded by the inability of the criminal justice system to hold the alleged perpetrators accountable. There have been cases where military courts have sentenced Somalia National Army soldiers to lengthy terms of imprisonment and to capital punishment for rape under circumstances that have raised concerns in terms of compliance with due process rights.

36. Many cases of rape and sexual assault are however often adjudicated in customary courts which order the alleged perpetrator to pay compensation or force survivors to marry their rapists as a form of "restitution". In Puntland, a 14-year-old boy accused of raping a 6-year-old internally displaced girl was released after clan elders in a customary court ordered \$25 compensation to be paid. According to reports, this money was distributed among the elders and \$5 paid to the father of the survivor. Reports also indicate that armed militias and clan militias, as well as Al-Shabaab, are forcing girls into marriage. In Somaliland, there are reports that, owing to a lack of legislation stipulating a minimum age for marriage, early forced marriages often occur with the acquiescence of religious leaders.

37. With assistance from UNSOM, the Steering Committee on the Somalia national action plan on sexual violence in conflict led by the Ministry of Women and Human Rights Development is in the process of developing plans to implement the national action plan, which was developed and adopted in May 2014. The non-governmental organization Legal Action Worldwide, working in collaboration with the United Nations, is providing technical support to the Federal Government of Somalia, Puntland and Somaliland to draft sexual offences bills for their respective regions.

38. Female genital mutilation is still prevalent in Somalia and is almost universal, affecting about 95 per cent of women and girls. In view of the stigma and discrimination

attached to abandoning the practice, UNICEF is working with the Federal Government of Somalia and key stakeholders throughout Somalia to mobilize communities to abandon the practice by creating an environment that empowers individuals to make decisions based on the best interests of their children. In Puntland, the United Nations and various stakeholders are engaged in dialogue with the authorities and the community to develop standard operating procedures to prevent and respond to gender-based violence and to establish monitoring mechanisms and raise awareness about abandoning the practice. Consultations with the authorities and civil society in Puntland on draft legislation prohibiting female genital mutilation and introducing stiff penalties are ongoing. Puntland is also in the process of drafting a sexual offences bill and the Ministry for Women Development and Family Affairs supports survivors of rape and sexual violence, including by pursuing prosecutions against alleged perpetrators.

39. The Network Against Female Genital Mutilation In Somaliland, which groups 20 civil society organizations campaigning against female genital mutilation, has established three support centres for survivors and, in addition to its other activities, is working with the Somaliland authorities and religious leaders to produce a fatwa against female genital mutilation in Somaliland.

F. Sexual exploitation and abuse by troops of the African Union Mission in Somalia

40. Following the release of a Human Rights Watch report detailing allegations of sexual exploitation and abuse by AMISOM troops in Mogadishu, the Independent Expert addressed a letter to the Special Representative of the Chairperson of the African Union Commission for Somalia expressing concerns about allegations contained in the report, and urged AMISOM to conduct independent investigations into the allegations and to take appropriate measures to eliminate occurrences of sexual exploitation and abuse by AMISOM troops.

41. In his response, the Special Representative of the Chairperson of the African Union Commission for Somalia informed the Independent Expert that the African Union Commission and AMISOM had put in place a number of policies and measures designed to ensure that its uniformed personnel conducted their operations in a manner consistent with its international humanitarian principles. He reported that, following the Human Rights Watch report, a number of measures had been put in place, including the establishment of an investigation team by the African Union Commission to investigate the allegations and the setting up of an emergency helpline to receive reports of allegations of sexual exploitation abuse and complaints against AMISOM. The Chairperson of the African Union Commission also constituted an assessment team consisting of academics and women activists with special expertise in dealing with victims of sexual violence, as well as in human rights protection and law enforcement. The team was tasked with determining the extent, nature, patterns and trends of sexual exploitation and abuse in AMISOM to inform and guide policy and response mechanisms not only in AMISOM, but in all peace support operations of the African Union.

42. In October 2014, AMISOM organized a three-day workshop in Johannesburg, South Africa, aimed at strengthening its instruments and approaches towards preventing and addressing the issue of sexual exploitation and abuse. On 21 April 2015, the African Union released the key findings and recommendations of the report on investigations into the allegations of sexual exploitation and abuse by AMISOM troops in Somalia. The Independent Expert was however shocked to learn that the implicated troop-contributing countries had not cooperated with the investigation team and had denied them the access to

former officers and the alleged perpetrators that was critical to an effective investigation. This indicated a lack of commitment by the relevant troop-contributing countries.

G. Minorities

43. While Somalia has not undertaken a full population census since 1986, estimates indicate that minority groups constitute about 4 per cent of the total population. One of the largest minority groups are the Bantu people, who comprise the 0.5 in the 4.5 clan power-sharing formula. The Bantu people, who mainly live in parts of southern Somalia and particularly in the riverine areas, are discriminated against on the basis of their ethnicity. In Somaliland minority groups are called Gaboye, which is the collective name for different occupational minority groups (Musa Dariyo, Tumul, Madiban and Yibir) who number some tens of thousands of people and reportedly suffer severe discrimination in the nomadic pastoralist-based Somali society. They are also found elsewhere in Somalia. The Independent Expert learned that these minority groups live in conditions of abject poverty, have little or no access to education or other economic and social rights, and have limited political representation in the political process. They suffer numerous forms of discrimination and exclusion on account of their occupations, as hairdressers, metal-workers and blacksmiths, leather-workers and shoemakers, herbalists and ritual specialists, services they traditionally perform for the rest of the Somali pastoralist clans. Customarily, they are unable to intermarry with pastoralist clans. They also do not have strong clan protection as do the major clans. Women from these minority groups suffer multiple discrimination on the basis of their gender. The Independent Expert also received information that a number of minority leaders from Somaliland, including a king, were forced to flee Somaliland, reportedly because of their advocacy for the rights of minorities.

H. Persons with disabilities

44. Persons with disabilities in Somalia remain vulnerable and are subjected to a myriad of abuses and limited access to health services, food and water. However, statistics or comprehensive information on persons with disabilities in Somalia is lacking. The prolonged conflict in Somalia in combination with poor health services has left many Somalis with various types of disabilities. Speaking to the Independent Expert, a representative of persons living with disabilities stated that disability multiplies their vulnerabilities. While the provisional Constitution of Somalia affirms equal rights for all, including persons with disabilities, it is crucial that legislation and structures are put in place to ensure the protection of persons with disabilities. In September 2014, the Ministry of Labour and Social Affairs, in collaboration with the Human Rights Section of UNSOM, the National Council for Disability, and the Institute of Education for Disabled People, embarked on an initiative to address issues, priorities and the human rights of persons with disabilities. Some of the areas highlighted for support included assistance for the process of drafting a national policy on persons with disabilities, the strengthening of coordination on issues relating to persons with disabilities and the establishment of a trust fund for persons with disabilities.

I. Humanitarian situation

45. According to the Office for the Coordination of Humanitarian Affairs, the humanitarian situation in Somalia is alarming, with at least 3.2 million people in need of humanitarian assistance. The prolonged conflict, drought and increasing food prices have resulted in about 1 million Somalis being unable to meet their basic food requirements, with

a further 2.1 million on the verge of slipping into acute food insecurity. Military gains made in recovering territories from Al-Shabaab have not really translated into the opening up of access for humanitarian actors to easily deliver basic services in newly liberated areas. It is expected that the 2015 El Niño phenomenon could cause floods in the Shabelle and Jubba areas, while the northern part of the country is expected to have below-average rains. These conditions are likely to exacerbate food insecurity and malnutrition. As at September 2015, the Office for the Coordination of Humanitarian Affairs reported that, compared with six months previously, the number of people in crisis and emergency had increased by 17 per cent from 731,000 to 855,000. The recent restrictions placed on remittances to Somalia by major banks in the United States of America, the United Kingdom of Great Britain and Northern Ireland and Australia will likely have a serious impact on the livelihoods of the receiving households. In a climate where humanitarian funding to Somalia is declining, the measures taken by these banks are likely to aggravate the humanitarian situation. Reports indicate that remittances to Somalia exceed the amount received in humanitarian and development aid and account for up to 45 per cent of the country's economy.¹ As at 16 September, of the \$863 million requested under the 2015 Somalia Humanitarian Response Plan, only \$290 million (34 per cent) has been covered.

J. Refugees

46. It is estimated that the eastern African region hosts about one million Somali refugees who have fled the conflict and that, of these, about 330,000 are in Dadaab camp, in north-eastern Kenya. In the wake of the terrorist attacks in Kenya, particularly on the Westgate Mall and more recently on Garissa University, there was considerable pressure on the Government of Kenya from sections of its population to close down Dadaab and Kakuma refugee camps and forcibly repatriate the Somali refugees. This was largely due to the perception that the presence of Somali refugees in Kenya contributed to insecurity in Kenya, particularly in the north-eastern part of the country. However, the Office of the United Nations High Commissioner for Refugees (UNHCR), the Governments of Kenya and Somalia committed to respect international refugee law and particularly the principle of non-refoulement.

47. During his second mission to Somalia, the Independent Expert met with the Speaker of the federal parliament, who stated that parliament had resolved to urge the Federal Government to do all in its power to receive the returnees, notwithstanding the challenges that Somalia still faced. UNHCR has also noted that, while the security situation in Somalia was still fragile, it had observed signs of increasing stability. In July 2015, the Tripartite Commission formed by UNHCR and the Governments of Kenya and Somalia agreed to scale up assistance to Somali refugees living in Kenya who wished to return to Somalia, and agreed on a strategy that would lead to the voluntary repatriation of about 425,000 Somali refugees over a five-year period. Between December 2014 and early August 2015, UNHCR supported the return of 2,969 Somali refugees to the districts of Luuq, Baidoa and Kismayo as part of the pilot phase of facilitating returns. According to UNHCR, more Somalis have returned spontaneously without UNHCR assistance.

48. The Independent Expert remains of the view that, in spite of the gains made by the Somalia National Army with the support of AMISOM troops to recover territory from Al-Shabaab, the security situation in many parts of Somalia, particularly in the south-central regions, is not safe or stable enough for returnees to be received. Premature returns increase

¹ Adeso, Global Centre on Cooperating Security and OXFAM, "Hanging by a Thread: the ongoing threat to Somalia's remittance lifeline" (19 February 2015).

the likelihood of those refugees becoming displaced persons facing the same protection challenges as those that are currently displaced.

49. Meanwhile the conflict in Yemen has also led to an inflow into Somalia of Somali returnees and refugees, the majority of whom arrived through Bossaso in Puntland and Berbera in Somaliland. As at September 2015, UNHCR had recorded a total of 25,941 Somali returnees and a total of 3,138 Yemeni refugees and third-country nationals. With the assistance of UNHCR and other humanitarian partners, assistance has been provided to the returnees, including transportation to their areas of origin or return, while some have joined settlements for displaced persons. In June 2015, the Somalia Response Plan for the Yemen Crisis was launched but it remains seriously underfunded, with only 5 per cent of the \$64 million needed having been received.

K. Internally displaced persons

50. About one million Somalis have been displaced from various parts of Somalia. They live in substandard conditions in settlements that are overcrowded and insecure, with limited access to safe water, sanitation and hygiene services. In addition, displaced people continue to face discrimination, sexual and gender-based violence, and lack adequate protection. The Independent Expert continues to receive reports of harassment and forced evictions of displaced persons. Forced evictions are common not only in Mogadishu but in other parts of the country. The most recent data from UNHCR indicates that, between January and February 2015, over 25,700 displaced persons were forcibly evicted from public and private land and buildings in Mogadishu. Another 10,200 displaced persons remain at imminent risk of forced evictions. Many of the evicted displaced persons are forced to relocate and settle in areas where they continue to suffer a myriad of human rights violations and where living conditions are deplorable and services limited or non-existent.

51. Forced evictions are regarded as being *prima facie* incompatible with the International Covenant on Economic, Social and Cultural Rights, a treaty to which Somalia has been party since 1990. They may be justified only under the most exceptional circumstances. However, even where forced evictions are justifiable, they must be carried out in strict compliance with international human rights law and in accordance with general principles of reasonableness and proportionality. In addition, certain procedural protections must be afforded, especially if the evictions are likely to involve large groups, as is often the case in Somalia.

IV. Institutional framework for promoting and protecting human rights

A. Human Rights Road Map

52. Despite the challenges it faces in terms of inadequate resources and capacities, the Ministry of Women and Human Rights Development has demonstrated the commitment of the Federal Government to implement the Human Rights Road Map. With the technical support of UNSOM, the Ministry embarked on extensive consultations with various stakeholders to develop a plan of action to implement the 2014 human rights road map. Consultations were held with various government ministries, members of the parliamentary human rights committee of the Somali Parliament, religious leaders and civil society. The proposed action and outputs in the action plan for the implementation of the Human Rights Road Map are aligned with implementation of the recommendations emanating from the universal periodic review of Somalia, the Somali New Deal Compact, the United Nations

Integrated Strategic Framework for Somalia and Vision 2016. This approach to developing the action plan will ensure that human rights are integrated in the peace and State-building goals of Somalia. The Independent Expert encourages the Federal Government of Somalia to continue its efforts to implement the action plan and the international partners to support the Federal Government to implement the Human Rights Road Map through technical assistance and provision of resources, including through the Peacebuilding and State-Building Goals.

B. National human rights commission and regional human rights institutions

53. The process of enacting the legislation establishing the national human rights commission of Somalia has been slow. In December 2014, a human rights commission bill was submitted to parliament but after a second reading was sent back to the parliamentary committee on human rights for review. The process of the review however suffered a setback due to the political crisis that ensued following the resignation of the Prime Minister in December 2014. The United Nations and other partners advocated for a thorough revision of the draft legislation to ensure that it provided for the establishment of a human rights commission that complied with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). The bill is currently undergoing review by the parliamentary committee on human rights.

54. In November 2014, the Puntland Office of the Human Rights Defender was established, following the appointment by parliament of Mohamed Yusuf Ali as the Puntland Human Rights Defender. Following the appointment, the Human Rights Section of UNSOM commenced discussions with partners aimed at securing support that would make the Office fully functional. The Human Rights Section has also conducted human rights training for the staff of the Office. In June 2015, the Human Rights Defender's Office held a consultative forum with the participation of United Nations agencies and civil society organizations at which a draft strategic plan for 2015 to 2016 was presented. As a young human rights institution, the Office lacks resources and requires support in order to deliver on its mandate. In Somaliland, the Human Rights Section continues to engage with and build the capacity of the Somaliland National Human Rights Commission.

V. Conclusion and recommendations

55. **Years of conflict in Somalia have affected every aspect of human rights and destroyed governance structures. A major constraint and challenge facing the Federal Government of Somalia is the endemic lack of financial resources, technical capacity and expertise and infrastructure, which to a large extent contributes to its inability to fulfil its obligations in addressing the human rights challenges with which it is faced. Notwithstanding the fact that Somalia has the primary responsibility to protect the human rights of its people, Somalia needs as much support as possible to build strong institutions and structures that will make it not only a functional democratic State but one that ensures that the human rights of its people are protected.**

A. Recommendations to the Federal Government and institutions of Somalia and to Puntland and Somaliland

56. In reviewing the provisional Constitution, the Independent Constitutional Review and Implementation Commission should clearly define the powers and

authority of the Prime Minister vis-à-vis those of the President so as to avoid the political clashes that have arisen in the past owing to the contradiction in the provisional Constitution relating to their powers. Furthermore, the establishment of a fully operational constitutional court to adjudicate disputes arising out of the application and interpretation of the Constitution is vital.

57. Provide the Federal and regional administration institutions, the judiciary, the Ministry of Women and Human Rights Development, the Ministry of Justice and the law enforcement and security institutions with adequate financial and human resources, infrastructure and training to discharge their respective mandates.

58. Review the provisions of the counter-terrorism bill to ensure that the critical human rights concerns raised in respect of some of the provisions are addressed and that the legislation fully complies with international human rights standards. The Government should consider the concerns expressed by the United Nations and other stakeholders regarding some of the provisions of the draft legislation.

59. Establish a moratorium on the use of the death penalty with a view to working towards its abolition. Somaliland in particular is urged to reinstate its *de facto* moratorium, which it lifted in May 2015 when it executed six people. The continued application of the death penalty and the executions being conducted in public are contrary to the international commitments made by Somalia and the growing international acknowledgement of the inhumane nature of the death penalty.

60. Review the Somali military court system to ensure that it conforms with international human rights standards and, in particular, that it exercises jurisdiction only over military personnel and that the capacity of the military court judges, prosecutors and lawyers in international human rights and international humanitarian law is strengthened.

61. Ratify the Convention on the Rights of Persons with Disabilities, and adopt legislation, national policies and programmes aimed at protecting the rights of persons with disabilities.

62. The Ministry of Women and Human Rights Development should continue its efforts to ensure the ratification of the Convention on the Elimination of All Forms of Discrimination Against Women.

63. Ensure that the Action Plan for the implementation of the Human Rights Road Map is implemented and that adequate resources are allocated to implement the plan.

64. Ensure that the participation and representation, without discrimination, at all levels of government, of women, including those from minority groups in south-central Somalia, Puntland and Somaliland, are facilitated, including in the political and State-formation processes in Somalia.

65. Ensure that the legislation establishing the national human rights commission of Somalia complies with the Paris Principles and that it is enacted without undue delay. Adequate financial and human resources must be provided to the Office of the Human Rights Defender of Puntland and the Somaliland National Human Rights Commission to enable them to discharge their respective mandates.

66. Ensure the protection of the rights to freedom of expression and of the press and, particularly, ensure that journalists in south-central Somalia, Puntland and Somaliland are able to practise their profession freely and in a safe environment. Proper investigations should be conducted into the killings of journalists and media workers and the alleged perpetrators fully prosecuted. Proper investigations should also be conducted into cases where the rights of the media are alleged to have been

violated by government agencies, and compensation paid for any losses suffered, including for destruction of media equipment. The Puntland Administration should implement the advisory opinion of the Attorney General and amend the two articles of the media law that are contrary to the provisions of the Puntland Constitution.

67. Ensure that the draft media law currently under review conforms to international human rights standards relating to freedom of expression, freedom of the media and the freedom of journalists to practise their profession. The Government must take into account the concerns expressed by journalist groups, the United Nations and other national and international stakeholders with regard to some of the provisions of the law.

68. Ensure that children deprived of their liberty for alleged association with armed groups are treated primarily as victims and handed over to child protection actors without delay.

69. Strengthen the Somali Police Force through proper financing, training and provision of equipment to enable it to provide protection to the civilian population, improve its investigation and prosecutorial capabilities and remove the National Intelligence and Security Agency from the conduct of civilian policing functions.

70. Deploy Somali national police forces throughout the country to protect the civilian population, including in settlements for internally displaced persons and in the newly accessible areas, in order to guarantee delivery of social services and humanitarian assistance.

71. Ensure that the Somalia National Army acts in accordance with international humanitarian and human rights norms and standards while conducting military operations.

72. Respect, protect and fulfil the human right to adequate housing, particularly for displaced persons and the most vulnerable in Somalia and, by inference, not sponsoring, tolerating or carrying out forced evictions. Before conducting any evictions that are likely to involve large groups, the Government should, *inter alia*: (a) conduct genuine consultation with those affected and fully explore all feasible alternatives with a view to avoiding, or at least minimizing, the need to use force; (b) ensure that adequate and reasonable notice is given to all affected persons prior to the scheduled date of eviction; (c) provide information on the proposed evictions in reasonable time to all those affected; (d) announce to all individuals concerned, in writing, in the local language, all decisions relating to the evictions; and (e) provide legal aid to those in need of it to seek redress from the courts.

73. Adopt legislation addressing sexual and gender-based violence in south-central Somalia, Puntland and Somaliland, in particular the sexual offences bill and legislation criminalizing female genital mutilation/cutting. The Federal Government should fast track the development of action plans to implement the national action plan on sexual violence in conflict which was adopted in May 2014. Furthermore, the Federal Government should implement the commitments made under the joint communiqué it signed on 7 May 2013 with the United Nations on the prevention of sexual violence.

74. Ensure that all cases of sexual and gender-based violence in south-central Somalia, Puntland and Somaliland are fully investigated and prosecuted and prohibit the involvement of clan and traditional elders from resolving or adjudicating such cases.

75. Ensure that minority groups in south-central Somalia, Puntland and Somaliland, especially women and children, are accorded equal protection, and

facilitate the participation and representation without discrimination of minority groups, including minority women, at all levels of government including in the political and State-formation processes in Somalia. Furthermore, policies, laws and programmes to protect their heritage and traditions should be adopted, while ensuring that their social, economic and cultural rights are fully guaranteed.

76. Ensure that it settles returning refugees in safe and secure areas and provides them with adequate resources and social services to rebuild their lives.

77. Ensure that elections in Somaliland are conducted in accordance with the Somaliland Constitution and that political parties and civil society are allowed the political space to exercise their right to participate in the political process.

B. Recommendations to the international community, the United Nations and bilateral donor countries

78. Continue to provide adequate technical and financial support to the peace and State-building process in Somalia and towards the implementation of Vision 2016. Provision of adequate resources under the New Deal Compact is key to better facilitating technical support and capacity-building to support public service delivery, without which the capacity of the Government and its institutions is very limited. Support for the Action Plan for the implementation of the Human Rights Road Map should be considered in the context of the New Deal for Somalia financing arrangements.

79. Continue providing support, including training and equipment of the Somali national army and police to strengthen their capacity to protect the Somali population.

80. Ensure equitable allocation of resources to the regional administrations and their various institutions.

81. Ensure proper and open coordination of donor funding with the Federal Government of Somalia and civil society to ensure transparency and accountability in the use of donor funds.

82. The Governments of Australia, the United Kingdom of Great Britain and Northern Ireland and the United States of America and should consider reviewing the restrictions placed on remittances to Somalia in order to allow families to contribute to the sustainable livelihood of their relatives in Somalia.

83. Provide additional funds to meet the current funding gap under the humanitarian response plan for 2015 and under the Somalia response plan for the Yemen crisis, to avert a humanitarian disaster in Somalia and ensure the basic right to life. This funding is particularly crucial in the light of reports of the voluntary return of Somalis, including those escaping the conflict in Yemen and those assisted by UNHCR in its ongoing operation of assisted voluntary repatriations from Kenya.

84. Advocate and support a comprehensive strategy against Al-Shabaab that is anchored in human rights, including through ensuring protection of civilians and accountability for human rights violations; ensuring that counter-terrorism measures comply with human rights standards; and ensuring humanitarian access and the rapid delivery of basic services, security and law enforcement in newly liberated areas.

C. Recommendations to the African Union Mission in Somalia and troop-contributing countries

85. Ensure that the African Union Mission in Somalia (AMISOM) troops act in accordance with international humanitarian and human rights norms and standards while on deployment in Somalia and especially during military operations.

86. Enhance the integration of international humanitarian and human rights in the military planning and operations of AMISOM, including after action reviews and ensure that all measures are taken to reduce the impact of military action upon the civilian population.

87. Conduct expeditious, transparent and thorough investigations into allegations of human rights violations, allegations of sexual exploitation and abuse and the killing of civilians whenever they occur and ensure full redress and protection for the victims and their families, including through payment of compensation. Individual troops found guilty of committing serious violations of international human rights and international humanitarian law and of committing acts of sexual violence, sexual exploitation and abuse should be held accountable by means of prosecutions or disciplinary action against them and should not be redeployed to peace operations.

88. Troop-contributing countries must ensure full redress for the victims and their families, including through payment of compensation.

89. Ensure that all personnel, with priority given to senior staff and contingent commanders, receive effective and practical training on how to ensure compliance with international human rights and international humanitarian law in the conduct of their operations and functions.
