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### Technical assistance and capacity-building

## Situation of human rights in Somalia

### Report of the Independent Expert on the situation of human rights in Somalia\*

#### Summary

The Independent Expert on the human rights situation in Somalia, Isha Dyfan, assumed her functions on 1 May 2020, following her appointment by the Human Rights Council on 12 March 2020. Since May, the Independent Expert has held online meetings on a broad range of issues with the Minister of Women and Human Rights Development of the Federal Government of Somalia and representatives of the African Union Mission in Somalia, the United Nations, other international organizations, civil society organizations, the media and the diplomatic community. She has also carried out extensive background research on the prevailing security, political, socioeconomic, human rights and humanitarian situation in Somalia.

The Independent Expert notes the commitment of the Federal Government of Somalia to improving the situation of human rights in the country and to ensuring the enjoyment of all human rights by all, including by addressing security threats and protecting civilians from harm in a manner that respects international humanitarian law and human rights, strengthening accountability and the rule of law, including for sexual and gender-based violence, and guaranteeing freedom of expression and association. Despite its efforts, however, significant gaps remain in these areas.

The report covers the period from 1 August 2019 to 30 June 2020 and provides an analysis of the human rights challenges that remain to be addressed. In the report, the Independent Expert also shares initial reflections on the way forward towards developing a transition plan for achieving sustainable progress in respect of the situation of human rights in Somalia.

\* Agreement was reached to publish the present report after the standard publication date owing to circumstances beyond the submitter's control.



## Contents

|                                                                                    | <i>Page</i> |
|------------------------------------------------------------------------------------|-------------|
| I. Introduction.....                                                               | 3           |
| II. Situating the mandate of the Independent Expert.....                           | 3           |
| III. Engagement with international and regional human rights systems.....          | 3           |
| IV. Recent developments.....                                                       | 4           |
| A. Political, security and economic developments .....                             | 4           |
| B. Humanitarian situation.....                                                     | 6           |
| C. Human rights implications of the coronavirus disease .....                      | 7           |
| V. Main human rights challenges.....                                               | 8           |
| A. Violations of the right to life.....                                            | 8           |
| B. Violations of the right to freedom of opinion and expression.....               | 10          |
| C. Strengthening the rule of law and accountability .....                          | 11          |
| D. Economic, social and cultural rights .....                                      | 13          |
| E. Promoting women’s rights and gender equality .....                              | 16          |
| F. Protecting children from armed conflict .....                                   | 17          |
| VI. Technical cooperation and the Somalia National Development Plan 2020–2024..... | 18          |
| VII. Conclusion and way forward.....                                               | 19          |

## **I. Introduction**

1. The mandate of the Independent Expert on the situation of human rights in Somalia was established in 1993 pursuant to Commission on Human Rights resolution 1993/86 and was most recently extended by the Human Rights Council in its resolution 42/33 of 27 September 2019, for a period of one year, to assess, monitor and report on the situation of human rights in Somalia with a view to making recommendations on technical assistance and capacity-building in the field of human rights. In that same resolution, the Council requested the Independent Expert to report to it at its forty-fifth session and to the General Assembly at its seventy-fifth session.
2. The present report is the first to be submitted by the current Independent Expert, Isha Dyfan, who officially assumed her functions on 1 May 2020. It covers the period from 1 August 2019 to 30 June 2020 and is based on information from a variety of sources, including interviews with various interlocutors from civil society organizations and United Nations funds, agencies and programmes and with representatives of the donor community. It is also based on open-source information such as government statements, publicly available official documents and news articles.
3. Due to coronavirus disease (COVID-19)-related measures and travel restrictions, the Independent Expert was unable to undertake a mission to Somalia during the reporting period but would welcome the opportunity of doing so in the near future.

## **II. Situating the mandate of the Independent Expert**

4. The Independent Expert acknowledges the progress made by the Somali authorities in expanding State authority by establishing State institutions and political processes, improving security and demonstrating its commitment to human rights and socioeconomic development, as underscored in the Somalia National Development Plan 2020–2024.<sup>1</sup>
5. In fulfilling her mandate, the Independent Expert is guided by Human Rights Council resolution 42/33, in particular the Council's request to propose, in cooperation with the Federal Government of Somalia, a transition plan toward deeper thematic engagement with the special procedures and other experts, including the Office of the United Nations High Commissioner for Human Rights, with clear steps and benchmarks to inform the appropriate follow-up actions by the Council. The Independent Expert has thus identified seven areas for the proposed transition plan (see para. 94 below).

## **III. Engagement with the international and regional human rights systems**

6. The Federal Government of Somalia has demonstrated a willingness to hold a constructive dialogue and engage with the international human rights system since its election to membership in the Human Rights Council in October 2018 and, more recently, since its candidate was elected as one of the 21 Vice-Presidents of the General Assembly at its seventy-fifth session. The Government has submitted reports on the implementation of the Convention on the Rights of the Child and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 16 September and December 2019, respectively. The Independent Expert was informed that, at the time of preparing the present report, the Federal Government of Somalia was holding nationwide consultations for the submission of its reports to the Human Rights Committee and the universal periodic review (third cycle).
7. The protection of the rights of persons with disabilities and internally displaced persons has been placed at the forefront of the Federal Government's human rights agenda. Following the ratification of the Convention on the Rights of Persons with Disabilities on

<sup>1</sup> See <http://mop.gov.so/wp-content/uploads/2019/12/NDP-9-2020-2024.pdf>.

6 August 2019, and in an effort to ensure full implementation of the instrument and enhance international cooperation and partnerships to ensure the protection of persons with disabilities, the Minister for Women and Human Rights Development of Somalia and the Office of the United Nations High Commissioner for Human Rights, in collaboration with the Independent Expert, co-organized a high-level side event on the margins of the forty-second session of the Human Rights Council entitled “Making the Convention on the Rights of Persons with Disabilities a reality”. At the regional level, the Federal Government ratified the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa on 6 March 2020.

8. The Independent Expert welcomes the positive collaboration extended by the Federal Government of Somalia to her predecessors, including the frank dialogue and exchanges held during mandate holders’ periodic country missions and other types of engagement. She looks forward to receiving the same level of cooperation that has been extended to her predecessors. In addition to country visits, there are other avenues through which special procedure mandate holders engage with Governments to address human rights violations, including the issuance of urgent appeals, letters of allegation and other forms of communication. On 4 September 2019, the Independent Expert and the Special Rapporteur on extrajudicial, summary or arbitrary executions issued a joint communication concerning the killings of two civilian men and injuries sustained by three civilian women during crossfire between members of the rapid response unit of the Somaliland police and clan militia in Ceel Afweyn, Sanaag Region, Somaliland.<sup>2</sup>

## **IV. Recent developments**

### **A. Political, security and economic developments**

9. At the Somalia Partnership Forum held in Mogadishu in October 2019, the Federal Government of Somalia and its international partners adopted a new set of priorities to be achieved over the following year. They also adopted a mutual accountability framework for 2020 centred on four key themes: inclusive politics; security and justice; economic development; and social development.

10. On the political front, a number of commitments were made to create the preconditions necessary for holding one person-one vote elections within the constitutionally mandated time frame. These included the adoption of an amended Federal Constitution and the completion of voter registration by end of June 2020; the enactment of the electoral law and the amendment to the political parties law by December 2019, which would include a 30 per cent minimum quota for women parliamentarians; continued progress towards national reconciliation; and the ensuring of meaningful participation of different sectors of society, including women, youth, persons with disabilities, minorities and marginalized communities, in all processes. On 27 June, the Chair of the National Independent Electoral Commission presented options for holding the one person-one vote elections within the constitutionally mandated time frame, either in March or August 2021, depending on voter registration method.<sup>3</sup>

11. The electoral law, which was signed on 20 February 2020 by President Mohamed Abdullahi Mohamed “Farmajo”, contains a number of gaps that hinder its effective implementation. On 28 February, a joint ad hoc parliamentary committee was established to review the four key legislative issues with the law: seat allocations for both houses of Parliament (constituencies), the election of members from Somaliland, representative rights of Banaadir Region and the 30 per cent quota to ensure women’s representation in

<sup>2</sup> See <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24840>.

<sup>3</sup> See <https://unsom.unmissions.org/federal-elections-and-political-consensus-building>.

Parliament.<sup>4</sup> The amendments to the political parties law remain to be adopted and it is unlikely that the constitutional review process will be finalized by the end of June.

12. The reporting period was marked by the continuing political impasse between authorities at the federal and state levels and by the outcomes of the electoral processes in Jubbaland and Galmudug held in August 2019 and February 2020, respectively. A number of initiatives facilitated by the African Union, the Intergovernmental Authority on Development, the European Union and the United Nations were undertaken with the aim of strengthening relationships and building consensus between the two levels of government to advance national priorities, including by seeking to identify the most appropriate model for holding federal elections and finalizing the constitutional review process.

13. Early in 2020, clashes in Gedo Region, Jubbaland, between the Somali National Army and the militia loyal to former Jubbaland Minister of Security Abdirashid Hassan Abdinur “Janan”, who had escaped from detention in Mogadishu following his arrest on 31 August 2019 on charges of human rights violations, further aggravated existing tensions.<sup>5</sup> The clashes resulted in civilian casualties and the mass displacement of approximately 56,000 people.<sup>6</sup>

14. On 14 June 2020, President Farmajo issued a statement recognizing Ahmed Mohamed Islam “Madobe” as interim President of Jubbaland for a period of two years following a disputed electoral process in Jubbaland.<sup>7</sup> Another noteworthy development is the resumption, on 14 June 2020, of a dialogue with the Somaliland authorities in Djibouti. This follows a previous meeting facilitated by the Prime Minister of Ethiopia in Addis Ababa in February 2020. President Farmajo apologized for the first time for the atrocities committed in Somaliland by the Siad Barre regime during a judicial conference held in Mogadishu shortly after the meeting in Addis Ababa.<sup>8</sup>

15. The security situation in Somalia remained volatile and Al-Shabaab continued to pose serious threats to peace and stability in Somalia, carrying out complex attacks using a range of methods targeting the Government and its allies, including various attacks on United Nations and African Union Mission in Somalia (AMISOM) bases. On 28 December 2019, in one of the deadliest attacks carried out by Al-Shabaab in Mogadishu, more than 90 individuals were killed and 140 injured.<sup>9</sup> In 2019, the United Nations recorded a total of 1,459 civilian casualties (591 killed and 868 injured); while Al-Shabaab was responsible for 69 per cent of the civilian casualties, 8 per cent were attributed to clan militias and 4 per cent to the Somali National Army, 3 per cent to the Somali police and 2 per cent to AMISOM elements.<sup>10</sup> The Somali authorities, in coordination with AMISOM and other international forces, are actively working to restore lasting peace and security in Somalia, combat terrorism and violent extremism and ensure the protection of civilians and civilian objects.

16. On the economic front, on 25 March 2020, the Federal Government reached a decision, under the World Bank and International Monetary Fund Heavily Indebted Poor Countries Initiative, that will allow Somalia to benefit from new types of financing. These newly available resources, if well invested, could significantly improve the socioeconomic landscape and contribute to the realization of the Sustainable Development Goals.

<sup>4</sup> See [https://unsom.unmissions.org/sites/default/files/iesg\\_newsletter\\_february-march\\_2020\\_0.pdf](https://unsom.unmissions.org/sites/default/files/iesg_newsletter_february-march_2020_0.pdf).

<sup>5</sup> S/2020/398, para. 8.

<sup>6</sup> See <https://reliefweb.int/sites/reliefweb.int/files/resources/HC%20Statement-Gedo%20Conflict%20-%20final%20draft-English%20version.pdf>.

<sup>7</sup> See [www.garoweonline.com/en/news/somalia/somalia-fgs-recognises-madobe-as-interim-president-invites-fms-leaders-to-meeting#:~:text=MOGADISHU%2C%20Somalia%20%2D%20Under%20pressure%20Somalia,embr%20in%20a%20protracted%20conflict](http://www.garoweonline.com/en/news/somalia/somalia-fgs-recognises-madobe-as-interim-president-invites-fms-leaders-to-meeting#:~:text=MOGADISHU%2C%20Somalia%20%2D%20Under%20pressure%20Somalia,embr%20in%20a%20protracted%20conflict).

<sup>8</sup> See [www.somaliland.com/news/somaliland/somalia-president-apologizes-to-somaliland-people-for-atrocities-in-1980s/](http://www.somaliland.com/news/somaliland/somalia-president-apologizes-to-somaliland-people-for-atrocities-in-1980s/).

<sup>9</sup> S/2020/121, para. 19. See also S/2019/884, paras. 12–20, and S/2020/398, paras. 15–21.

<sup>10</sup> United Nations, *UN Somalia: Country Results Report 2019*, p. 46.

17. The Independent Expert encourages the Somali authorities and international financial institutions to conduct a human rights impact assessment of any structural adjustment policies adopted or programmes established. She also encourages them to respect fundamental economic, social and cultural rights, in line with the international human rights obligations of Somalia, by increasing the proportion of the budget allocated to the social sectors, thereby protecting the rights of the most vulnerable and marginalized segments of society.

## **B. Humanitarian situation**

18. The long-standing humanitarian crisis experienced by Somalia has been aggravated by three factors: the COVID-19 outbreak, the desert locusts and climate change-related effects such as severe droughts and floods, which in 2020 have left 5.2 million people in need of humanitarian assistance. These challenges have resulted in the further displacement of populations and exacerbated existing inequalities, discrimination and protection gaps.<sup>11</sup> The Independent Expert was informed of an upsurge in school dropout rates and in domestic, sexual and gender-based violence, with women and girls being disproportionately affected.

19. In 2019, the United Nations provided basic services to close to 1.2 million internally displaced persons and members of displacement-affected communities, most of whom had become displaced as a result of conflict and/or floods.<sup>12</sup> While many of those displaced by the floods have returned to their homes, the impact remains widespread. Many others require support, as they have been stripped of their livelihood and social protection networks, are being forced to stay in overcrowded areas with others living in poverty and are at risk of eviction.<sup>13</sup> In addition, lack of access to basic health care and inadequate access to food, water and sanitation further increase their vulnerability and exposure to water-borne diseases, malaria and COVID-19.

20. In November 2019, the United Nations and the Federal Government launched a flood response plan and were able to provide some US\$ 25 million in assistance to 350,538 persons.<sup>14</sup> In the same month, the Federal Government adopted the Interim Protocol on Land Distribution for Housing to Eligible Refugee-Returnees and Internally Displaced Persons, 2019, and the National Eviction Guidelines to prevent the forced eviction of internally displaced persons.<sup>15</sup> A month later, at the Global Refugee Forum, the Federal Government reiterated its commitment to finding durable solutions for refugees, internally displaced persons, refugee-returnees and other vulnerable populations.<sup>16</sup>

21. Early in December, Somalia was hit with the worst desert locust outbreak in over two decades, leading to the declaration of a national state of emergency on 2 February 2020. On 27 February, the Federal Government issued a desert locust crisis action plan in conjunction with the Food and Agriculture Organization of the United Nations, setting out activities to be carried out during the rest of the year.<sup>17</sup> While the heavy rains slowed the impact of the desert locusts, the 2020 crop harvest is expected to be 20–30 per cent lower than in previous years, further increasing the risk of food insecurity and malnutrition.<sup>18</sup> On 15 May 2020, the World Bank approved a grant of US\$ 137.5 million to support recovery, in terms of both livelihoods and infrastructure, in flood- and drought-affected areas and to strengthen the Federal Government's disaster preparedness.<sup>19</sup>

<sup>11</sup> S/2019/884, paras. 54–60; S/2020/121, paras. 60–67; and S/2020/398, paras. 59–65.

<sup>12</sup> *UN Somalia: Country Results Report 2019*, p. 33.

<sup>13</sup> S/2020/398, para. 61.

<sup>14</sup> S/2020/121, para. 61.

<sup>15</sup> *UN Somalia: Country Results Report 2019*, p. 26.

<sup>16</sup> *Ibid.*, p. 12.

<sup>17</sup> S/2020/398, para. 62.

<sup>18</sup> See <https://reliefweb.int/report/ethiopia/under-secretary-general-humanitarian-affairs-and-emergency-relief-coordinator-mark>.

<sup>19</sup> See [www.worldbank.org/en/news/press-release/2020/05/15/world-bank-approves-137-5-million-for-](http://www.worldbank.org/en/news/press-release/2020/05/15/world-bank-approves-137-5-million-for-)

22. Significant challenges continue to exist for humanitarian access across Somalia as a result of the security situation, with reported threats and use of violence against humanitarian personnel and assets, abductions of humanitarian workers, detention of personnel and beneficiaries, entry restrictions, disruptions to humanitarian activities and looting of goods.<sup>20</sup>

23. The Independent Expert notes the efforts made by the Somali authorities, United Nations agencies and other humanitarian actors. She calls for increased coordination between humanitarian and development actors and additional support for local non-governmental organizations.

### C. Human rights implications of the coronavirus disease

24. On 16 March 2020, Somalia confirmed its first COVID-19 case and took a number of preventive measures to curb the virus, including the imposition of curfews, the suspension of flights, the prohibition of large gatherings and the closure of schools and universities. As of 30 June, the Federal Ministry of Health of Somalia reported a total of 2,924 confirmed cases, 932 recoveries and 90 deaths.<sup>21</sup> Decades of conflict have had a tremendous impact on the national health infrastructure and on the country's capacity to respond to a public health crisis of this magnitude. There are very few hospitals, isolation facilities and personnel protection equipment and limited testing capacity. Since the onset of the pandemic, 133 health-care workers have been infected by COVID-19 in Somalia,<sup>22</sup> which puts an additional strain on service delivery across the country.

25. At the end of March, the Federal Government launched a national COVID-19 preparedness and response plan and a comprehensive socioeconomic impact and response plan for COVID-19. It also launched a dedicated preparedness and response plan for internally displaced persons and vulnerable communities. In line with these plans, a number of positive measures have been taken at the Federal and state levels, in coordination with the United Nations and local non-governmental organizations and with financial support from the private sector and international donors to address the impact of the pandemic. These include investments in the health sector, the release of over 1,300 inmates to ease overcrowding in prisons and other places of detention, and fiscal and other economic measures to relieve the economic burden of the pandemic on vulnerable populations.

26. While commending the efforts of the Somali authorities and its international partners to address the pandemic amid the prolonged armed conflict and humanitarian crisis, the Independent Expert is concerned that some of these measures have seriously undermined the enjoyment of human rights. There have been reports of attacks against health-care and aid workers, excessive use of force by law enforcement agencies resulting in the death of civilians, violations of the right to freedom of expression and opinion and an increase in sexual and gender-based violence and forced evictions during the pandemic.

27. On 27 May, seven health workers and one civilian were abducted and killed by Al-Shabaab in Gololey village, Middle Shabelle Region.<sup>23</sup> Since the attack, the local mother and child health centre, the only medical facility in the area, has remained closed. On 8 May, Al-Shabaab abducted three aid workers who were conducting a nutrition and health assessment in the town of Dhobley, Juba Hoose Region. On 24 April, a police officer shot and killed two civilians while enforcing the dusk-to-dawn curfew in Bondhere district, Mogadishu. These killings sparked violent protests across the city calling for justice and accountability.<sup>24</sup> The alleged perpetrator was sentenced to death by a military court on

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somalias-response-to-covid-19-floods-and-drought.

<sup>20</sup> S/2019/884, para. 60, and S/2020/398, para. 64.

<sup>21</sup> See <https://moh.gov.so/en/covid19/>.

<sup>22</sup> See <https://reliefweb.int/sites/reliefweb.int/files/resources/COVID%20-19%20Impact%20Update%209%20-%20publish.pdf>.

<sup>23</sup> See <https://somalia.un.org/en/48336-statement-abduction-and-killing-ngo-health-workers>.

<sup>24</sup> See [www.aljazeera.com/news/2020/04/anger-mogadishu-police-kill-civilian-covid-19-curfew-200425143536573.html](http://www.aljazeera.com/news/2020/04/anger-mogadishu-police-kill-civilian-covid-19-curfew-200425143536573.html).



2 July.<sup>25</sup> On 13 April, the Federal Government acknowledged the crucial role of the media and classified it as an essential service in the fight against COVID-19. Nonetheless, journalists continued to face restrictions in the exercise of their duties. For instance, on 20 March, Puntland police arrested a journalist for seeking the views of the public on ways to prevent the spread of COVID-19. On 14 April, the Somali police force arrested a journalist working for a private radio and television station in Mogadishu following posts on his social media criticizing the Government's response to the pandemic. He was released on bail four days later and appeared before court on 7 July.<sup>26</sup>

28. Moreover, the price of basic items and commodities have spiked in various parts of the country, posing additional risks to food security for vulnerable populations, including internally displaced persons, persons with disabilities and persons living in poverty. The pandemic has also disrupted the flow of remittances, which is a major source of revenue for many.

29. The Independent Expert urges the Federal Government and its partners to place human rights at the centre of the response to the COVID-19 pandemic and other public health emergencies, as the only way to guarantee long-term recovery and achieve sustainable development.

## **V. Main human rights challenges**

### **A. Violations of the right to life**

#### **1. Protection of civilians during armed conflict**

30. The Independent Expert acknowledges the efforts made by the Federal Government and its international partners to put in place measures to protect the people of Somalia, prevent violations and ensure that the security forces comply with international human rights and humanitarian law, including through the provision of training and the development of tools such as human rights action plans.

31. Nonetheless, the Independent Expert is concerned about the continued volatility of the conflict in Somalia resulting in unacceptable levels of civilian casualties. During the period under review, the United Nations reported almost 800 security incidents leading to over 300 alleged unlawful killings/assassinations and almost 500 injuries during military operations. The killings and injuries occurred as a result of attacks by the parties to the conflict, aerial bombardments and inter-clan violence and have been attributed to Al-Shabaab, clan militia, Somali security forces, AMISOM elements and unidentified perpetrators.<sup>27</sup> In some instances, civilians have been compelled to pay fees to armed groups or to take sides in conflicts against their wishes. The conflict has also resulted in grave violations against children and in conflict-related sexual violence against women and girls, especially in camps for internally displaced persons and refugees and in host communities. Those responsible for violations have seldom been held accountable, nor have the victims been awarded appropriate remedies, reparations or rehabilitation support.

32. The Independent Expert is encouraged by the efforts made by the Somali authorities and international partners to implement a security sector reform transition plan that will make Somali security institutions responsible for citizens' security and that is underpinned by respect for international human rights law. Protection and mitigation measures such as the erection of checkpoints, greater surveillance and the adoption of reasonable precautions in targeted operations to safeguard civilians have been noted.

33. Nevertheless, civilians, including human rights defenders and journalists, continue to be the targets of assassinations (at least 35 of which allegedly by Al-Shabaab) and

<sup>25</sup> <https://abcnews.go.com/International/wireStory/somali-officer-sentenced-death-shooting-civilians-71574589>.

<sup>26</sup> See [www.hrw.org/news/2020/07/06/baseless-charges-against-prominent-somali-journalist](http://www.hrw.org/news/2020/07/06/baseless-charges-against-prominent-somali-journalist).

<sup>27</sup> S/2019/884, para. 41, S/2020/121, para. 49, and S/2020/398, para. 44.

excessive use of force by State agencies. Casualties resulting from attacks by foreign forces such as United States air strikes continue to be of concern. Clan militias too have been responsible for the unlawful revenge killings that occurred during the period under review.

34. The Independent Expert calls on the Somali authorities to take robust measures to prevent extrajudicial killings and strengthen internal and external accountability mechanisms in relevant security forces and institutions. Parties to the conflict are urged to respect international human rights and humanitarian law in the conduct of hostilities.

## **2. Death penalty**

35. The Federal Government has not yet abolished the death penalty, nor has it declared a moratorium on executions. At least a dozen executions were reportedly carried out in 2019.<sup>28</sup> According to the United Nations, from 5 August 2019 to 4 February 2020, a total of 22 death sentences were pronounced and 11 executions were carried out in Somalia.<sup>29</sup>

36. Death Penalty Law in Somalia is not compliant with international human rights standards in that death sentences are pronounced for crimes that do not qualify for the imposition of the death penalty. It has been reported but not confirmed that executions are also carried out by the Somali National Army which are in contradiction with the voting record of Somalia in the General Assembly on the death penalty. On 3 February 2020, on the occasion of the handover of the Mogadishu prison and court complex, the Government agreed that anyone detained in the complex would not be executed.<sup>30</sup> The Independent Expert encourages Somalia to move towards a moratorium on the death penalty.

## **3. Inter-clan conflicts and water and land resources**

37. The clan system is pervasive in the political, economic, social and cultural life of Somalia, especially in rural areas. Clan elders regulate the use of natural resources such as grazing land and water, influence political matters, facilitate the resolution of conflict and oversee the traditional justice (*xeer*) system. Competition for power, arable land and water results in discrimination against small and minority clans and fuels conflict that sometimes leads to death, destruction of property and displacement. In Jubbaland, the security of clan elders and candidates in state elections was a priority concern. On 17 June 2019, in Kismayo, unidentified gunmen shot and killed a traditional elder of the Bayomaal clan in a suspected election-related incident.<sup>31</sup> Tensions and conflicts among clans escalate during droughts, floods and attacks by locusts, which heighten the need, especially among vulnerable rural communities, for arable land and access to water for domestic and agricultural use. On 11 April 2020, elders from the Majerteen and Awramale clans agreed to a ceasefire following intermittent clashes over disputed land south-west of Kismayo. The clashes had claimed more than 50 lives between 2 February and 2 April.<sup>32</sup>

38. The Independent Expert notes that a water, sanitation and hygiene policy that has been approved by the Minister of Energy and Water Resources is awaiting approval by the Cabinet and of an initiative led by the Prime Minister to develop a national strategy for water resources management. The Independent Expert urges the Somali authorities to protect the rights of minority clans by strengthening the participation of local communities in improving water and sanitation arrangements.

39. The Somali authorities are also urged to build more wells so as to improve access to and availability of clean water. Specifically, she urges the authorities to complete the 100-wells project to reduce the level of resource-related clan conflict and limit the impact of droughts, floods and locusts on marginalized communities.

<sup>28</sup> See [www.amnesty.org/download/Documents/ACT5018472020ENGLISH.PDF](https://www.amnesty.org/download/Documents/ACT5018472020ENGLISH.PDF).

<sup>29</sup> S/2019/884, para. 41, and S/2020/121, para. 49.

<sup>30</sup> *UN Somalia: Country Results Report 2019*, p. 20.

<sup>31</sup> S/2019/661, para. 19.

<sup>32</sup> S/2020/398, para. 34.

## B. Violations of the right to freedom of opinion and expression

40. The right to freedom of opinion and expression is enshrined in the Provisional Federal Constitution of 2012 and the 2016 media law, as well as in a number of international and regional instruments to which Somalia is a party. On 14 January 2020, the upper house of Parliament approved amendments to the 2016 media law. The law as amended is currently awaiting presidential promulgation.

41. While the approval of amendments can be considered to be a step in the right direction, the Independent Expert is concerned that certain provisions of the media law as amended curtail freedom of opinion and expression and constitute violations of international human rights law. For instance, the provision prohibiting independent media outlets from broadcasting news deemed to be against the national interest, including in the areas of security, the economy and public policy, and the lack of clear definitions of key terms – such as “fake news”, “incitement of conflict or encouragement of tribalism” and “unfounded propaganda” – could constitute a form of censorship and a means to suppress independent voices.<sup>33</sup> Moreover, the composition and appointment process of the Somali Media Council, whose responsibilities include mediating and resolving complaints, granting and revoking media licenses and presenting awards and taking disciplinary measures against journalists, editors and media outlets, does not guarantee independence and could promote self-censorship.<sup>34</sup> In addition to being a member of the Somali Media Council, the Ministry of Information is also in charge of recommending the list of members of the Somali Media Council for approval by the Council of Ministers, giving the Government excessively broad discretionary powers and control over the media. The Independent Expert cautions against the use of administrative regulations, such as licensing and fines, to exert undue pressure on or to suspend or ban media outlets.

42. On the occasion of World Press Freedom Day, on 3 May 2020 President Farmajo announced a reform of the 1964 Penal Code, which is routinely used to suppress media freedom and the right to access to information. In another positive development, on 21 May, the Banaadir Regional Court issued a letter to the Attorney General’s Office requesting investigations into the killings of over 50 journalists following a complaint by the National Union of Somali Journalists. While these developments provide hope that there will be increased accountability for human rights violations perpetrated against journalists, the situation remains worrisome. In 2020, Somalia ranked 163rd out of 180 countries listed in the World Press Freedom Index.<sup>35</sup>

43. The Independent Expert has continued to receive reports of alleged killings, physical attacks, arbitrary arrests and detentions without charges, acts of harassment and intimidation of journalists, suspension of broadcasts aired by television stations and other media outlets by the Somali authorities at the federal and state levels and by Al-Shabaab.<sup>36</sup> Journalists and media outlets are routinely targeted for reporting on issues that are considered to be against the national interest. For instance, on 10 January 2020, journalists were prevented from covering the election of the Galmudug Regional State Assembly and decided to suspend their work in protest.<sup>37</sup> Most of the charges against journalists and media outlets are for spreading “false news”, which is criminalized in the Penal Code and punishable with imprisonment of up to six months, a penalty that is incompatible with international law.

44. According to a recent report by the Federation of Somali Journalists, between May 2019 and May 2020, 4 journalists were killed, 47 were physically tortured or harassed, 7 were wounded and 64 were arbitrarily arrested across Somalia. In addition, five media

<sup>33</sup> Bill amending the media law, arts. 3–4.

<sup>34</sup> *Ibid.*, arts. 14–15.

<sup>35</sup> See <https://rsf.org/en/ranking#>.

<sup>36</sup> See, for example, [www.amnestyusa.org/wp-content/uploads/2020/02/Somalia\\_We-live-in-perpetual-fear.pdf](http://www.amnestyusa.org/wp-content/uploads/2020/02/Somalia_We-live-in-perpetual-fear.pdf).

<sup>37</sup> See <https://sjsyndicate.org/2020/01/13/journalists-covering-galmudug-election-protest-against-restrictions-tv-editor-released/>.

outlets were reportedly attacked.<sup>38</sup> On 14 August 2019, a cameraman working for the Somali National Army Radio was among several individuals killed in a car bomb attack by Al-Shabaab targeting the army base in Awdheegle.<sup>39</sup> On 16 February 2020, a freelance journalist was killed by unidentified armed men in the town of Afgooye, Shabelle Hoose Region, after having allegedly received numerous threats. An investigation has reportedly been launched into the killing.<sup>40</sup> On 5 May, a reporter working with Kalsan TV was reportedly stabbed to death on his way home while trying to separate a man and a woman who appeared to be fighting. It is alleged that the journalist was deliberately targeted for his coverage of political issues.<sup>41</sup>

45. The Independent Expert urges the Somali authorities to redouble their efforts to improve the safety and security of journalists and create an enabling environment in which they can operate, in dignity, free from any abuse. The Independent Expert also urges the authorities to conduct thorough investigations into all allegations of human rights violations against journalists and other media practitioners.

### C. Strengthening the rule of law and accountability

46. The Somali justice sector straddles the traditional *xeer* system, sharia law and the formal legal system based on national and international law. While the formal justice infrastructure is being progressively rebuilt, it remains fragile due to the lack of accountability. An alternative dispute resolution mechanism established to complement the struggling formal justice system appears to have increased access to dispute resolution but has not, however, resulted in greater justice for women and girls or for members of marginalized and minority communities.

47. The Independent Expert welcomes the federal authorities' commitment to strengthening the rule of law and preventing impunity by drafting a new Penal Code, building the capacity of the police and the judiciary and taking steps to establish a legal aid system.<sup>42</sup> The Independent Expert welcomes the passing laws establishing an anti-corruption commission and a land commission and urges the Somali authorities to ensure the appropriate functioning of these institutions.

48. Delays in enacting crucial national legislation and establishing justice mechanisms weaken legal and institutional frameworks. For the most part, inadequate and ineffective policing services remain unaccountable; an under-resourced and unskilled judiciary negatively affects the fair dispensation of justice; and unregulated customary practices that are in conflict with human rights law continue to impede the fight against impunity. The revision of the Provisional Federal Constitution has been under discussion for more than two years with no consensus among federal and state authorities. The establishment and operationalization of the Judicial Service Commission and the Constitutional Court have also been delayed.

#### 1. Establishment of the national human rights commission

49. The Independent Expert reiterates that finalizing the establishment of the national human rights commission, a step that has been pending for almost two years, is of the utmost priority. A national human rights commission that is independent and adequately resourced, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), and that is empowered to monitor and provide accountability for human rights violations and abuses is critical to enhancing access to justice and ending impunity. Not prioritizing the operationalization of

<sup>38</sup> See <https://feso.org/wp-content/uploads/2020/05/FESoj-REPORT-2020.pdf>. See also [www.nusoj.org/wp-content/uploads/2020/03/Annual-Report-2020.pdf](http://www.nusoj.org/wp-content/uploads/2020/03/Annual-Report-2020.pdf).

<sup>39</sup> Ibid., p. 4.

<sup>40</sup> Ibid.

<sup>41</sup> See <https://en.unesco.org/news/unesco-director-general-condemns-murder-journalist-said-yusuf-ali-somalia>.

<sup>42</sup> See <https://lib.ohchr.org/HRBodies/UPR/Documents/Session24/SO/Somalia.pdf>.

this institution undermines the Federal Government's commitment to realizing the rights of Somalis. The Somali authorities are encouraged to expedite the recruitment of commissioners in such a manner as to guarantee the representation of women, minority groups and persons with disabilities.

## 2. Law enforcement agencies

50. Somalia has made some progress towards promoting and deploying a “new police model” by increasing the number of police officers in Jubbaland, South-West State, Hirshabelle and Puntland. A draft police bill that has been submitted to the Federal Parliament is yet to be passed. Human rights vetting and gender diversity principles have been integrated into recruitment processes. General and specialized police training is being conducted. In the Somalia National Development Plan 2020–2024, the Federal Government committed itself to improving the services delivered by the police forces.

51. The Independent Expert is concerned that these efforts have yet to translate into adequate protection for civilians, that they fall short of democratic policing standards and that several challenges to effective policing remain.<sup>43</sup> In Somaliland, for example, reports of systemic abuse of power by police officers and a culture of impunity have caused a breakdown of trust between the police and the community. The rates of investigations into criminal cases and of prosecutions of alleged perpetrators remain low. The Independent Expert is also concerned about the continued excessive use of force by the police against civilians and about the fact that officers reportedly continue to torture, beat, threaten, harass and arbitrarily arrest civilians, especially journalists, human rights defenders and persons allegedly suspected of terrorism.<sup>44</sup> The low capacity of police officers means an inability to apply existing laws fairly, especially in cases of violations against internally displaced women and children.

52. The Independent Expert urges the Federal Government to accelerate measures to ensure accountability for police human rights violations and to take positive steps to build trust between police officers and communities. The Independent Expert also urges the Somali authorities to continue to train the police, in collaboration with international partners, especially in the area of addressing sexual violence.

## 3. Courts and the alternative dispute resolution system

53. The institutional capacity of the courts continues to be of concern due to inadequate infrastructure and funding and the weak capacity of judges, prosecutors and court personnel. The Federal Government and the United Nations Development Programme (UNDP) have increased the number of mobile courts to 16 and expanded their reach into newly liberated areas where the absence of security makes it difficult to build permanent court structures. Mobile courts registered 1,040 cases in 2019 while alternative dispute resolution centres resolved 5,051 cases during the same period. This seems to indicate a lack of confidence in the formal justice system and an increasing reliance on other forms of arbitration.<sup>45</sup>

54. The Supreme Court has led a training-of-trainers programme for 36 judges and prosecutors from the federal and state courts with support from the Global Focal Point for the Rule of Law to address gaps identified in a training needs assessment of judges.<sup>46</sup> Recent statistics suggest that the representation of women lawyers, prosecutors, judges and other staff in the judiciary remains low.<sup>47</sup> The Independent Expert urges the authorities to accelerate efforts to provide victims with adequate remedies and reparations and to enhance peace and security.

<sup>43</sup> *UN Somalia: Country Results Report 2019*, p. 19.

<sup>44</sup> See [www.amnestyusa.org/wp-content/uploads/2020/02/Somalia\\_We-live-in-perpetual-fear.pdf](https://www.amnestyusa.org/wp-content/uploads/2020/02/Somalia_We-live-in-perpetual-fear.pdf).

<sup>45</sup> *UN Somalia: Country Results Report 2019*.

<sup>46</sup> S/2019/884, para. 68.

<sup>47</sup> *UN Somalia: Country Results Report 2019*, p. 19.

55. The military court system in Somalia continues to operate despite serious rule of law and human rights concerns, especially in relation to the lack of fair trial and due process guarantees. Also of concern is the continuing practice of trying civilians in these courts. Except for in one recorded case, legal representation of defendants is inadequate, appeals processes, particularly for death penalty cases, are not available and the military court system operates under the jurisdiction of the Ministry of Defence.<sup>48</sup> On 10 December 2019, the Federal Government agreed on a road map for transferring the caseload of high-risk Al-Shabaab and Al-Shabaab-associated detainees from military to civilian courts.<sup>49</sup> The non-observance of fair trial procedures due to a lack of transparency of court proceedings, especially in death penalty cases, is of concern.

56. Legal aid is vital in scaling up access to justice, especially for the poor and marginalized, and designed to complement the work of the mobile courts in Somalia. The Federal Government has reported that it has developed a legal aid policy and a national legal aid bill that are currently undergoing approval. Legal aid services are mainly provided by civil society organizations such as the Somali Legal Aid Network. Reports indicate that about 4,068 people benefited from legal aid services in 2019.<sup>50</sup> The Independent Expert urges the Somali authorities to accelerate the enactment of these legal frameworks so as to improve service delivery in the formal justice system.

57. Traditional dispute resolution mechanisms continue to be used in communities due to their physical accessibility, low cost and legitimacy in the eyes of local participants. While the traditional dispute resolution system has the potential to improve access to justice in Somalia, it can also reinforce discrimination and perpetuate practices that do not comply with international human rights standards, in particular against women, girls and minorities. The police and families of victims of sexual violence sometimes encourage and refer cases to *xeer* courts. The intervention of and declarations by the Attorney General to discourage this practice have not gained traction. Through the implementation of a joint programme, UNDP and Legal Action Worldwide have assisted the Federal Government in referring sexual violence cases to formal criminal jurisdiction.

58. In the Somalia National Development Plan 2020–2024, the Federal Government has recommitted itself to modernizing and harmonizing the traditional dispute resolution system until such time as formal systems are in place at all levels of government to address access to justice. This commitment may well delay access to justice for women, girls and minorities given that the traditional courts apply discriminatory norms and practices.

## **D. Economic, social and cultural rights**

59. Through the Somalia National Development Plan 2020–2024, the Federal Government aims to address poverty, institutional reform, human capacity development and legal and policy frameworks to enhance respect for human rights and humanitarian law. Nonetheless, human rights challenges persist in respect of several vital economic, social and cultural opportunities. Economic disparities among marginalized and minority groups are pervasive, for example, between the Bantu and Gaboye peoples in Somaliland. Inadequate investment and discrimination limit access to education for women, girls, internally displaced persons, refugees and persons with disabilities.

60. Limited access to water, sanitation and land resources, exacerbated by the ongoing armed and clan conflicts and environmental disasters, including droughts, floods and desert locusts, leave marginalized communities destitute.

<sup>48</sup> United States Department of State, country reports on human rights practices for 2019 ([www.state.gov/reports/2019-country-reports-on-human-rights-practices/](https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/)).

<sup>49</sup> *UN Somalia: Country Results Report 2019*, p. 20.

<sup>50</sup> *Ibid.*, p. 19.

## 1. Access to education

61. The Convention on the Rights of the Child, which the Federal Government has ratified, and the Provisional Federal Constitution guarantee for Somali girls the right to quality education on the basis of substantive equality. The draft national child rights bill further protects these rights.<sup>51</sup> Yet, Somalia continues to have the lowest school enrolment rates in the world (only 30 per cent of children, 40 per cent of whom are girls, are in school) and a particularly weak education system.<sup>52</sup>

62. The Somali authorities, in collaboration with United Nations partners and other stakeholders, have supported programmes to improve school management systems, the capacity of teachers and school feeding programmes to increase the enrolment and retention of girls in schools, particularly at the primary level.<sup>53</sup> This disparity in school attendance between boys and girls is due to the ongoing conflict situation and lack of safety for girls and to harmful practices such as female genital mutilation and early and/or forced marriage. The high cost of fees also makes school unaffordable for poor families, particularly those living in rural areas. For example, 84 per cent of nomadic women have had no education. Girls with disabilities, girls in farming and nomadic communities living in rural and remote areas, pregnant girls and girls in camps for internally displaced persons and refugees face compounded forms of discrimination that hamper their access to education.<sup>54</sup>

63. The Independent Expert believes that, unless the Government invests in an enhanced, coherent and comprehensive nationwide education system, Somalis will continue to be left behind in all aspects of their development.

## 2. Improving access to health rights

64. In the Somalia National Development Plan 2020–2024, the Federal Government committed itself to further improving access to health care and health outcomes by focusing on rural citizens, who have the least access to health care. The Independent expert takes note of the efforts made by the Somali authorities and development partners, including the United Nations Children's Fund, to develop the health strategy 2018–2020, the mental health strategy 2019–2023, the first Somali road map for universal health care, national guidelines on the integrated management of neonatal and childhood illnesses and midwifery.

65. While these efforts have resulted in modest improvements, some children and mothers are nonetheless disproportionately exposed to avoidable and treatable diseases. It is estimated that 73 per cent of women face at least one problem accessing health care due to high costs, distance to health facilities or the need to seek consent. Somalia continues to record the highest maternal mortality rate in the region, estimated at 692 deaths per 100,000 live births (down from 723). This is due to low levels of family planning, female genital mutilation, limited care provided by and involvement of skilled birth attendants and inadequate access to emergency obstetric care. Moreover, 67.7 per cent of women have not received antenatal care.<sup>55</sup> The neonatal death rate is estimated at 37.5 deaths per 1,000 live births in 2018.

66. The Independent Expert is concerned that the ongoing conflict, droughts, floods and locust attacks have increased the vulnerability of the population to hunger, disease and malnutrition, thus overwhelming an already weak health-care system. Improving the health-care system and services, especially for members of poor communities, internally displaced persons, refugees, women and children, is vital for the progressive realization of the right to health.

67. The Independent Expert urges the Somali authorities, in collaboration with development partners, to move expeditiously towards the progressive realization of the

<sup>51</sup> S/2019/884, para. 44.

<sup>52</sup> *UN Somalia: Country Results Report 2019*, p. 36.

<sup>53</sup> *UN Somalia: Country Results Report 2019*, p. 36.

<sup>54</sup> *The Somali Health and Demographic Survey 2020*, pp. 212–213.

<sup>55</sup> *Ibid.*, pp. 278–280.

right to health by enacting legal and policy frameworks, including the national health professional bill, and to develop a national health policy, a strategy and a plan of action, with appropriate resources equal to at least 15 per cent of the national budget, as recommended in the Abuja Declaration on HIV/AIDS, Tuberculosis and Other Related Infectious Diseases.

### 3. Promoting youth participation

68. Somali youth make up two thirds of the population of about 15 million people.<sup>56</sup> In the National Youth Policy 2017–2021, the Federal Government acknowledges that Somali youth are unable to realize their rights and access basic services and that they look to it to provide accountability and respond to their needs. More than half of youth are illiterate and two thirds of those aged 15–24 years live in poverty (driven partially by food insecurity). In addition, young people lack access to sexual and reproductive health education and youth-friendly services, and about 27 per cent of them are unemployed. Through the National Youth Policy 2017–2021, the Federal Government aims to remove institutional barriers to youth development and create opportunities to that young people can attain their full potential.

69. The Independent Expert takes note of several policies and programmes designed to empower Somali youth implemented by the Ministry of Youth and Sports in collaboration with the United Nations Human Settlements Programme (UN-Habitat), the United Nations Population Fund, the United Nations Assistance Mission in Somalia, the United States Agency for International Development (USAID), the Peacebuilding Fund and others. During the period under review, a youth empowerment development project advocated youth political participation in the Jubbaland elections and resulted in 17 young people, including two women, running for state office in 2019. At the federal level, the National Independent Electoral Commission organized a training session for 40 young people representing all regions to learn about the barriers to young people's political participation in Somalia.

70. At the Fourth Somalia National Youth Conference, more than 300 young people representing all regions engaged in an intergenerational dialogue with government representatives to acquire negotiation and diplomatic skills. In November 2019, the Mogadishu Tech Summit, held under the theme “Scaling youth-led tech-enabled solutions for Somalia”, attracted over 5,000 people. Significant financial pledges for technological advancement and innovation were made to the country. The Inter-Agency Working Group on Youth and Development has supported the Federal Government and youth groups to design coordination and oversight mechanisms at the federal and state levels with the aim of engaging with young people and supporting them in developing workplans that find solutions to local concerns. These mechanisms have served as vehicles for the provision of technical training and for long- and short-term employment in the technology, energy and other sectors. In January 2020, USAID and the Somali authorities launched an entrepreneurial youth programme to support youth-owned businesses and facilitate investment by Somali banks and microfinance institutions.

71. These efforts have made modest contributions to reducing the marginalization of young people in society and increasing their capacity to claim their rights. The Independent Expert is concerned that the youth experience remains largely driven by poverty, lack of access to education and training opportunities, inadequate health care and other services, unemployment and gender discrimination, among others. Somali young people living in rural communities and in camps for internally displaced persons and refugees continue to face acute disparities compared to urban youth and remain excluded from governance mechanisms and processes, as well as networking opportunities that would allow them to take advantage of employment opportunities when they exist. Young people in conflict areas are also vulnerable to abduction and forced recruitment by Al-Shabaab.

72. The Independent Expert urges the Somali authorities to expand youth programmes to rural areas and scale up the quality of education and training, health and social protection

<sup>56</sup> Of that total, 75 per cent are under the age of 35 years and 29 per cent are 15–29 years old.



services to stem disaffection, drug abuse and violence among youth that leads to unrest and recruitment into criminal and terrorist activities.

## **E. Promoting women's rights and gender equality**

73. Post-conflict environments offer unique opportunities for women to claim their human rights and advance their status in society. To date, Somalia has not ratified the Convention on the Elimination of All Forms of Discrimination against Women or the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. At the national level, women's rights and gender equality are guaranteed by the Provisional Federal Constitution of 2012, which is currently under review.

74. The Women's Charter for Somalia of 2019 provides a policy framework for advancing women's human rights and promoting the political, economic and social development agenda for an inclusive society. Although the Federal Government has endorsed the Women's Charter, Somali women and girls continue to face challenges in access to education and representation and participation in public life. Moreover, they are subject to sexual and gender-based violence, including conflict-related sexual violence, female genital mutilation and early and forced marriage.

### **1. Women's participation in public life**

75. The Independent Expert is concerned that despite the call for the equal participation of women in every aspect of institutional and national life contained in the Women's Charter (a call supported by Somali women parliamentarians) and for women to occupy at least 30 per cent of positions across the three branches of government, the private sector and independent commissions, women make up less than 25 per cent of federal and state institutions. Moreover, neither the electoral law enacted in February 2020 nor the Provisional Federal Constitution contains a minimum quota of 30 per cent for women's representation in decision-making positions at all levels of government, making it an uphill task to reach that threshold. Indeed, the representation of women in the new South-West State assembly fell from 22 per cent to 15 per cent, short of the constitutional requirement of 20 per cent.<sup>57</sup>

76. Progress is obstructed by the male-dominated clan system, which permeates political and family life and which is influenced by an interpretation of sharia law that limits women's participation in decision-making and leadership positions. Efforts have been made by the Ministry of Women and Human Rights Development, in collaboration with the United Nations, AMISOM and others, to equip women with the skills, training and knowledge necessary to enhance their leadership role in politics at the federal and state levels. Recently, they have advocated and obtained the establishment of a working group to address women's rights and gender equality issues under one of the four pillars of the Somalia National Development Plan 2020–2024.

### **2. Sexual and gender-based violence, including conflict-related sexual violence**

77. The Provisional Federal Constitution and the Penal Code of Somalia provide women with some level of protection from violence. The 2018 sexual offences bill, which should enhance protection for women and girls, is awaiting enactment. Similar sexual offences laws in Somaliland, Puntland and Jubbaland, with some variations, seek to protect women and girls from sexual violence. Despite these developments, however, sexual and physical violence against women and girls is widespread and committed with near-total impunity.<sup>58</sup> Reportedly, 76 per cent of rapes occur in camps for internally displaced persons and 14 per cent in host communities,<sup>59</sup> and the proportion of the female population justifying domestic violence is 76 per cent. More than 270 conflict-related sexual violence cases reportedly

<sup>57</sup> S/2020/398, paras. 36–38.

<sup>58</sup> Organization for Economic Cooperation and Development, Gender, Institutions and Development Database. Available at <https://stats.oecd.org/Index.aspx?DataSetCode=GIDDB2019>.

<sup>59</sup> See <https://sidrainstitute.org/wp-content/uploads/2019/06/Rape-Policy-Brief.pdf>.

occurred during the reporting period. Structures for implementing legal and policy frameworks and holding perpetrators accountable continue to be weak. The Ministry of Women and Human Rights Development, United Nations partners and others have been training judges, prosecutors and police officers on prosecuting for crimes of sexual violence and conflict-related sexual violence. Women and children protection units have been set up in some police units.

78. During the period under review, the United Nations recorded hundreds of sexual violence incidents against women and girls attributed to unidentified armed men, clan militiamen, Al-Shabaab elements and members of the Somali police and armed forces.<sup>60</sup> Although the number of prosecutions is expected to increase following technical training, it still remains very low. In most instances, families and victims prefer to complain to the traditional courts, where damages could be awarded to the male family member of the victim or the perpetrator is requested to marry the victim of sexual violence according to *xeer*. The outcomes of efforts by the authorities to change this practice are mixed. The Independent Expert is concerned that if the sexual offences bill is not enacted, justice will elude survivors of sexual violence. She urges the Federal Government to adopt the bill so as to enhance accountability.

### 3. Harmful practices

79. The Provisional Federal Constitution prohibits female genital mutilation, yet this practice is widespread.<sup>61</sup> At the federal level, a draft bill providing a framework for combating female genital mutilation in Somalia was submitted to Parliament in 2018<sup>62</sup> and bills outlawing female genital mutilation in Jubbaland and Puntland were reviewed by the state parliaments on 14 and 21 November 2019, respectively.<sup>63</sup>

80. While these are important steps in the right direction, harmful practices have continued unabated and, in some instances, have increased. According to information contained in *The Somali Health and Demographic Survey 2020*, 99 per cent of Somali girls and women aged 15–49 years have undergone female genital mutilation and 72 per cent of women believe that undergoing female genital mutilation is a religious obligation. These findings notwithstanding, female genital mutilation poses a risk to the health and well-being of women and girls who are subjected to it and constitutes a violation of the rights of the child. The current strategies implemented by the Somali authorities to overcome resistance to the bills by religious and traditional leaders who oppose the current age of marriage for girls and wish to reduce it to 15 years, which presents significant physical and psychological health risks, including death in some cases, appear to be ineffective. The Independent Expert is concerned that the continuing delay in adopting these bills exposes girls to cruel and degrading treatment and undermines efforts to criminalize acts of torture and provide redress for survivors.

81. The Independent Expert urges the Somali authorities to accelerate consultations and national dialogues on female genital mutilation with key stakeholders with a view to reaching a consensus on remaining obstacles, adopt the draft female genital mutilation and sexual offences bills, provide assistance to victims and implement a national programme to combat this harmful practice.

## F. Protecting children from armed conflict

82. The Federal Government has recognized the need to place children at the centre of its humanitarian and development agenda and has committed itself to enhancing the protection of children from the effects of conflict by strengthening the legislative, institutional frameworks at the national level, including by drafting a comprehensive child rights bill in line with its obligations under the Convention on the Rights of the Child. In

<sup>60</sup> S/2019/884, para. 49, S/2020/121, para. 56, S/2020/398, para. 52, and S/2020/487, paras. 43–45.

<sup>61</sup> Provisional Federal Constitution, article 15 (2) and (4).

<sup>62</sup> S/2019/884, para. 53.

<sup>63</sup> S/2020/121, para. 59.

that regard, the Independent Expert welcomes the adoption in October 2019 of a road map for the implementation of the two action plans signed with the United Nations in 2012, one to end and prevent the recruitment of children and use by the Somali National Army and another to end and prevent their killing and maiming. The Independent Expert also notes that a national strategy to prevent child recruitment and to facilitate the release and reintegration of children is being finalized.

83. Despite these efforts, children continue to be affected by the armed conflict in Somalia. In 2019, the United Nations verified 3,709 grave violations against 2,959 children (2,436 boys and 523 girls). Children, some as young as 8 years old, were recruited and used in the conflict, killed and maimed, raped and subjected to other forms of sexual violence, targeted in attacks on schools and hospitals, abducted and denied humanitarian access.<sup>64</sup> Al-Shabaab remains the main perpetrator, followed by federal and regional government security forces and clan militia.<sup>65</sup>

84. In the area of juvenile justice, the Independent Expert notes that the juvenile justice bill is currently under review by Parliament. She is concerned, however, that children associated with armed groups are not recognized as victims and continue to be detained for their association with armed groups and tried by military courts. She is also concerned about the inconsistent application of the standard operating procedures for the handover of children separated from armed groups signed in 2014 and a limited number of reintegration programmes.

85. The Independent Expert aligns herself with the recommendations contained in recent reports of the Secretary-General on children and armed conflict.<sup>66</sup> In particular, she urges the Federal Government to treat children associated with armed groups as victims in line with the principle of the best interests of the child. She also urges the Federal Government to swiftly adopt the child rights bill, which is currently awaiting discussion and approval by the Council of Ministers, and the juvenile justice bill. Furthermore, she encourages the Federal Government to ratify the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and the African Charter on the Rights and Welfare of the Child.

## **VI. Technical cooperation and the Somalia National Development Plan 2020–2024**

86. Somalia has made progress in its human rights agenda due in large part to the strength of its partnership with the international community as expressed in successive mutual accountability frameworks. The Human Rights Council, in its resolution 42/33, recognized the importance and effectiveness of international assistance to Somalia, including in the field of human rights, and the need to scale up coordination, coherence and quality of capacity development and reaffirmed the need for regular Somalia Partnership Forum meetings.

87. At the Somalia Partnership Forum held in Mogadishu in October 2019, participants took stock of progress made since 2018 and agreed on priority actions to address the remaining challenges in the transition of Somalia together. Furthermore, they endorsed a mutual accountability framework for 2020 that sets out urgent and inclusive political reform measures such as adopting an amended Federal Constitution by June 2020, enacting the electoral law, holding elections in late 2020 or early 2021 and establishing the Constitutional Court and the Judicial Service Commission. Security and justice reforms include a reconfiguration of AMISOM and accelerated reforms of the Somali security forces, including to provide security for elections and in Mogadishu. In the areas of economic and social development, priority has been given to youth empowerment, employment generation, social service delivery, recovery and humanitarian assistance. The

<sup>64</sup> A/74/845-S/2020/525, paras. 136–147. See also S/2020/174.

<sup>65</sup> Ibid.

<sup>66</sup> A/74/845-S/2020/525, paras. 136–147, and S/2020/174, paras. 78–88.

international partners that participated in the Forum meeting committed themselves to supporting the Federal Government in meeting the Heavily Indebted Poor Countries Initiative benchmark.

88. In December 2019, the President of Somalia launched the Somalia National Development Plan 2020–2024. The Plan integrates cross-cutting issues, including gender, human rights and other social equity concerns, into four pillars: inclusive and accountable politics; security and the rule of law; economic development; and social development. Following successful advocacy by the Ministry of Women and Human Rights Development, a standalone working group on human rights, gender and inclusion was established. Implementation of the Plan, which serves to guide planning efforts, is dependent on the support and cooperation of international partners. The priorities in the Plan are in line with the mutual accountability framework for 2020.

89. Donors have continued to support Somalia at the federal and state levels through technical assistance in developing legal and policy frameworks, training programmes for building human capacity and funding for infrastructure and humanitarian needs, especially to counter the negative impact of COVID-19. While the health sector has been severely affected, the Federal Government's trajectory has not changed and its adherence to its international commitments has remained steady. The Independent Expert urges the Federal Government and its international partners to stay the course in cooperating to promote and protect the human rights of all Somalis.

## VII. Conclusion and way forward

90. The Independent Expert recognizes the progress made by the Federal Government of Somalia to strengthen human rights legal and policy frameworks, design strategies and action plans, institute mechanisms and mobilize international cooperation and donor support for the promotion and protection of human rights in a context of recovery. The Federal Government has set out a vision for moving Somalia along a path towards becoming a just, stable and prosperous nation. The holding of the first one person-one vote in over 50 years offers a great opportunity for transformational change. The electoral process is fraught with challenges, however, which could hinder progress.

91. During the period under review, key human rights processes suffered inordinate delays, making it all the more difficult to respond to human rights violations. The Independent Expert urges the Somali authorities to swiftly adopt all outstanding legislative measures, including the amended Federal Constitution, the sexual offences, female genital mutilation, juvenile justice and child rights bills and the amendments to the 2016 media law, and to finalize the establishment of a national human rights commission, the Judicial Service Commission and the Constitutional Court.

92. The Independent Expert welcomes the swift action taken by the Somali authorities to stop the spread of the COVID-19 pandemic amid the ongoing armed conflict and humanitarian crises. She is concerned, however, that some of the containment measures have contributed to an increase in human rights violations, including the unlawful killing of civilians, the arbitrary arrest and detention of journalists and sexual violence against women and girls. The Independent Expert urges the Somali authorities to put in place effective mechanisms to protect civilians and hold perpetrators accountable. She encourages the Federal Government to continue to expand national programmes beyond humanitarian assistance to include persons with disabilities, refugees and internally displaced persons, members of minority and disadvantaged communities, particularly those living in rural areas, in the sectors of health, education and opportunities for youth. These programmes should be accompanied by massive awareness-raising campaigns. Without these mechanisms, it will not be possible to meet minimum human rights obligations and standards.

93. In an effort to address the request by the Human Rights Council to prepare a transition plan with clear steps and benchmarks towards deeper thematic engagement with the special procedures and other experts, including the Office of the United Nations High Commissioner for Human Rights, the Independent Expert has initiated consultations with governmental, non-governmental and multilateral stakeholders. However, she considers the consultations conducted thus far to be insufficient to inform a comprehensive and inclusive human rights transition plan.

94. In light of the human rights challenges identified in the present report, she has identified seven areas that could form the basis for preliminary considerations for benchmarking the transition plan over the next four years, taking into account the priorities set forth in the Somalia National Development Plan 2020–2024, the joint human rights programme, the security sector reform transition plan, ongoing commitments in the mutual accountability framework and existing human rights recommendations anchored on the Sustainable Development Goals. The seven areas are: (a) promoting security, peace and reconciliation for the protection of civilians in conflict; (b) strengthening the rule of law, accountability and transitional justice; (c) ensuring respect for freedom of opinion and expression, assembly and association; (d) promoting women’s rights and gender equality in all aspects of society; (e) ensuring respect for children’s rights in the context of armed conflict and promoting juvenile justice and youth empowerment; (f) promoting the right to water and sanitation, women and children’s health and access to quality education; and (g) protecting the rights of internally displaced persons, refugees, persons with disabilities and minorities.

95. The Independent Expert looks forward to holding further consultations with all stakeholders to design appropriate indicators and enrich the proposal. To facilitate the implementation of the plan, she encourages the Somali authorities to establish processes for the collection, analysis, tracking and reporting of data on human rights and the establishment of a multi-stakeholder monitoring and evaluation mechanism to conduct an annual assessment of the plan.

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