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Technical assistance and capacity-building

Report of the Independent Expert on the situation of human rights in Somalia^{*}

Note by the Secretariat

In the present report, the Independent Expert highlights the progress made in political, security, national and State-building processes as Somalia prepares for the 2016 elections, and identifies the challenges encountered by the Federal Government. He identifies security and economic development as key elements of democratic processes and the protection of human rights. He also notes, however, that the respect for the rights of women, children, persons with disabilities and minorities is a major challenge. In this regard, he underscores the importance of traditional justice and the need for reform in accordance with international human rights standards. Lastly, he emphasizes the need for ongoing support from the international community to safeguard the rights of women and children, media freedoms and the right to freedom of expression and opinion, and respect for international human rights law and international humanitarian law in the context of armed conflict.

^{*} The present report was submitted after the deadline in order to reflect the most recent developments.

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I. Introduction

1. In its resolution 30/20, the Human Rights Council renewed the mandate of the Independent Expert on the situation of human rights in Somalia for one year. It also requested the mandate holder to continue 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 other human rights commitments, including the post-transition human rights road map and the process to establish an independent human rights commission in due course. The Independent Expert, Bahame Tom Nyanduga, submits the present report to the Council pursuant to that request.

2. The Independent Expert conducted a mission to Somalia from 16 to 24 April 2016. He expresses his appreciation to the Federal Government of Somalia and regional authorities for their cooperation, which enabled him to interact with Federal State officials, including the Speaker of Parliament, the Deputy Prime Minister, the Attorney General, the Minister for Women and Human Rights Development, the Minister of the Interior and the Minister for Information, and other senior officials.

3. The Independent Expert met the Speaker of Parliament and Acting President of South-West Administration and senior ministers in Baidoa, and in Kismayo the Minister for Women and Human Rights Development of Jubbaland. He also held consultations with the Deputy Special Representative of the Secretary-General and senior staff members of UNSOM, and met the Special Representative of the African Union Commission Chairperson and head of the African Union Mission in Somalia (AMISOM), his military commanders, and political and human rights advisers. He met representatives of civil society, including traditional elders, scholars on Islamic law, women, young people, members of the media, and persons with a disability. Owing to logistical constraints, the Independent Expert was not able to visit Puntland and Hargeisa. Any reference to Puntland and Somaliland made by the Independent Expert in the present report is based on an analysis of available reports and documents.

4. The Independent Expert submits the present report to the Human Rights Council in the wake of important developments that are likely to have an impact on the situation of human rights in Somalia. Somalia has continued in its agenda of State-building, which is critical for the electoral process in 2016. The implementation of the Vision 2016 programme has continued despite major challenges, including continuing attacks by Al-Shabaab and the loss of territories that had previously been recovered. Other setbacks included attacks by Al-Shabaab against AMISOM military installations and the civilian population, and in particular on Mogadishu hotels. In spite of these losses, the Somalia National Army and AMISOM have continued to recover territory and to consolidate their gains, despite the operational challenges discussed below.

II. Objectives of the mission

5. The objectives of the mission conducted by the Independent Expert were to follow up on the implementation of the recommendations made by the mandate holder in his previous reports and made in reports of other human rights mechanisms; to assess the situation of human rights and to identify capacity gaps, and to take stock of the implementation of the recommendations accepted by the State at the eleventh session of the Working Group on the Universal Periodic Review (see A/HRC/18/6), and the process of adoption of a constitution. Another of his objectives was to assess progress in the ongoing State-building process as Somalia heads towards elections later in 2016. The Independent

Expert commended the Federal Government for having submitted its national report during the session of the Working Group on the Universal Periodic Review early in January 2016.

6. The Independent Expert examined the progress made in the establishment of federal structures under the Vision 2016 programme, such as the national human rights institution, the judicial services commission and the interim constitutional review commission, all of which will greatly strengthen the capacity of the State to ensure respect for human rights during the period of transition until after the holding of elections. He also enquired about the specific measures taken to address concerns raised regarding alleged violations of the right to freedom of expression; the non-implementation of a moratorium on the death penalty; the protection of the rights of women and children; and the lack of protection for vulnerable groups, such as persons living with a disability, internally displaced persons and minorities.

A. National Leadership Forum: a new development

7. During the period subsequent to the mission conducted by the Independent Expert in 2015, leaders in Somalia sought to resolve outstanding issues through the National Leadership Forum, a new political body comprising the Federal President, the Speaker of Parliament, the Prime Minister and the Deputy Prime Minister (ex officio President of Somaliland State), the Presidents of Puntland and Jubbaland, and the Presidents of the Galmudug Interim Administration, the Interim South West Administration, and the State potentially to be formed by the Hiraan and Middle Shabelle regions. Consultations at the federal level within the framework of the National Leadership Forum have permitted the settlement of political issues that could not have otherwise been resolved by Parliament owing to the short timeframe available before the elections.

8. The National Leadership Forum, an ad hoc mechanism established outside the provisional federal Constitution, has become a critical political decision-making body, hence the need to institutionalize it in the new federal Constitution. Despite what might seem a constitutional anomaly, the Forum demonstrates the goodwill of political leaders in Somalia to find a lasting and permanent solution to the crisis that the country has endured for the past two decades and a half. The leaders should be commended for their vision and resolve to ensure that the transition succeeds.

B. Political and security backdrop

9. The security situation continues to improve, even though Al-Shabaab has continued to attack major security and civilian facilities, such as its attacks against AMISOM military installations and the killing of AMISOM soldiers, the occasional loss of territory and the capture of weaponry. The bomb attacks on the Ambassador and the Naasa Hablood hotels in Mogadishu in June 2016, which led to the death of two parliamentarians and the injury of a score of civilians, demonstrate the need for continued support for Somalia to consolidate peace and reconciliation.

10. The Independent Expert is concerned about reports of cuts to the financing of military support and at the threat of some States contributing contingents to AMISOM to withdraw their forces. He learned about a decision by the European Union to reduce its financial support for AMISOM troop allowances by 20 per cent.¹ Uganda and Kenya are

¹ African Union Peace and Security Council communiqué, 595th Meeting, 28 April 2016, PSC/PR/COMM.2(DXCV), para. 11.

reportedly considering withdrawal of their forces from AMISOM owing to lack of support from the international community. These reports have serious implications for security and protection in Somalia, and for the fight against Al-Shabaab in particular.

11. Similarly, Kenya announced in early May 2016 that, owing to security concerns, it would close the Dadaab refugee camp and return more than 320,000 Somali refugees to their country, when conditions for voluntary repatriation are not favourable. The cumulative effect of these decisions is likely to have a negative impact on the situation of human rights in Somalia.

12. The Independent Expert commends the measures taken by the international community, through multilateral and bilateral efforts, to support the Somalia peacebuilding process. Between the periods under review, Somalia received visits and missions from the Security Council, the Deputy Secretary-General, the United Nations High Commissioner for Refugees and other senior United Nations officials, and the President of Turkey.

13. On 24 February 2016, Turkey hosted a donors' conference in Istanbul, the High-level Partnership Forum, within the framework of the Somali Compact. A strong commitment to the protection of women's rights and their political participation, of critical importance for political negotiations on the 30 per cent participation of women in Parliament, was one of the outcomes of the conference.

III. Constitution, federalism and State-building

14. During the period under review, State authorities, leaders at the federal State level and the international community concluded that Somalia would not be able to adopt a Constitution and hold elections in 2016 on the basis of universal franchise. It is expected that the law on political parties adopted on 6 June 2016 and the prospective federal Constitution will be applied during the elections to be held in 2020 based on universal adult suffrage. The 2016 electoral process will be held under an improved model of the traditional 4.5 formula (an apportionment to each of the four main clans, plus a quota of 0.5 to a coalition of minority clans), which involves about 13,750 representatives, appointed by different clans across the country, to elect 275 Members of Parliament to the Lower House. The representatives of the Upper House will be elected by the States rather than by the 135 elders who elected the President and members of Parliament in 2012. A 30 per cent quota for women was agreed.

15. Consultations to finalize the Federal Constitution were ongoing at the time of the mission. A technical committee held meetings to review and harmonize the draft Constitution inside and outside the country. Ten chapters of the draft Constitution had been agreed upon and were to be sent to the Federal States for consultation with the regional parliaments, relevant executive branches and civil society organizations, before being submitted for national consultations. Five contentious chapters that the technical committee was not able to finalize were referred to the National Leadership Forum. The chapters concerned matters relating to, inter alia, the adoption of a parliamentary or presidential system, the composition of the executive, the judiciary, and the relations of power between the federal State and regional States, in particular the sharing of economic resources and the status of Mogadishu. The new Constitution should define clearly the limitations of executive power between the President and the Prime Minister in order to avoid future political crises or a repeat of those witnessed in 2014 and 2015. At the time of drafting of the present report, the Independent Expert was informed that all 15 chapters of the proposed federal Constitution had been finalized.

A. State-building and status of Mogadishu

16. The status of Mogadishu as a separate State has yet to be determined. Before the collapse of the Siad Barre regime, Mogadishu, the national capital, was also known for being multi-clan city. Owing precisely to its role as the federal capital, its substantial contribution to the economy of the federal State, its complex clan structure and the fact that it is now claimed by the Banadir clan, the status of Mogadishu is today one of the most contentious issues of the constitutional review process. The Independent Expert was informed that the State-building process was ongoing. Besides the regional States that already exist, there are plans to form the State of Hiraan/Middle Shabelle, which are now being finalized.²

B. Electoral process

17. The Independent Expert was informed by the Speaker of the Federal Parliament that it had spearheaded the formation of the National Leadership Forum with the purpose of improving engagement with the international community. The Forum had the responsibility to commit the State to the rule of law and to present a unified message about the future of Somalia. The Speaker urged the international community to give its support during the period leading up to the elections. The electoral model that was proposed for Somalia would be based on transparency, anti-corruption measures and fairness, to ensure broad participation. He stated that, although the Federal States had been consulted on the prospect of holding elections based on universal suffrage, in his view it would not be possible.

18. With regard to the right of women to participate in the forthcoming elections in 2016, the Speaker stated that it was necessary to change public attitudes towards the participation of women, and suggested that temporary special measures, such as quotas in governance structures, be adopted in favour of women, minorities, young people and persons with disabilities. During his meeting with civil society organizations, however, the Independent Expert heard representatives of women, persons with disabilities and youth complain about restrictions on freedom of expression and opinion, the ongoing insecurity and poor relations between the Government and civil society. They complained about the very restrictive operating environment, reporting how they adopted a low profile when engaging with government authorities. The organizations had requested support from the international community for their participation in the upcoming elections 2016, to help to prevent their exclusion, as was the case in 2012. They reiterated the lack of financial and logistical support to operate, and the need for election monitoring training. Their freedom of movement had been restricted by insecurity and threats. Civil society organizations held the belief that the electoral model that allows only traditional elders to elect the President and members of Parliament was not representative enough, and lacked legitimacy. Representatives of persons with disabilities stated that they did not receive any support from the Government or the international community. Some youths stated that, when they expressed critical views, they were either branded as members of Al-Shabaab or ostracized.

IV. National development plan

19. The adoption of the national development plan by the Federal Government for the period from January 2017 to December 2019 is a positive development. The

² According to article 49(6) of the provisional Constitution of the Federal State of Somalia (2012), two or more States may agree to form a federal State within the federation.

implementation of the plan was officially launched by the President of the Federal Republic in early June 2016.

20. The national development plan is a policy framework with the purpose of developing a national plan based on the identification of the causes of poverty, to empower the poor by means of an environment conducive to finding a basic livelihood. Another objective of the plan is to implement the Sustainable Development Goals.

21. The national development plan identifies government development priorities in State-building and peacebuilding, including democratic governance; budgetary allocations for 2017 and beyond; and funding priorities for development partners. It also serves as the interim poverty reduction strategy for Somalia, aligned with the Sustainable Development Goals and the State's ongoing commitments under the Somali Compact. The plan was adopted at a national stakeholders' consultative forum involving government and civil society partners. It will build on earlier or existing policies and plans, including the peace- and State-building goals of the Somali New Deal, and plans of action in human rights and other areas.

22. The national development plan will consolidate positive developments, such as the formation of federal States, and peace and security. According to the plan, economic activity in Somalia is estimated to have expanded in terms of real GDP by 3.7 per cent in 2014 and the consumer price index by only 1.3 per cent. In some areas, the delivery of social services has improved, although is still inadequate. Improving the delivery of services is one of the main priorities of the plan.

23. During the discussions held by the Independent Expert with the authorities, it was stressed that, without economic development and security, the situation of human rights would not improve. While the international community has put emphasis on security, stabilization and State-building, it has not yet allocated resources commensurate to building institutional capacity in Somalia. Government officials urged the Independent Expert to impress upon the Human Rights Council the need to address the lack of resources, without which the Government was not able to discharge fully its obligations.

24. The Minister for Planning and International Cooperation stated that the national plan mainstreamed human rights, including the role of women, under the guidance of the Ministry for Women and Human Rights Development and the United Nations.

25. Following the adoption of the proposal by Parliament of a 30 per cent quota for women, the Minister for Planning and International Cooperation expected to see an increase in the participation of women in governance and public affairs. In some regional governance bodies, such as the South West Assembly, the administration had set a target of 20 per cent representation of women, but had managed to increase it to 21 per cent. In Galmudug State, the target for representation of women was 20 per cent, but only 17 per cent had been attained in the regional assembly. The Minister admitted that there was still much work to be done to reach the targets; in the meantime, the Ministry was prepared to integrate institutional guidelines to protect human rights. The national development plan promotes the principle of freedom of movement in order to reduce the barriers between clans and regions, thus improving labour mobility.

26. The Minister also pointed out that, according to the local legislation, persons born in certain clans, such as minorities, were barred from holding public office. Similarly, the 4.5 formula (see para. 14 above) did not advance equal rights, nor had it achieved much at the community level. Such a situation was unconstitutional and generally unacceptable. The national development plan would be monitored and evaluated by a body composed of 45 per cent women, thereby respecting the principles of gender equity and transparency.

V. Cooperation with human rights mechanisms

27. Somalia submitted its national report to the Working Group on the Universal Periodic Review at its twenty-fourth session (A/HRC/WG.6/24/SOM/1). At the thirty-second session of the Human Rights Council, the State announced that, of the 228 recommendations made, it had accepted 168 and noted 60.

28. The Independent Expert commends the Federal Government for its timely submission to the Human Rights Council and for actively engaging in the review, despite the severe resource and capacity constraints that it faces. The support of the UNSOM Human Rights and Protection Group allowed the Federal Government to present its report, which was based on nationwide consultations. The Independent Expert indeed calls upon the international community to assist the Federal Government in submitting pending reports to the treaty bodies, such as the Committee on the Elimination of Racial Discrimination, the Committee on Economic, Social and Cultural Rights, the Human Rights Committee and the Committee on the Rights of the Child. The submission of these reports will allow the Government of Somalia and the international community to identify outstanding challenges, including the extent to which the conflict in the country has had an impact on the rights of the child and the resources available for social services.

A. Right to life, liberty and security of person

29. The Independent Expert is concerned about violations of the right to life in Somalia owing to the ongoing indiscriminate attacks by Al-Shabaab and the use of suicide bombers and improvised explosive devices against civilian targets.

30. The Independent Expert was repeatedly informed that the Government could not abolish the death penalty nor adopt a moratorium on it given that it was a legitimate form of punishment under Islam, unless a victim's family decided to forgive the perpetrator. During an interview with the Attorney General, the Independent Expert pointed out that Somalia could learn from other Muslim countries that did not apply the death penalty, such as Turkey and the Comoros, adding that advocacy with victims' families and the Somali nomadic society to abolish the death penalty required time, given that a victim's family could resort to *diya*, namely, compensation in the form of camels or cows in lieu of the execution of the perpetrator.

31. The Independent Expert was informed that conditions of detention in prisons had improved following the steps to reduce overcrowding and ensure greater availability of medicine, water and bedding.

B. Equality and non-discrimination

32. The political establishment in Somalia has accepted the principle of a quote of 30 per cent representation of women, as provided for by the Constitution adopted in 2012. With regard to the forthcoming elections in 2016, the traditional elders council, constituting the electoral college, will ensure that women representatives are elected. It is expected that, on the basis of the 30 per cent quota, at least 92 women will be elected to the Federal Parliament, which has a total of 275 members. Any vacancies arising for women in Parliament will be occupied by women (unlike in the case of the recently dissolved Parliament, where seats vacated by a woman member were filled by a man appointed by his clan). In June 2016, President Hassan Sheikh appointed by decree 13 goodwill ambassadors to champion the cause. The ambassadors presented a formula to the National Leadership Forum that is still being discussed. The ambassadors will also engage the elders from the

electoral college. Led by the United Nations, the international community is supporting this process.

33. The United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) and other United Nations agencies working in Somalia have developed a project for the empowerment of women focusing on peace and security. The project will facilitate the participation of women in public affairs, in access to justice and rule of law programmes. Owing to the little time remaining before the elections, implementation of concrete actions is difficult. The Independent Expert is working with UN-Women and UNSOM to improve compliance of traditional elders with standards when adjudicating cases related to violence against women. Following consultations between the new Government and other stakeholders, a national conference on this issue has been proposed for 2017. A conference of this type would provide an opportunity to develop home-grown solutions to improve the access of women to justice under the traditional justice system.

34. In the view of the Minister for Justice, the large number of reported cases of violence against women had been exaggerated by civil society, and pointed out to the Independent Expert that most of the cases had been reported in areas occupied by Al-Shabaab, to which the Government has no access. The Minister added that, in any case, most of the reports had been received. He stated that the Ministry had established mobile courts to ensure access to justice for victims. The Independent Expert was also informed that the Government was currently integrating the formal justice system with the traditional and religious systems.

35. The Attorney General informed the Independent Expert that human rights were part of Islamic tradition, and urged that support be given to the Ministry for Women and Human Rights Development and the Ministry of the Interior to ensure implementation of the human rights road map and other human rights-related programmes. Improved access to justice depended largely on the security situation, which the Government had prioritized. During the meeting with the Independent Expert, the Attorney General highlighted the key challenges to advancing the rights of women: ensuring the representation of women during the electoral process; the participation of women in the traditional justice system; and the recruitment of women prosecutors.

36. The Independent Expert was informed that the Ministry of Justice was working closely with rule of law institutions. The Government is rolling out a pilot project in 16 districts to assess the strengths and weaknesses in the traditional justice system and the role of traditional elders, including women elders. Traditional elders were already conceding the adjudication of rape cases to the police (see also para. 66 below). The number of female police officers actually handling cases involving violence against women is, however, still small.

C. Violence against women

37. Violence against women continues in Somalia, and has been exacerbated by the conflict. In 2015, an information management system found that trends in sexual gender-based violence continued to be a critical protection concern. Reports revealed that 94 per cent of the survivors of sexual or gender-based violence were female. Some 74 per cent of survivors are internally displaced persons, a figure confirming their extreme vulnerability and need for additional protection. Women and girls from minority clans are especially vulnerable. Victims are exposed to assault, rape, sexual violence, female genital mutilation/cutting and forced marriages. One contributing factor is the lack of awareness of many women, particularly those living in rural areas, of their rights.

38. Access to survivors of sexual violence is itself a challenge, as is the inability of victims to report attacks and to identify perpetrators. Victims often have no access to health services, which could otherwise help in the prevention of sexually transmitted diseases and HIV/AIDS after rape attacks. They also often fail to report rape out of fear of stigmatization or of countering religious or cultural norms. Another impediment to reporting cases of sexual violence are traditional practices requiring the perpetrator and the survivor's family to settle the matter outside the formal judicial system, with the exclusion of the victim. This practice exacerbates the violation of the rights of victims or survivors in that they do not obtain justice, it fuels impunity for sexual violence crimes and discourages victims and survivors from reporting cases. Even though civil society organizations advocate for the rights of women across Somalia, sexual and gender-based violence continues. With regard to female genital mutilation, the Minister for Women and Human Rights Development reported that the Government had adopted a policy against this practice, although a specific law thereon had not yet been passed.

39. At the London Somalia Conference in May 2013, the Government of Somalia signed a joint communiqué in which it pledged to combat sexual violence. A public commitment to combat sexual violence and to protect survivors was announced by President Hassan Sheikh Mohamed during the Open Day on Women, Peace and Security in Mogadishu on 4 December 2013. To fulfil that commitment, in 2014, the Government developed a national plan of action to end sexual violence in conflict, and established a multiparty steering committee. The plan of action encouraged the involvement of traditional and religious leaders in combating violence against women through the formal justice system. The Sexual Offences Bill, addressing gaps in laws enacted in the 1960s, was adopted. Measures proposed include the strengthening of referral mechanisms for survivors of sexual violence, health services, psychosocial support, and legal aid and economic empowerment programmes for survivors of sexual violence.

40. The Independent Expert appreciates the advocacy work conducted by the Government of Somalia, the AMISOM Gender Section, the UNSOM Human Rights and Protection Group and a number of civil society organizations on this issue. He notes, however, that the Government will find it difficult to disseminate the legislation on sexual offences throughout the country if adequate resources are not made available. On 17 May 2016, a validation workshop to advocate for the Bill was hosted by Legal Action Worldwide, an international non-governmental organization. The adoption of the Bill will be a milestone for women's rights in Somalia.

41. A strong police capacity to investigate and allow for successful prosecution is necessary. A gender unit is already in place within the Somali police force. AMISOM police have been supporting the unit by establishing "gender desks" in some police stations in Mogadishu. The Independent Expert also notes that the Federal Government has appointed female prosecutors to the Ministry of Justice.

42. Prosecution of such cases may be problematic because of lack of evidence. The Government is building capacity to use forensics for the identification of the so-called "men in uniform" responsible for rape and for concealing their identity. The Government is also establishing referral centres for the counselling of victims of sexual and gender-based violence. UN-Women is working to build the capacity of the gender unit, including by creating an organization chart and defining job descriptions and case management processes. The United Nations Development Programme (UNDP) is building the capacity of the police and the judiciary to deal with cases of violence against women; in Puntland, Somaliland and Jubbaland, it has set up mobile courts, which are being replicated also elsewhere in south-central Somalia. Traditional elders are being trained on mediation skills and report to a legal aid network on resolved cases.

43. In Jubbaland, the Minister for Gender, Family Affairs and Human Rights lamented the weakness of penal laws and the lack of police, judiciary and correctional services infrastructure, which resulted in the forced release of perpetrators of rape. Some of the main challenges to women's participation in public affairs include the high rate of illiteracy among women and their perception that they can only perform traditional roles at home. The Minister indeed constantly urged women throughout Somalia to unite and work beyond their clan identity.

44. Traditional elders from across Jubbaland expressed progressive views about the role of women. They acclaimed the role played by women during the years of conflict in holding families together. The elders pledged to ensure that the 30 per cent quota for women in the next Parliament would be guaranteed. They also wish to contribute ideas to UNSOM on national politics and the role of women. Traditional elders complained that they did not receive any financial support or respect from the United Nations and the Federal Government, despite the work done for their communities under the control of Al-Shabaab insurgents. Some of them had been forced to cross territory controlled by Al-Shabaab to reach Kismayo to meet the Independent Expert.

D. Strengthening justice and rule of law institutions

45. Even though it has not been possible to adopt a Constitution within the framework of the Vision 2016 programme, the federal Government and international partners are keen to ensure that elections are held in 2016. The Independent Expert commends the Federal Parliament for passing, on 6 June 2016, the National Human Rights Commission Bill, which is now awaiting presidential assent. The Bill is largely compliant with the Paris principles. The Independent Expert urges the President to give his assent promptly so that the Human Rights Commission may be established. The Deputy Prime Minister informed the Independent Expert that, although the international community was pushing for State-building, it was not providing the commensurate resources necessary to establish institutions. Institutions lacked infrastructure, and officials were forced to conduct their business out of dilapidated facilities and overcrowded rooms. He added that the national plan of action on the implementation of the human rights road map has been disrupted by the lack of adequate resources.

46. UNSOM is currently implementing a comprehensive civilian and military stabilization programme known as the Community Recovery and Extension of State Authority (CRESTA), which is designed to complement government efforts to strengthen security and rule of law institutions, such as the judiciary and police, governance and reconciliation, and social service delivery programmes. The programmes are, through donor coordination, designed to link up with ongoing disarmament, demobilization and reintegration and job-creation programmes, such as road reconstruction and other socioeconomic and development initiatives. CRESTA has mainstreamed human rights in its programmes by ensuring gender equality and the participation of young and older persons alike.

47. The Deputy Prime Minister informed the Independent Expert that the Federal Government is committed to improving the situation of human rights in the country through deployment of human rights advisers to every ministry, the National Intelligence and Security Agency, the police and the military. He acknowledged that detention conditions in prisons were poor and that it was not always possible to separate juvenile and adult inmates. He reiterated the Government's commitment to train officers on human rights.

VI. Securing recovered territory

48. The Independent Expert commends the Federal Government and the Somalia National Army assisted by AMISOM for having liberated a vast territory and re-establishing control over it, thereby allowing access to humanitarian and other services. In spite of the progress made against the insurgency, Al-Shabaab was able to mount daring attacks, including on AMISOM military installations, killing several soldiers, stealing weaponry and retaking lost territory. The failure to secure territory is attributed to the lack of adequate police deployment in the recovered territory (see A/HRC/27/71, paras. 22-23) and the poor morale in the ranks of the Somalia National Army, largely due to inadequate salaries or lack of payment to soldiers.

49. The failure to consolidate a police presence in the recovered territories was also attributed to the lack of harmonization and coordination in police training by the parties supporting recovery efforts in Somalia. The Independent Expert commends the Federal Government for its endorsement of the Federal Policing Model, and calls for consultations on and support for its implementation.

A. National Intelligence and Security Agency, and the treatment of disarmed combatants

50. The Independent Expert held a meeting with the Director General of the National Intelligence and Security Agency to follow up on allegations of ill-treatment of disengaged combatants at the Serendi detention facility in Mogadishu, where children recruited by Al-Shabaab were also held. The Agency, as an intelligence and security organ of the State, does not possess the powers of arrest and detention. The Independent Expert had received allegations that the Agency routinely conducted mass arrests during its operations and that it did not respect minimum human rights guarantees, such as by holding detainees for prolonged periods without judicial review. The Director General emphasized that the Agency operated within the legal framework under very difficult conditions, and that Al-Shabaab attacked and killed civilians constantly without any regard for their human rights. Although the Agency faced suicide bombers on a daily basis, it also worked for the rehabilitation of captured fighters, including children. Its main focus was to protect the country; not to kill the fighters, but to reintegrate them into society.

51. The Director General acknowledged that the National Intelligence and Security Agency was not a perfect institution, but it was ready to correct its mistakes. He requested training on human rights for Agency operational officers and warders in rehabilitation centres. On the matter of due process guarantees in military courts and public executions, it was time for Somalia to review such measures, and expressed his openness to advice on how best to address these concerns. He extended an invitation to the Independent Expert to visit the rehabilitation centre in Serendi. The Independent Expert appreciates the readiness of the Agency to open its facility for a visit.

B. Military courts

52. Military courts play a prominent role in Somalia in the context of counter-terrorism operations. Owing to the lack of security for judicial officers and prosecutors across the country, the courts hear cases that do not usually fall within their jurisdiction. Military courts have been accused of violations of fair trial guarantees. A number of people have been convicted, sentenced to death and, after hasty appeals, executed. Although civilian

judges have been trained in anti-terrorism legislation, security is often identified as the main problem for civilian courts when handling anti-terrorism cases.

VII. Freedom of expression and the media

53. During his mission, the Independent Expert raised concerns with the Minister for Information and Culture on the restrictions to freedom of expression for journalists. The media law was adopted by Cabinet in December 2015, and became law on 10 January 2016. Prior to its adoption, media stakeholders expressed their concern at its failure to comply with international human rights standards. Some of the concerns were taken into consideration, while others, such as those on the composition and the independence of the Media Commission, and the requirements for qualification or eligibility to practice journalism, were rejected, a decision that has been contested by media stakeholders.

54. Despite years of conflict and the constraints of the operating environment, the media in Somalia are vibrant, mostly in the hands of private entrepreneurs. According to UNSOM, there are 41 radio stations operating across the country, 20 newspapers and 12 Somali-language television stations, five of which operate from the United Kingdom. The State owns four radio stations, four television stations and a newspaper. Somali journalists and media owners across the country are organized in different associations, such as the Media Association of Puntland and the Somaliland Journalists Association, and other groupings, such as the Women in Journalism Association and the Somali Independent Media Houses Association, which advocate for freedom of expression and the free exercise of the profession. The role played by the media in Somalia is critical and indispensable as Somalia builds peace and democracy and consolidates the State.

55. Media stakeholders and journalists have complained about the Somalia Press Commission, which was established by the media law to promote ethics, apply the media law, mediate and resolve disputes, discipline journalists and media editors, receive complaints from journalists and other media personnel, and recommend the granting and withdrawal of accreditation and licences. The Commission is composed of three members from State-owned media, three members from the private media, and three members from civil society representing women's associations, the legal profession and the national human rights commission. The Minister for Information proposes names to the Cabinet and the President appoints them. The mode of appointment has been criticized for the lack of transparency and its potential to impinge on the independence of the Commission.

56. Some of the concerns relating to the media law include ambiguous terminology and concepts defined broadly in the law, therefore exposing journalists to restrictions in the free exercise of their profession. The media law provides for heavy penalties and fines against journalists suspected of its infringement. The Independent Expert was informed that the media in Somalia operate under severe constraints, threats and intimidation, and are banned from reporting on certain topics, often leading to self-censorship. Journalists risk being arrested for reporting on the insurgency or Al-Shabaab operations, and are themselves vulnerable to Al-Shabaab attacks.

57. The Minister for Information welcomed suggestions for the amendment to the law, adding that the Government was aware of the above-mentioned concerns. He stated that, following the adoption of the media law, journalists were free to practice their profession in Somalia, although some threatened peace and the State-building process. The media law had been adopted on the basis of a consultative approach, and had an in-built system for correcting any mistakes or problems relating to freedom of expression.

58. Physical attacks against and cases of arbitrary arrest and detention of journalists on the ground of their reporting on the political situation in view of the elections in Somaliland have increased since December 2015.

59. Some 28 journalists and media workers have reportedly been killed in the country since 2012. According to the Committee to Protect Journalists and UNSOM sources, 17 journalists were killed from January 2014 to February 2016. Al-Shabaab claimed responsibility for the killing of 10 of the journalists during attacks on beachfront complexes.

60. The Independent Expert noted the existence of two factions within the National Union of Somali Journalists, which has led to a crisis within it. In response, one of the factions submitted a complaint to a tribunal of the International Labour Organization (ILO) in November 2015 claiming that the Government was interfering with the right of journalists to organize and join trade unions. In March 2016, the ILO Governing Body adopted a recommendation in which it urged Somalia to desist from interfering with the activities of the Union and the Federation of Somali Trade Unions.

61. With regard to alleged infighting in the National Union of Somali Journalists, the Minister for Information stated that the Government had not interfered in the affairs of the Union and indeed wanted a strong union for journalists. He pointed out that the number of journalists killed in 2015 was significantly lower than in previous years and that the situation in the country was improving.

62. On 13 April 2016, the Independent Expert, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the rights to freedom of peaceful assembly and of association addressed a communication to the Government of Somalia in which they expressed grave concern at the intimidation and threats to the safety of Omar Farouk Osman, whom the federal authorities had threatened to prosecute for damaging the image of the State. Mr. Osman alleged to have been a victim of an assassination attempt by unknown persons in Mogadishu. The Independent Expert urges the authorities to investigate the attack on the journalist and to prosecute the attackers.

63. It is incumbent upon the new Government of Somalia to address the concerns of media stakeholders once it assumes office.

VIII. Role of *Xeer* and traditional elders in governance, and the administration of justice

64. In his first report to the Human Rights Council, the Independent Expert pointed out that the customary legal system known to the majority of Somali people, *Xeer*, had been applied alongside statutory law and sharia law throughout Somalia (A/HRC/27/71, paras. 40-47). Traditional elders have become central to the political process, since they elect the Parliament, which in turn elects the President.

65. *Xeer* continues to play a significant role in the administration of traditional justice in Somalia. In a meeting held with the Independent Expert on 18 April 2016 in Kismayo, traditional elders stated that it had played a key role in maintaining cohesion in Somali society, particularly during the years of conflict. The absence of such legal structures as police stations, courts and correction facilities – destroyed during more than two decades of conflict and only slowly being rebuilt – has allowed *Xeer* to continue to play its traditional role. Traditionally, it has been applied in the settlement of inter-clan disputes over land, pasture and water, and kept the peace between clans and subclans. *Xeer* is widely trusted, although some of its weaknesses need to be addressed.

66. Traditional elders adjudicate different types of cases, including cases of rape and other forms of sexual and gender-based violence. During a meeting with the Independent Expert, clan elders in Kismayo stated that they were forced to perform such functions owing to the absence of formal administrative structures in their local area. They acknowledged that they might have violated women's rights when rendering decisions under customary justice because of their lack of knowledge of human rights.

67. The Independent Expert met traditional elders and Islamic scholars from the faculty of law at both Kismayo and Jubba Universities in order to gain an insight into their views on women's rights and how they could be protected, and the role of women in the forthcoming elections. They informed him that the constitutional, electoral and State-building processes were being driven by external agendas rather than by national consensus.

68. Some of the scholars informed the Independent Expert that, according to religious teachings, women do not have a role in governance, while others asserted that there was no religious basis to exclude women from politics or governance. They stated that traditional elders and their clans did not believe that women could participate in any leadership position.

69. Traditional elders suggested that clans needed to understand that women can participate in public affairs, and that awareness-raising initiatives were necessary to that effect. They felt, however, that the time remaining before the elections was insufficient to implement such programmes; in addition, given that Somalia was governed under a secular Constitution, it was necessary for traditional elders and clan leaders to be informed about the role of women in society.

70. The scholars acknowledged that the number of women working in the public service was small. There was only one woman minister out of the 12 in the Jubbaland administration, and only three women amidst the 75 members of the regional parliament. Customary law does not allow the participation of women in councils or the meetings held by elders to adjudicate on issues relating to women's rights or to allow victims to present their case. Under the *Xeer* system, a victim of rape may be ordered to marry the perpetrator of the rape in order to preserve the honour of the woman's family.

71. The scholars also acknowledged the need for training on international human rights law to safeguard the rights of women and girls against sexual and gender-based violence, rape, early, child and forced marriage, domestic violence and female genital mutilation. Similarly, other harmful practices, such as the inheritance of a wife by the late husband's brother or by a widower, or the exchange of girls and women between clans as a form of dispute resolution, should be eliminated. They recognized that reform of the *Xeer* was necessary.

72. The Attorney General informed the Independent Expert that the Government was reviewing the traditional justice system and that the Ministry of Justice had established a traditional dispute resolution directorate to lead the review. A traditional dispute resolution policy drafted by the Government would be circulated for consultations throughout the country. It is expected that the new system will harmonize the formal and the informal justice systems, thereby gaining the trust of the populace. The Independent Expert has discussed the possibility of engaging on this important issue.

73. Reform of *Xeer* should ensure compliance with the Federal and State Constitutions and international human rights norms and standards. It should incorporate gender and clan equity in its operation and application in order to protect the rights of women, girls and minorities. In order for *Xeer* to be respected as before, clan leaders should not become involved in political matters.

IX. Refugees

74. In early May 2016, Kenya announced the closure of the Dadaab refugee camp, which has hosted thousands of Somalia refugees since the early 1990s. The decision was motivated by the increasing insecurity in Kenya and allegations that the camp had become a base for recruitment and planning of Al-Shabaab attacks on Kenyan territory. Following the announcement, on 13 May 2016 the Independent Expert held consultations with representatives of the Office of the United Nations High Commissioner for Refugees (UNHCR) in Geneva and informed the authorities of both Somalia and Kenya of the need to honour the tripartite agreement, concluded on 10 November 2013 between Somalia, Kenya and UNHCR, which outlines a framework for the repatriation of Somali refugees in safety and dignity.

75. During their meeting, the representatives of UNHCR informed the Independent Expert that, since December 2013, it had facilitated the repatriation of some 7,000 refugees. UNHCR was optimistic that repatriations would be conducted within the framework of the tripartite agreement.

X. The right to food and a livelihood

76. In 2016, the El Niño phenomenon has had an impact on parts of Somalia. The country has in the past suffered from drought, which has affected the availability of food reserves and supply. Reportedly, in some parts of Somaliland, one in 10 people is experiencing food insecurity. In Puntland, between 60 and 70 per cent of pastoral households have migrated in search of water and pasture land. According to the Rapid Results Drought Response Plan of the Food and Agriculture Organization of the United Nations (FAO), people are for various reasons suffering from loss of food and sources of income, which in turn is reducing their purchasing power and increasing debt. Some will be forced to sell their livestock, hence affecting their recovery and resilience capacity. FAO has appealed for \$17 million to help more than 1 million people to cope with food shortages and other needs.³

77. Heavy rains in the Ethiopian highlands caused flooding in Beletweyne, displacing some 70,000 people, of whom 36,000 were forced to settle in a camp, while others moved to neighbouring villages. Lifesaving sanitation and hygiene supplies, including mobile clinics, were provided. In total, about 4.7 million people in Somalia are in need of humanitarian assistance; 950,000 currently suffer from food insecurity. Overall, the 2016 humanitarian response plan of the Office for the Coordination of Humanitarian Affairs requires \$885 million, of which it has received only \$288 million.⁴

XI. Financial flows and humanitarian assistance

78. Following anti-money laundering and counter-terrorism legislation prohibiting money transfers to Somalia from Australia, the United Kingdom of Great Britain and Northern Ireland and the United States of America, the Independent Expert and the Special Rapporteur on extreme poverty and human rights, the Chair of the Working Group on the issue of human rights and transnational corporations and other business enterprises and

³ FAO *Rapid Results Drought Response Plan, Somaliland and Puntland*, 31 March 2016.

⁴ Reliefweb, *Somalia Humanitarian Snapshot* (7 June 2016), Office for the Coordination of Humanitarian Affairs.

Special Rapporteur on the promotion and protection of human rights while countering terrorism sent communications to the Governments of the three States to point out that such prohibitions had had an unjust impact on the capacity of ethnic Somalis in the diaspora remitting money to their families. Studies have shown that such a prohibition would cost the Somali economy an estimated \$1.3 billion, slightly more than the external aid by donor countries.⁵ The Governments of the three States replied that safeguards had been put in place to permit money transfers while ensuring that such funds did not finance terrorism in Somalia.

XII. Rights of ethnic minorities

79. Somalia has several minorities – the Gaboye, the Bajoun and the Bantu – and groups identified on the basis of their trades, such as blacksmiths and potters. The Bantu, the largest minority, are found mainly in the Lower Jubba area, and engage in agriculture. Many Bantus have fled the agricultural area in the Lower Jubba basin to other safer regions in south-central Somalia because of the attacks conducted by Al-Shabaab and the conflict, the drought and the inter-clan fighting over pasture lands. Minority ethnic groups do not have adequate representation under the 4.5 formula (see para. 14 above) in Somalia. Minority clans are subject to marginalization because they are not fully integrated into the clan-based political system or into other aspects of socioeconomic life in Somali society. Minorities in Somalia do not benefit from the clan protection system.

80. The Attorney General conceded that minorities did not have adequate representation in governance structures because they are poor and have to form alliances with powerful clans for their protection. According to senior State leaders, the new political framework being negotiated recognizes the need to increase participation of minorities in political structures at the local and federal levels.

XIII. Persons with disabilities

81. The Independent Expert is concerned that persons with disabilities are marginalized in Somalia. The State has not ratified the Convention on the Rights of Person with Disabilities. During one meeting, the Independent Expert was informed by representatives of civil society that persons with disabilities did not receive any support from the Government or the international community. The Government acknowledged that, despite the lack of understanding of the rights of persons with disabilities, it was committed to improving their rights. The Government should carry this commitment through. The rights of person with disabilities were not addressed by Somalia in its national report submitted to the Working Group on the Universal Periodic Review (A/HRC/WG.6/24/SOM/1). Persons with disabilities should be integrated into national governance structures, and social and economic plans.

XIV. Rights of children

82. The Independent Expert learned that, in the first half of 2016, some 8,000 cases of acute watery diarrhoea and cholera were reported in south-central Somalia, of which about

⁵ Manuel Orozco and Julia Yansura, *Keeping the Lifeline Open: Remittances and Markets in Somalia*, Oxfam America, ADESO and Inter-American Dialogue, 2013.

59 per cent of cases were children under 5 years of age. A total of 437 deaths were reported.

83. Children continue to suffer as a result of the conflict, and the lack of economic development and basic social services. Children are recruited by armed groups, in particular Al-Shabaab, mainly in Lower and Middle Jubba, in Gedo and the Lower and Middle Shabelle, where Al-Shabaab targets Somali Bantu youth and children as young as 10 years of age. More than 90 children have been captured, of whom about 66 remain in detention, while 43 have been transferred to rehabilitation facilities in Mogadishu. A few have been sentenced to death in Puntland. Orphaned children are employed as domestic servants, are poorly paid and work long hours or are involved in informal activities, such as street vending or washing cars. The accession by the State to the Convention on the Rights of the Child is a welcome development for the protection of children's rights in Somalia.

XV. African Union Mission in Somalia

84. The Independent Expert held a meeting with AMISOM leaders during his mission. He paid tribute to the sacrifices made by AMISOM soldiers and its civilian personnel, and commended the support given by the international community to its mission. The Special Representative of the Chairperson of the African Union Commission reiterated a message previously conveyed to the Assistant Secretary-General, in which he rejected allegations that AMISOM contingents had killed civilians during air strikes; thorough investigations conducted by the Intergovernmental Authority on Development and the administrative authorities of Jubbaland had in fact found that the allegations were untrue. He stated that AMISOM operations were sensitive to human rights and respect for international humanitarian law, and that AMISOM acted on all concrete reports of violations.

85. The Special Representative conceded that a vehicle carrying civilians had been attacked in Bura Maleh a few days prior to the mission of the Independent Expert because AMISOM soldiers had mistaken the vehicle's failure to stop at a checkpoint, despite the warnings given, as an attack by Al-Shabaab. AMISOM would set up a board of inquiry into the incident at both the command and headquarters levels. The board would include representatives of the police and the local community; in the interests of transparency, representatives of the United Nations, the Government and the regional authorities were also invited to observe the process. The Special Representative pointed out that AMISOM would honour the recommendations made by the board whether compensation is to be paid or the soldiers implicated court-martialled.

86. At the time of drafting the present report, the Independent Expert had not received information regarding the findings of the above-mentioned board of inquiry. With regard to the allegations of sexual abuse by AMISOM soldiers, the Special Representative informed the Independent Expert that AMISOM had taken a number of measures to prevent sexual exploitation and abuse. The camps had been sealed against any unnecessary interaction with the civilian population. Businesses had been removed from within the camps, thus reducing contacts between civilians and soldiers. A toll-free hotline managed by Somali non-governmental organizations to receive allegations of cases of sexual exploitation and abuse had been set up. Since the measures had been taken, no new allegations of sexual exploitation and abuse had been reported. The Special Representative emphasized that he had directed the force commanders to ensure that such acts do not occur again.

87. With regard to actions taken by troop-contributing countries, the Special Representative explained that they were accountable to the Peace and Security Council of the African Union. The Chairperson of the African Union Commission had set up a board

of inquiry that had found that, of 22 allegations made, 20 were baseless. He criticized Human Rights Watch for refusing to cooperate with the inquiry.

88. The Special Representative acknowledged that AMISOM had again lost territory it had recovered earlier because of failure to secure it; the situation had, however, been reversed in February 2016. He rejected the allegations that the Mission had abandoned the civilian population to Al-Shabaab, and indeed expressed satisfaction with the military campaign conducted by the Somali National Army and AMISOM forces against Al-Shabaab, and with the work done by the AMISOM police in training the Somali police force.

89. The Special Representative reiterated the need for the support of the local community and for continued capacity-building for the Somali National Army, the police and other institutions of governance. The Special Representative emphasized the need for unified training of the national army by bilateral donors, who are conducting training for the Somali National Army and the police, but without any coordination with AMISOM. He reiterated the need for a unified command and control, which at the time of the mission of the Independent Expert was not yet in place.

XVI. Conclusions

90. **In the present report, the Independent Expert has identified the progress made in the political, security, and national and State-building processes in Somalia as the State prepares for the elections to be held later in 2016, and the challenges that the Federal Government faces during that time. The newly established National Leadership Forum is addressing all concerns to create the conditions for better governance in the future. The establishment of the Forum, albeit a supra-constitutional institution, has facilitated consultations between the Federal and State authorities on urgent issues that could have otherwise undermined the elections.**

91. **The mobilization of resources and their allocation to Federal and State institutions and to civil society remains a major problem that could affect institutional capacity-building at all levels as the State struggles to consolidate peace, economic development and security. The newly adopted national development plan addresses some of these issues. The Independent Expert reiterates his view that the international community should not withhold its support for Somalia at this critical time.**

92. **The Independent Expert repeatedly identified security and economic development as a key factor in sustaining the democratic building process and the protection of human rights in Somalia. Somalia is emerging from a conflict situation that has long oppressed the enjoyment of human rights at all levels. Challenges remain with regard to respect for the rights of women, children, persons with disabilities and minorities. For historical reasons, and in spite of its imperfections, the traditional justice system, *Xeer*, continues to play a significant role in Somalia. Traditional elders have also played a crucial role in ensuring the cohesion of Somali society, but have also been accused of perpetuating the violation of women's rights. The reform of *Xeer* is timely and necessary, to harmonize it with international human rights standards. This will call for a concerted effort of awareness-raising across the country, resource mobilization and support. The institutional and legal reforms made to date could come undone if commensurate resources are not invested to consolidate them.**

93. **Humanitarian issues continue to attract the attention of the Federal Government of Somalia and the international community, particularly at this time of political transition in Somalia. The Federal Government is attempting to organize**

elections, fight the insurgency and manage State-building, besides having to address a potential massive return of refugees. In the midst of these challenges, it must not sacrifice human rights. With the support of the international community, it should continue to safeguard the rights of women, combat violence against women and children, and respect international human rights and humanitarian law as it fights Al-Shabaab. It should safeguard media freedoms and the right to freedom of expression and opinion.

XVII. Recommendations

94. In view of the foregoing, the Independent Expert recommends that Somalia:

(a) Institutionalize the National Leadership Forum as a federal institution within the permanent federal Constitution;

(b) Accede to and ratify international human rights instruments, such as the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of Persons with Disabilities, the Convention on the Prevention and Punishment of the Crime of Genocide, the Rome Statute of the International Criminal Court and Additional Protocols I, II, and III to the Geneva Conventions of 1949;

(c) Allocate and redistribute resources equitably between the Federal Government and Federal States;

(d) Establish skills development centres to empower women, young people and minorities;

(e) Ensure that the 30 per cent quota for women in Parliament is implemented during the 2016 electoral process, and that young people and persons with disabilities are represented in governance structures, including through allocations in a quota system;

(f) Guarantee the rights of journalists and the freedom of the media;

(g) Undertake an urgent review of the media law to bring it into line with international standards that guarantee freedom of expression;

(h) Investigate all cases of intimidation, threats against and killing of journalists, and prosecute perpetrators of such acts;

(i) Continue the reform of the traditional justice system, and conduct advocacy activities to ensure that traditional elders do not perpetuate discrimination and violence against women;

(j) Ensure awareness of the Sexual Offences Bill;

(k) Increase resources allocated to ministries and institutions responsible for the administration of justice and the protection of human rights, in particular the Ministry for Women and Human Rights Development at the federal and State levels, the judiciary, the police and correctional services;

(l) Continue its appointment of women to judicial and administrative posts in justice institutions.

95. The Independent Expert recommends that the international community:

(a) Continue its support for the stabilization process in Somalia by providing adequate resources to ensure the successful holding of elections;

(b) **Continue financial support for the Federal Government and AMISOM in their fight against Al-Shabaab;**

(c) **Coordinate with the Federal Government and AMISOM in the training of the Somali National Army and the police.**

96. **The Independent Expert recommends that AMISOM continue to implement its casualty tracking system in order to minimize the accidental killing of civilians, and ensure accountability for their deaths.**

97. **The Independent Experts recommends that the African Union Commission, troop-contributing countries and AMISOM ensure operational efficiency through a centralized command structure.**

98. **The Independent Expert recommends that civil society continue its advocacy work with regard to violations of the right to freedom of expression and opinion, violence against women and violations of the rights of children.**
