



General Assembly

Distr.
GENERAL

A/HRC/10/85
24 February 2009

Original: ENGLISH

HUMAN RIGHTS COUNCIL
Tenth session
Agenda item 10

TECHNICAL ASSISTANCE AND CAPACITY-BUILDING

Report of Shamsul Bari, independent expert appointed by the Human Rights Council on the situation of human rights in Somalia* **

* Late submission.

** The footnotes are reproduced as received, in the language of submission only.

Summary

The election of a new President of Somalia, Sheikh Sharif Ahmed, the expansion of the Parliament, the appointment of a government of unity, and the complete withdrawal of Ethiopian troops from Somalia in early January 2009 have created a new momentum and a window of opportunity for the implementation of the Djibouti peace agreement.

Furthermore, the feared breakdown in the security situation has not occurred so far, with Sheikh Sharif Ahmed stressing that security was a main priority, during a visit to Mogadishu immediately after his election. His assurances of an inclusive process and discussions with a wide range of groups have also been positively perceived. Elsewhere in Somalia, peaceful elections in “Puntland” in January led to the election of a new President and a Government which has made a commitment to democratization and change.

Nevertheless, many challenges lie ahead, contributing to the unpredictability of the situation. Strengthening security, including through the development of Somali transitional forces and a new civilian police force in South/Central is urgent. At the same time, the African Union Peace and Security Committee has urged the reinforcement of the African Union Mission in Somalia (AMISOM) and asked the United Nations to provide urgently needed financial and political support, which is currently under consideration.

Despite these recent political developments, all the parties to the conflict have continued to commit serious violations of international humanitarian and human rights law. Indiscriminate violence and frequent attacks against civilians continue, including the use of heavy artillery, mortars and roadside bombs; targeted attacks, abduction and killings of aid workers and human rights defenders, in particular journalists; smuggling and human trafficking; looting and extensive property destruction; as well as sexual and gender-based violence. Intensified and widespread violence, in 2008 especially, has also led to a significant increase in the number of displaced persons, which stood at a staggering 1.1 million people as of September 2008. Moreover, the right to food is severely affected by the drought and water shortages and the rights to education, health, shelter, water and sanitation are seriously challenged. All these violations and abuses of human rights and international humanitarian law are committed with total impunity.

The lack of accountability for past and current violations and abuses of human rights and international humanitarian law has further exacerbated the situation. A culture of impunity, although not new, prevails, especially in those cases where the traditional clan structure does not provide adequate protection, and most acutely in cases where the victims belong to a minority.

Although institutions are still very weak, the ongoing Djibouti peace process is the opportunity to start building the necessary structures to prevent human rights violations and abuses in the future. The establishment of the Joint Security Committee¹ and the High Level

¹ The Joint Security Committee (JSC) and the High Level Committee (HLC), as established respectively by the articles 8 and 9 of the Djibouti Agreement, are two key bodies of the peace accord chaired by the United Nations to follow up on the implementation of agreed security

Committee pursuant to the Djibouti Agreement, which strongly focus on the protection of the population with respect to human rights, constitutes a positive step in ensuring that political dialogue be continued, while also addressing issues of justice and reconciliation. The unity Government established in February 2009 must continue this focus.

On 22-23 November, the independent expert appointed by the Human Rights Council on the situation of human rights in Somalia, while on mission to the Horn of Africa, attended a preparatory meeting on justice and reconciliation organized by the United Nations Political Office for Somalia (UNPOS) Human Rights Unit (HRU) with OHCHR support, with the participation of the members of the High Level Committee, civil society delegates, and representatives from the United Nations Children's Fund (UNICEF), the United Nations Development Fund for Women (UNIFEM), the Office of the United Nations High Commissioner for Refugees (UNHCR) and the Department of Political Affairs of the Secretariat, among others. The positive outcome of the meeting was an agreement (though implementation has been delayed) to set up a working group made up of three representatives of each party, chaired by UNPOS, to review in more depth possible mechanisms such as the establishment of a commission of inquiry and/or judicial mechanisms.

Meanwhile, attacks on humanitarian aid workers and civil society continued unabated. In 2008, the conflict in Somalia took on a new dimension with targeted killings of dozens of humanitarian workers and civil society activists. On 17 October a World Food Programme (WFP) national officer was killed in Merca, as were two more in January 2009. On 19 October a UNICEF national officer was killed in Hudur. International non-governmental organizations (NGOs) and United Nations agencies have subsequently limited their actions in lower Shabelle.

In "Somaliland", Al Shabab attacked the United Nations Development Programme (UNDP) compound in Hargeisa on 29 October, killing 4, including 2 national staff members, and severely wounding 10. The attack was one in a concerted series of attacks in "Somaliland" and "Puntland", also targeting the presidential palace in Hargeisa, the Ethiopian diplomatic mission in Hargeisa and the headquarters of the "Puntland" security services in Bossaso. Owing to the security situation, all planned United Nations human rights activities inside Somalia had to be postponed, but with renewed access to some parts of the country in February, it is hoped that it will be possible to resume these.

The situation in Baidoa has also been of concern, with Al Shabaab taking control of the town in January, though high levels of violence were prevented through mediation by elders. A wave of violence at the end of 2008 led to at least two targeted killings. The deputy minister for reconciliation, Ismail Hassan Timir, was shot dead on 27 December by unidentified gunmen as he got out of his car in Baidoa. Another member of the national reconciliation commission, Abdullahi Abdi Egaal, was shot dead on 1 January 2009 in similar circumstances in the centre of Baidoa.

arrangements, including monitoring of the cease fire agreement (JSC) and to address challenges related to political, justice and reconciliation issues, including protection of civilians and respect of human rights (HLC).

Violations of freedom of expression continued to be a major concern in all parts of Somalia. Authorities in “Somaliland” and “Puntland” strictly reduced freedom of expression in the preparation for elections, although the situation appears to have improved in Puntland since the elections. In South/Central Somalia, both sides to the conflict continue to target journalists and human rights defenders. On 1 January 2009 the International Federation of Journalists (IFJ) condemned the murder of Hassan Mayow Hassan, a Somali journalist, who was shot dead in the Afgoye District of lower Shabelle region in Southern Somalia. A second journalist, the Director of Radio HornAfrik, was shot dead in Mogadishu on 3 February.

As mentioned earlier, the complete withdrawal of the Ethiopian troops from Somalia, together with the enlargement of Parliament, the election of President Sheikh Sharif, the formation of a Government of national unity under a new prime minister, create a new momentum and a window of opportunity for lasting peace and security in Somalia which must not be lost. Meanwhile, huge challenges lie ahead in terms of security, political and logistical needs.

Ethiopia’s withdrawal deprives the militant liberationists of their national appeal. In this regard, much will depend on how the security needs in Mogadishu and Baidoa, in particular, are met. Whether the international community would be able to strengthen the capacity of AMISOM, and support the establishment of functioning security forces which protect the population rather than abuse it, are all factors, including possible increasing conflict between the Islamist hardliners and the insurgent groups, will have an impact on the situation of human rights.

Before entering into the substance of my report - which covers the period from September 2008 to February 2009 - I should like to acknowledge all the help I received during the entire trip and the hospitality shown by many to me and to my Office of the High Commissioner for Human Rights (OHCHR) colleague. First and foremost, I am grateful to Idrissa Kane of OHCHR who assists me in the exercise of my mandate. I am also grateful to the United Nations offices at the various places I visited for logistical and other support they provided to us. But the support I received from UNHCR was much more than logistical.

I am grateful to UNPOS and in particular to the Special Representative of the Secretary-General for Somalia, Ahmedou Ould-Abdallah, for following me in the progress of the Djibouti Peace Accord. And finally, I would like to express my deep gratitude to the Vice-Minister for Foreign Affairs of Yemen, Ali Muthana Hassan, and the Deputy Minister for Human Rights for Yemen, Ali Saleh Taiseer, for the courtesies and hospitality they and their colleagues extended to me and my colleague during our trip to Yemen.

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
I. INTRODUCTION	1 - 5	6
II. OUTCOME OF THE DJIBOUTI PREPARATORY CONFERENCE ON JUSTICE AND RECONCILIATION	6 - 19	6
III. THE SITUATION IN SOMALIA AS GLEANED FROM TALKS WITH REFUGEES AND REFUGEE OFFICIALS IN KENYA AND YEMEN	20 - 37	9
A. Visit to Dadaab refugee camps, Kenya	21 - 23	9
B. Visits to Sana'a and Aden, Yemen	24 - 37	10
IV. INFORMATION ON THE HUMAN RIGHTS AND HUMANITARIAN LAW SITUATION IN SOMALIA GATHERED FROM THE UNITED NATIONS AND NON-GOVERNMENTAL ORGANIZATIONS	38 - 56	12
A. Human rights and humanitarian law violations in general	39 - 43	13
B. Human rights violations in relation to specific categories	44 - 53	14
C. Human rights situation in "Puntland"	54	16
D. Human rights situation in "Somaliland"	55 - 56	17
V. SOME REFLECTIONS ON THE MANDATE IN RELATION TO SOMALIA	57 - 66	17
VI. RECOMMENDATIONS	67 - 89	19

I. INTRODUCTION

1. In accordance with the mandate established by the former Commission on Human Rights in its resolution 1993/86 and with resolution 7/35 adopted at the seventh session of the Human Rights Council that renewed the mandate for a period of one year, the independent expert submits the present report to the tenth session of the Human Rights Council.
2. Appointed by the Council in March 2008, I undertook my first field visit to the Horn of Africa subregion from 28 June to 12 July 2008 and visited Kenya, Somalia, including “Puntland” and “Somaliland”, as well as Djibouti and Ethiopia. I presented my preliminary oral report to the ninth session of the Council on 19 September 2008.
3. From 22 November to 2 December 2008, I undertook my second field visit to the region to update the tenth session of the Council on the situation of human rights in Somalia. However, due to the security constraints (Mogadishu is under security Phase V while all other areas fall under Phase IV), I was not able to visit Somalia but focused on the neighbouring countries such as Kenya, including a visit to the Dadaab refugee camp. I visited Djibouti and Yemen, where I also had the opportunity to talk to newly arrived Somali refugees. The present report covers the period from September 2008 to January 2009.
4. In Kenya and Yemen I visited refugee camps and spoke with United Nations officials dealing with refugees. In Yemen, I also met with key ministers and officials of the Government involved with refugee affairs. In Djibouti, I participated in the preparatory conference on Justice and Reconciliation organized by the Special Representative of the Secretary-General for Somalia and with OHCHR as part of the Djibouti Peace Accord formalized in August 2008 between TFG and ARS. While there, I also spoke at length with the African Union Ambassador to Somalia. I had the opportunity to talk with the Special Representative of the Secretary-General for Somalia, Ahmedou Ould-Abdallah, the Somali Prime Minister Nur Hassan Hussein, the members of the Transitional Federal Parliament (TFP) and Government (TFG) as well as with many NGO representatives in Yemen and Djibouti.
5. This report will focus primarily upon (a) my participation in and the outcome of the Djibouti preparatory conference; (b) my findings on the situation in Somalia based on my talks with refugees in camps and conglomerations, as well as refugee officials, in Kenya and Yemen; and (c) information gathered on developments in the field of human rights and humanitarian law in Somalia from United Nations and NGO sources. Based on the above, I would share some personal reflections and draw a few conclusions on the challenges of my mandate. And finally, the independent expert would like to offer some recommendations for consideration by the key players concerned.

II. OUTCOME OF THE DJIBOUTI PREPARATORY CONFERENCE ON JUSTICE AND RECONCILIATION

6. This report will begin with my trip to Djibouti, for two main reasons. Not only because this was the first stop (from 22 to 26 November 2008) on my trip schedule but also because it provides a good opportunity to start with developments in the political sphere, which is inextricably linked to the human rights situation in Somalia.

7. A preparatory conference on Justice and Reconciliation was organized by the Human Rights Unit of UNPOS, together with experts from OHCHR Headquarters in Geneva. The conference was an important part in the implementation of the Djibouti Peace Agreement formalized in August 2008 between the Transitional Federal Government (TFG) and the opposition grouping known as the Alliance for the Re-Liberation of Somalia (ARS). In its article 9, the agreement had, inter alia, led to the establishment of a High Level Committee (HLC) of the parties to follow up on issues of justice and reconciliation, as well as other political matters. Those attending the meeting were members of the HLC and UNPOS, of Somali civil society representatives from African Union (AU), the Intergovernmental Authority on Development (IGAD), the European Union (EU), UNICEF, UNIFEM, UNHCR, and the Department of Political Affairs, among others.

8. The main objective of the conference was to provide the two main parties to the Djibouti Agreement with information and tools on the different types of mechanisms to be set up in the context of a transitional justice process, to highlight the need for respect for existing international framework and the development of a locally relevant process respecting that framework. The idea was to set the ball rolling in this regard.

9. The preparatory conference ended with an agreement to set up a working group made up of representatives of each party and chaired by UNPOS. The working group would make an in-depth review of possible mechanisms such as the establishment of a commission of inquiry and/or judicial mechanisms to deal with human rights and humanitarian law violations. It would present its work and proposals at a second preparatory meeting to be held in early 2009, prior to the main conference on justice and reconciliation which would take place later in the year.

10. I consider this to be a very positive development. As a participant in the conference, I was pleased by the level of commitment of the parties towards peace and reconciliation in Somalia. It will be important for UNPOS and OHCHR to take the outcome of this preparatory conference forward by ensuring proper follow-up in cooperation with the working group. The conference was very useful in providing information and initiating discussions on transitional justice issues but, as has been rightly recognized by UNPOS, it will be an uphill task to balance the time required to develop a proper, well-informed process and the security requirements on the ground for it to be put in place, and at the same time show some concrete signs of progress.

11. As the conference overlapped with a meeting of the HLC of the parties under the Djibouti Agreement, I had the opportunity to attend the signing of the decisions of the HLC on a power-sharing agreement between the TFG and the ARS. In particular, the parties agreed to establish a Unity Government and an enlarged Parliament to accommodate the opposition forces and other elements. The decisions also included, as mentioned earlier, the establishment of a working group to explore as appropriate a possible mechanism to set up a Commission of Inquiry (COI) and/or an International Tribunal to address gross violations of human rights and international humanitarian law and to move forward to end impunity and establish a system and mechanism to ensure accountability.

12. In between the meetings in Djibouti, I had the occasion to meet with senior ministers of the TFG, including the Prime Minister, the Deputy Prime Minister and the Minister for Defence. I also met with a large number of members of the Transitional Federal Parliament (TFP). Equally important was the opportunity to meet with a significant number of opposition leaders belonging

to the ARS. They reassured me of their desire for peace in Somalia. It was encouraging to learn from them that among those who are still opposed to the accord, many are gradually coming around on the side of peace. The fact remains, however, that the ARS Asmara, the remaining main opposition grouping, as well as so-called Al Shabab or other armed groups, are still a considerable force to reckon with and it will be a long way for peace to be established in Somalia, as long as they stay out of the peace process. To my mind this will be the main challenge for the TFG, ARS and the Special Representative of the Secretary-General to deal with.

13. In my talks with the then Prime Minister, Nur Hassan Hussein, I reminded him of the letter I had written to him after our first meeting in July 2008. He told me that he had read it carefully. I then shared with him my concerns about the continuing and intensified human rights and humanitarian law violations in his country in more recent months. I shall summarize his responses in the paragraphs below.

14. The Prime Minister acknowledged that the deteriorating human rights situation in Somalia was indeed a matter of concern for him and his Government. They considered that to correct the situation, the role of religion, clans and clan elders is critical. Somalia had inherited a culture where clan elders and traditional leaders used to play a protection and reconciliation role between parties in a conflict. These values have been largely destroyed in the South and Central region by war and the gunmen. Fortunately they have survived in “Somaliland” and “Puntland”. One of the Prime Minister’s goals was to help revive these traditional values in the rest of Somalia as a means to resolve the conflict and contribute to reconciliation.

15. The then Prime Minister added that, while it is indeed the task of the Government to protect human rights, his Government did not have the necessary capacity to do so, particularly when the opposition is exerting so much violence against it and the people. In order to make an impact, the TFG must have its capacity enhanced. It needs the support of the international community in this regard. The Prime Minister asked me to convey this message to the international community.

16. As examples of his Government’s achievements, the Prime Minister mentioned the recent decentralization of the Banadir Administration and the agreement between TFG and ARS on the enlargement of TFP and the establishment of a Government of National Unity. He also added that those who were displaced between Afgooye and Mogadishu in June-July welcomed the new administration of Banadir and were encouraged to return home.

17. Responding to my concern about incidents such as the stoning to death of a young girl, Aisha Ibrahim Dhuhulow, in Kismayo, on 27 October, and the recent targeting and assassination of women human rights defenders, United Nations staff and journalists, the Prime Minister told me that he was himself very saddened by what happened in Kismayo. However, because the place is outside his Government’s control, there was not much he could do about it. He feared, however, that without increased international support to the Government, such cases could occur repeatedly. He hoped that the enlargement of the Parliament and the establishment of a Government of National Unity would improve the human rights situation.

18. My talks with the then Vice Prime Minister, Ahmad Abdi Salan Haji, were equally wide-ranging. Among other things, we discussed ways and means to involve the people of Somalia directly in the peace process. We discussed at length my proposal for the use of a participatory action research (PAR) approach in Somalia, which I had recommended in my oral report to the Council at its ninth session. I was pleased to learn that he too is aware of the approach and that he had already tried it effectively at several places in Somalia. I agreed to share with him an elaboration of my idea which we could try out on a pilot basis at an appropriate time and place.

19. In Djibouti, I had also the opportunity to talk to the ambassador of the African Union (AU) to Somalia, Nicholas Bwakira, at some length. He reiterated the commitment of the AU to helping the peace process in Somalia. It may be mentioned that the same message was conveyed to me by the Chairman of the African Union, Jean Ping, whom I met last July at AU Headquarters in Addis Ababa. My discussions with Mr. Bwakira included the need to approach the League of Arab States and the Organization of Islamic Conference (OIC) for financial and other support for an international stabilization force to fill in after the withdrawal of Ethiopian troops from Somalia. I pledged my full cooperation in this regard. I have already talked to the Ambassadors of the Arab League and OIC in this regard in Geneva last September and intend to follow up with talks with senior officials at the Headquarters of these two organizations.

III. THE SITUATION IN SOMALIA AS GLEANED FROM TALKS WITH REFUGEES AND REFUGEE OFFICIALS IN KENYA AND YEMEN

20. As stated earlier, because of my inability to visit Somalia, I had put special emphasis on meeting with newly arrived Somali refugees in Kenya and Yemen and find out from them about the circumstances that led to their flight from Somalia. The following paragraphs contain some information/impressions based on my talks with them and others involved with refugee affairs.

A. Visit to Dadaab refugee camps, Kenya

21. I visited the refugee camps in Dadaab, Kenya, on 27 November 2008. I visited the same camps during my first trip in July 2008. I have included my findings from that trip in my last report to the Council. This time, the number of refugees had increased significantly. The arrivals in 2008 and, more particularly in recent months, have swelled the camp population, making Dadaab, which hosts more than 230,000 refugees, the largest refugee conglomeration in the world. The average monthly number of arrivals of Somali refugees in Kenya recently has been around 5,000, among the highest since the opening of the camps in 1991.

22. The reasons given by the newly arriving refugees for their decision to flee Somalia in such large numbers are similar to those stated in my earlier report. As in the past, the majority of the refugees I met came from Mogadishu. (According to one estimate some 870,000 persons, or almost two-thirds of the population of Mogadishu, have now fled the city, either to become refugees in Kenya or Yemen or displaced within Somalia.) They fled because of continued insecurity in civilian areas. The more articulate among them blamed all the warring parties in the conflict in Somalia - the TFG forces, the Ethiopian troops and the Islamist insurgents - for continued violence, death and destruction. All of them are said to have pursued military tactics without much concern about civilian population living in urban areas. The insurgents have

continued to employ hit-and-run guerrilla tactics, namely ambush and mortar attacks, using the civilian population as cover. The response of the TFG and Ethiopian forces, according to them, has continued to be unrestrained with indiscriminate retaliatory mortar and rocket attacks as well as artillery fires on populated neighbourhoods. They also employ indiscriminate violence during house-to-house searches for weapons and insurgents.

23. The refugees confirmed the general knowledge that the humanitarian situation in Somalia has deteriorated dramatically in recent months. This was also corroborated by refugee officials who have interviewed other refugees. Most of the people I talked to spoke about increasing success of the insurgents in bringing more and more Somali territory under their control, putting the TFG and Ethiopian forces virtually on the run. Many of them told me that they feared further chaos if the Ethiopian troops withdraw and the insurgents take over. Even in Mogadishu and Baidoa, where the TFG still had some control with the help of Ethiopian troops, there is an appearance of a state of siege.

B. Visits to Sana'a and Aden, Yemen

24. This was my first trip to Yemen as the independent expert on the situation of human rights in Somalia. In both Sana'a and Aden, UNHCR had organized a series of meetings with refugees from Somalia, most of whom were new arrivals. All those I talked to had arrived in Yemen on smugglers' boats. In Aden I met with a number of refugees who had arrived only a few weeks ago. Apart from what they told me about conditions of life in Somalia which impelled them to leave the country, the descriptions they gave me on their crossing the Gulf of Aden were horrifying and would be etched in my mind for a long time.

25. In my long career as a UNHCR official before my retirement some 10 years ago, I have dealt with many painful humanitarian situations. My memories of the suffering of the Vietnamese boat people are still fresh. But what I heard about the traumatic experiences of men, women and children who crossed the Gulf of Aden in overcrowded fishing boats for safety to Yemen has overshadowed those memories.

26. I am told that a documentary movie has been made by a French journalist/film-maker on the inhuman conditions of the journey that refugees normally undertake to arrive, dead or alive, on the shores of Yemen. The film-maker was on the journey he filmed. I have not watched the movie but I spoke with some survivors of similar journeys. Listening to them was a painful experience. They demonstrated for me how they were made to sit in rows on a small boat, pressing their knees onto their chests, with no space to move around during the entire trip. The total ban on movement on board is also imposed to ensure safety since any abrupt movement may unbalance the boat and cause it to capsize. In the absence of any other alternative, the passengers had to meet the calls of nature while seated at the same place. The trip lasts an average of 36 hours. It was difficult for me to imagine how more than 100 persons in an overcrowded boat, not fit to accommodate even half that number, are able to survive such a choppy ride, mostly in total darkness of the night. I was told that most of the people arriving after such unhygienic, sardine-like rides develop severe skin diseases and have to remain prone on the beach to slowly regain their ability to stretch their legs out.

27. Apart from conditions on the boats, the journey itself is very treacherous because of rough sea conditions. Many perish at sea when their boats capsize. Many others are thrown overboard by ruthless crew if there are differences of opinions or other altercations between them and the passengers, if the passengers disobey their orders, if the boat is deemed to be excessively crowded under given circumstances, or if their children cry or make noises that may draw attention of patrol boats nearby. Many are pushed overboard near the Yemeni shores because of fear by the smugglers of being caught by patrol boats.

28. As a result of all these hazards, out of the 43,000 persons - mostly Somalis but some Ethiopians as well - who arrived in 850 boats in Yemen through early December 2008, more than 380 persons have perished at sea and another 360 are missing. In 2007, out of 29,500 persons who arrived in Yemen by boat, again mostly Somalis, some 1,400 persons had either perished at sea or were missing.

29. In fact, on the last day of our stay in Yemen, i.e. on 2 December, UNHCR reported the drowning of at least 20 Somalis, with 2 missing, when the passengers on a boat carrying 115 persons were forced by the boat crew to jump overboard in deep water near the shore of Yemen. The problem of people thus perishing at sea and being washed ashore has assumed such a proportion that UNHCR had to intervene with the Yemeni authorities to grant burial grounds in three different sites.

30. When I spoke with the refugees about the hazards of the boat trips and asked them whether they would advise their friends and relatives back home to risk such a trip to come to Yemen, I was not surprised that many said they would, except for one who said that she would not ask her daughter, who was left behind, to take this path to escape. It was the most traumatic experience in her life. Most of the refugees gave me the same reasons for their flight as those who fled to Kenya, namely insecurity of life in Somalia (most were also from Mogadishu), loss of close family members, loss of or lack of livelihood, lack of or high cost of food etc. In describing her situation when she was in labour pain in Somalia, a woman who arrived recently told me that she had waited for an opportunity to go out of her home for medical help for more than 70 hours, but failed to do so because of raging armed conflict in her neighbourhood all that time. As a result she had to give birth at home without any help. Fortunately the child survived but for another 70 hours she was unable to go out to get food for herself. She finally decided to flee the country, leaving the child with its grandmother.

31. The above provides an eloquent picture of the desperate conditions of life in Somalia today. It is the insecurity of life, lack of food, medical service and schooling, and more importantly the lack of livelihood opportunities that cause the Somalis to flee their country. And when one recalls that this has been going on for the ordinary people for close to two decades, one can understand the extent of their desperation.

32. However, there was also a brighter side of my trip to Yemen. This relates to the generosity of the Government of Yemen not only to accept the Somalis as refugees on a prima facie basis, thereby assuring their legal stay in the country until circumstances change, but also their cooperation with the United Nations in making the lives of the refugees as bearable as possible. Given the fact that Yemen is not a resource-rich country and is a developing nation itself, this

generosity is all the more commendable. It is seldom in my long career with UNHCR that I had come across such warm acceptance of refugees by the authorities. This of course does not mean that there are no protection problems for Somali refugees in Yemen. I shall refer to them in my recommendations.

33. In the meetings I had with the Vice-Minister for Foreign Affairs, Ali Muthana Hassan, and the Deputy Minister for Human Rights, Ali Saleh Taiseer, as well as their colleagues, I was impressed by the concern and sympathy they expressed for refugees from Somalia. While reiterating the policy of the Government of Yemen to accept and host Somali refugees to the best of its ability, they also asked me to convey their plea to the international community for more burden-sharing in this regard.

34. I was also pleased to learn that the Somali refugees in Yemen have unrestricted access to all educational institutions and that the Government has made some 150 scholarships available to Somali students to study in Yemeni universities and high schools for the year 2008/09. The Vice Foreign Minister however, added that his Government would appreciate international support to address the health needs and unemployment situation of Somali refugees in Yemen.

35. In sharing his views on the situation in Somalia, Dr. Muthana stated that, unless the root causes of the conflict were addressed, it would not be possible to improve the human rights situation, noting that the withdrawal of Ethiopian troops without an alternative will make the situation worse.

36. Dr. Muthana also referred to the issue of the piracy situation which, he felt, was helping to bring back the focus on Somalia. He thought that the big powers owning merchant fleets crossing the Gulf of Aden could help to stabilize not only Somali waters but also the country. He considered that piracy was an easy way to make money. By helping villagers in Somalia with that money, pirates were perhaps gaining support of the population.

37. Among other things, he mentioned that illegal fishing and dumping of toxic waste in Somali waters by western nations was causing anger to Somalis. He thought that patrolling by NATO ships in the Gulf of Aden was also adversely affecting the activities of Yemeni fishermen and the arrival of refugee boats. The fishermen were losing their revenues and many refugee-carrying boats were being held by the International Force. He suggested that I lobby the League of Arab States and the OIC for contribution of the Gulf countries such as Saudi Arabia, Qatar, the United Arab Emirates, Oman, Bahrain and Kuwait to assist the refugees with scholarships, health and employment opportunities.

IV. INFORMATION ON THE HUMAN RIGHTS AND HUMANITARIAN LAW SITUATION IN SOMALIA GATHERED FROM THE UNITED NATIONS AND NON-GOVERNMENTAL ORGANIZATIONS

38. To obtain further information on the situation in Somalia, I also consulted United Nations officials and NGOs involved with Somalia and read their periodic reports. On the basis of these, I have put together below some additional information relating to human rights in Somalia. Most of these have been corroborated by the refugees I talked to in Yemen and Kenya.

A. Human rights and humanitarian law violations in general

39. The human rights situation in Somalia continues to be characterized by indiscriminate violence and frequent attacks against civilians, including arbitrary detention of human rights defenders, arbitrary arrests and extrajudicial killings of journalists as well as sexual- and gender-based violence. While a large section of the opposition forces grouped under the ARS has agreed to renounce violence, the remaining opposition groups, those known as ARS-Asmara and the so-called Al Shabab (or youth) have intensified their insurgency. As a result, attacks and counter-attacks between the warring factions, namely the TFG forces and the Ethiopian troops on the one hand, and the Al Shabab insurgents on the other, have been causing increased violence and violations of basic human rights and humanitarian law, in particular since April 2008.

40. A joint statement issued in October 2008 by 52 NGOs involved with Somalia, expressed concern at the impact of increasing violence on the humanitarian crisis. In addition to the large-scale displacement of the civilian population, both internally and externally, particularly from Mogadishu, the statement reported that the number of people requiring emergency aid had increased by 77 per cent since the beginning of 2008, due to the combination of extreme insecurity, drought and steep rise in food prices and was then numbering almost half of Somalia's population (3.25 million people). The statement further alleged that all parties to the conflict are responsible for indiscriminate and disproportionate use of force, and noted that increased attacks on aid workers had further hindered humanitarian efforts, especially in South and Central.

41. In its report "Fatal insecurity, attacks on aid workers and right defenders in Somalia" of October 2008, Amnesty International has reported that at least 3.25 million Somalis, 43 per cent of the population, would require food until the end of 2008 and they were at a greater risk of malnutrition and disease due to the escalation of attacks on humanitarian and aid workers in Southern and Central Somalia, and the subsequent suspension of humanitarian programmes there. According to Amnesty International, in the first nine months of 2008 alone, at least 40 humanitarian aid workers and human rights defenders were killed, mainly in targeted killings. The majority of the killings were attributed to members of armed opposition groups and criminal gangs, with a small number attributed to militias associated with the TFG or Ethiopian troops. As an indication of the gravity of the situation, it may also be mentioned that a large number of airstrips in South Central Somalia were closed, creating difficulties for the movement of all, including aid workers.

42. According to an UNPOS report of October 2008, while armed clashes have continued regularly in Mogadishu between insurgents and the Ethiopian backed-TFG forces, there have also been recent reports of an increase in targeted attacks against AMISOM troops, which allegedly led the Ugandan troops to retaliate by indiscriminately firing with artillery against residential neighbourhoods. It should be recalled that the insurgents often use civilians as human shields and abusively make use of civilian neighbourhoods and installations as a base when attacking.

43. Another report mentioned the discovery of mass graves in Belet Weyne, an important city in South Central Somalia. The identity and number of victims buried in the graves as well as the identity of alleged perpetrators is unknown. At the time of writing, as the Belet Weyne airstrip

was closed for flights of the United Nations, its personnel could not access the area to verify the allegation. It was also reported that with the withdrawal of the Ethiopian troops from Belet Weyne in November 2008, nearly all IDPs displaced to nearby areas in July, have reportedly returned home.

B. Human rights violations in relation to specific categories

44. **Right to life and physical integrity:** As is evident, the violations of these two basic rights are primarily linked to the ongoing armed conflict. Both the warring sides accuse each other of violations, the verification of which is difficult, as there is no international human rights presence on the ground. The killing of 20 women by a roadside bomb in Mogadishu and the death of more than 40 civilians on board of two buses on the road between Afgooye and Mogadishu on 15 August are just two gruesome reminders of a desperate human rights situation in Somalia, which could not be independently verified. Both sides have denied any responsibility.

45. It must be added, however, that armed conflict is not the only reason for these violations. Human rights violations are also committed by soldiers, police, warlords, clan leaders, etc. Accountability in this regard must, however, lie with the Government, since it has the primary responsibility for law enforcement and justice.

46. In the absence of effective government protection, murder, assassination, abduction and wounding by insurgent forces, criminal elements or those with personal/private axes to grind are also quite rampant. Some examples of this are:

- Insurgents continue to target civilians with links or supposed links to the TFI as well as human rights activists. Women appear to be especially targeted. As weapons with little accuracy are being used for the attacks, passers-by are often victims.
- The town of Baidoa, which is second to Mogadishu in terms of importance since the Transitional Federal Parliament (TFP) was located there, though still under nominal control of the TFG, has become precarious in recent months as the insurgents were reportedly regrouping at its periphery. In the last week of October, at least 2 civilians were killed and 4 injured in two separate attacks at the TFG Regional Security Offices and at a military convoy passing in the Telecom area, while at least 13 civilians were severely injured when insurgents fired several mortar rounds into populated areas of the town on 4 October 2008.
- On 25 October, Duniya Sheikh Doon, Chairwoman of the local IIDA branch a women's development organization and a local defender of women's rights and fighter against FGM, was killed in the town of Guriel by unknown gunmen.
- On 3 November, Mariam "Dabayarey" Aden Mohamed, Chairwoman of the Bay region women's organization, was killed in Baidoa by unknown gunmen. The previous weekend, when the Chairwoman of IIDA organization was killed in Guri-ceel Mudug Region in Central Somalia, she was worried that she too would meet the same fate.

- In Merca, three unidentified gunmen allegedly attacked an NGO vehicle on 15 October, killing the driver and injuring three staff.
- In ICU-controlled Belet Weyne, the Chairman of the Hiran Regional Council of elders, Dacar Hersi Hoshow, was killed on 7 October by two unknown gunmen. The incident led to violent street demonstrations and closure of businesses in town.
- In December, after the announcement of the withdrawal of Ethiopian troops, at least four women were killed by unknown gunmen for allegedly having had relationships with Ethiopian soldiers.

47. **Freedom of expression:** Journalists in all parts of Somalia, including “Puntland” and “Somaliland”, continued to face severe threats and intimidation by the authorities and by armed opposition groups. In South Central region, the parties to the conflict apparently try to stop the press from reporting anything that might be perceived harmful to their interest or favourable to their opponents. Authorities in Hargeisa apparently resort to administrative measures as well as arbitrary arrests and detentions to obstruct the work of the journalists and there were some instances affecting journalists in Garowe prior to the elections.

48. The 2008 annual report of the National Union of Journalists of Somalia (NUSOJ) stressed that, despite the decrease in killings of journalists in Somalia in 2008 compared to the previous year, Southern Somalia still remains the most dangerous area for journalists to work independently. Two journalists were murdered with complete impunity in Kismayo. The murder of the vice-president of NUSOJ, Naster Dahir Farah, shocked all the media workers in Somalia. In “Somaliland”, 30 journalists and media staff reportedly were arrested and released without trial. More than 30 journalists received death threats, in many cases, by individuals allegedly acting with the consent of politicians.

49. **Sexual and gender-based violence (SGBV):** Traditionally, these violations are seldom reported. However, Somali NGOs working with SGBV-victims indicated to the United Nations that this type of violence occurs on a daily basis by different controlling authorities, as part of the conflict, e.g. during cordon and search operations, or in other circumstances, often in IDP camps. Women and young girls are doubly affected, since they have no effective justice and support system to turn to and the traditional conflict resolution mechanisms at the clan level do not provide them with the necessary protection. This is because SGBV is treated more as a civil dispute than a criminal matter in Somalia.

50. A gruesome example of SGBV is the stoning to death of a young, allegedly teenaged, woman, on 27 October, at the Veko stadium in Kismayo, which was covered internationally in media. She was given a death sentence by the local court for adultery in application of sharia law. The victim, who had been raped by three men allegedly linked to the ICU, was reported to be mentally ill. During the public execution, two onlookers, including one child, were reportedly killed and three injured, when a police officer opened fire. The two other victims had tried reportedly to stop the stoning.

51. **Right to education:** As a result of armed conflicts which have lasted for close to two decades, the education sector in Somalia has been drastically affected, with most educational institutions, other than religious schools, closed, particularly in the conflict-ridden areas. However, Somalis have managed to organize an independent schooling system in many places, giving children a chance to enjoy basic education. In the last two years, however, these institutions have also been targeted by both sides to the conflict. In October and November 2008, TFG forces have reportedly closed down 34 schools, including 7 universities, for security reasons, preventing some 30,000 students from attending classes. The fact that the Deputy Prime Minister of Somalia had to publicly condemn these closures also indicated the lack of coordination between different branches of the Government that should work in a concerted team spirit.

52. **Right to health care:** With an increased part of the population in need, the chronic food insecurity and endemic high malnutrition rates, the burden on and demand for basic health services have increased in an already dilapidated health system with very low levels of service coverage and poor health indicators. The outbreaks of communicable diseases, including cholera, meningitis and measles, are recurrent due to unhygienic conditions, limited access to safe drinking water, weakened immune systems due to poor nutrition, and general livelihood distress. The situation analysis in the United Nations 2008 Somalia Consolidated Appeal (CAP) document, particularly for the South and Central regions and for IDPs in the North, highlighted the critical health care conditions. While public hospitals are destroyed by the war and do not or rarely function, a large part of the population cannot afford medical care in the limited private clinics. International assistance is also hampered by the deteriorating security situation and access. Humanitarian organizations operating in Somalia, such as CARE and Médecins sans frontières (MSF), are often targeted. Three MSF staff members were deliberately killed in Kismayo in early 2008. As I recommended in my previous report, hospitals and medical services run by the Government must be revived and revamped to bring much needed medical services to the people.

53. **Rights of the minorities:** Discrimination and abuses against minorities and vulnerable groups continue unabated. Somali minorities such as the Benadir/Rer Hamar, Midgan (Gadoye) and Tomal, in particular the African Bantu/Jarir population, who have been traditionally discriminated against in Somali society, continue to face abuses and human rights violations because of their ethnic origin. During the Siad Barre regime, the vice-president was from the minority Tomal ethnicity, and the minorities were perceived to have enjoyed some protection. However when the regime collapsed and clan protection replaced State protection, the stronger clans managed to establish their own protection mechanisms leaving the weaker minority clans virtually unprotected. The fighting in South and Central region has adversely affected their ability to earn a livelihood as labourers, metalworkers, herbalists and hunters, their traditional occupation.

C. Human rights situation in “Puntland”

54. In “Puntland”, the situation has become more volatile in recent months leading up to the elections. For example:

- One civilian was killed and another injured in the evening of 24 October, when “Puntland” police opened fire on a public mini-bus in Bossaso. On 29 October,

two suicide bombers blew up cars at “Puntland” security services headquarters in Bossasso, killing one police officer, and injuring five others. Although the attack was simultaneous with the attack in Hargeisa (see below), United Nations offices were not targeted.

- In the ongoing inter-clan violence affecting Galkayo, a North Galkayo businessman was killed by two unknown gunmen on 7 October 2008.
- “Puntland” security forces attacked a pirate ship off the Somali coast on 12 October, killing two alleged pirates and wounding four. The ship was finally taken over by the security forces after a second liberation attempt on 14 October. The crew is reportedly unharmed. “Puntland” authorities announced that judicial procedures against the pirates would be initiated.

D. Human rights situation in “Somaliland”

55. In one of the worst incidents in recent times, Al Shabaab attacked the UNDP compound in Hargeisa on 29 October, killing 4, including 2 United Nations national staff members and severely wounding 10 others. This was one in a concerted series of attacks in “Somaliland” and “Puntland”, also targeting the presidential palace and the Ethiopian diplomatic mission in Hargeisa and the headquarters of the “Puntland” security services in Bossasso. As a result, the United Nations had to relocate all international staff out of “Somaliland” until the situation could be reassessed. In “Puntland”, staff ceilings were reduced as well. Since the attack, all United Nations human rights operations inside Somalia have been impeded and had not resumed at the time of drafting this report.

56. On a more positive note, the “Somaliland” President, Dahir R. Kahin, pardoned 815 prisoners incarcerated in different regions of the country, including in Mandhera Central prison, and released 104 minors from detention returning them to the care of their families and communities.

V. SOME REFLECTIONS ON THE MANDATE IN RELATION TO SOMALIA

57. It is evident that the international regime for the protection of human rights and humanitarian law in Somalia is one of the most challenged in the world. Almost two decades of armed conflicts and the consequent absence of law and order have given rise to a culture of impunity. As a result, citizens have suffered one of the longest and most brutal humanitarian crises in the world. The only protection they are able to seek is from the traditional clan structure, which does not provide adequate protection against most serious violations and abuses, particularly for victims belonging to a minority.

58. In this context, I have often wondered whether there is much scope for me to play a meaningful role as the independent expert on the situation of human rights in Somalia. My difficulties are compounded by the imposition of travel restrictions for security reasons. How does one assess the situation on the ground effectively without visiting the country and talking to people? There are times, therefore, that I have felt frustrated and questioned myself whether I was adding any value. Even if I am able to visit some parts of the country, as I did during my

previous mission, whom do I address my concerns to and share my recommendations with in the absence of an effective and stable central Government? To whom do I channel “the flow of technical assistance to Somalia” as the Council mandates me to, when the transitional Government exercises only limited authority? And with whom would I discuss the requirements of “technical assistance” when I am unable to talk to the relevant authorities in the country because of my lack of access to many of them, except in a fleeting manner? I believe that an independent expert’s role in Somalia will only be effective when there is an effective Government on the ground. My hope is that such a day is not far off, in view of the hopeful signs on the horizon.

59. I see a catalytic role for the independent expert to play by bringing the stark realities of Somalia into sharper focus for the international community to take notice of and consider necessary measures. If I can contribute even a little to change the status of “most forgotten humanitarian crisis” which Somalia has acquired, I would feel that I have been of some use.

60. In this regard, I would like to recognize the sterling role played by the NGO community, both national and international, in bringing the inhuman suffering and unconscionable deprivations that the Somali people are going through to the attention of the international community. The international NGOs have been bringing out detailed and timely reports on the situation in Somalia for quite some time. Most of these are highly objective and extremely constructive. The recent reports of Human Rights Watch and Amnesty International contain some useful recommendations for the improvement of the situation in Somalia. In its latest report “So much to fear - war crimes and devastation of Somalia”, Human Rights Watch reiterated among other recommendations, the need for the Security Council to “establish an independent and impartial commission of inquiry to investigate and map serious crimes and recommend further measures to recommend accountability”. This NGO is convinced that the relevant data is available and in the public domain, to support the analysis of the human rights situation in Somalia, despite the challenges on the ground in terms of security and access to credible information. I would like to draw the attention of all concerned to this data.

61. On the political front, I am convinced that the peace process initiated by the Special Representative of the Secretary-General for Somalia offers the best opportunity for the return of peace and respect for human rights in Somalia. The process has come a long way in the last six months and must not be allowed to lose steam. There is an urgent need, therefore, to ensure implementation and follow-up of the various aspects of the Djibouti Agreement.

62. I was happy to participate in the follow-up process of the Djibouti Agreement. In my talks with members of the High Level Committee in Djibouti including to both the sides I sensed their fervent hope that the long dark night of suffering would come to an end sooner than later. However, as I told them, it is they who must play the key role to ensure that the process of justice and reconciliation leads to adoption of effective mechanisms to bring those responsible for the most serious violations of human rights and humanitarian law to justice, and to guarantee the rule of law. In this regard, they will, of course, need the full support of the international community.

63. Support will also be needed to rebuild institutions that have been destroyed by the war. It will be important to instil in the minds of all concerned that adequate capacity in the field of human rights is as much an integral part of an effective Government as is security, finance or foreign affairs. Other nascent institutions, such as law enforcement agencies, the judiciary and the military will also need to build the adequate human rights capacity.

64. Additionally, the capacity of independent structures, such as civil society organizations will have to be built or enhanced so that they are able to monitor independently the human rights situation. This is intrinsically linked to the constitutional process, which should provide the basis for a national structure, as well as for the engagement of civil society.

65. I agree with the assessment of the Human Rights Unit of UNPOS that until the establishment of effective national and local human rights monitoring, protection and promotion mechanisms, and until an adequate international presence is secured on the ground, all local organizations and agencies involved directly or indirectly in the protection of human rights will need to build partnerships to objectively monitor the human rights situation, and provide the Government and the opposition with the necessary support for the protection and promotion of human rights. They have rightly stated during the above-mentioned preparatory conference held in Djibouti on 21-22 November 2008 that no peace process, however ambitious it might be, will succeed, if it does not provide for the protection and promotion of human rights, justice and reconciliation. The latter can only be achieved effectively, if past violations are investigated and justice is found for the victims.

66. In this context, the international community will have to ensure that any future international involvement in Somalia, be it through peacekeeping or through reconstruction and development, includes a human rights component. Any international assistance to the Unity Government must include as a precondition that they must not only ensure the development of institutional mechanisms for the protection and promotion of human rights but also make efforts to hold accountable all those responsible for war crimes or serious human rights abuses, both past and future.

VI. RECOMMENDATIONS

67. In my oral report presented to the ninth session of the Council in September 2008, I had made a number of recommendations for different stakeholders in the Somali crisis. Most of them remain valid. I shall however add some new ones in light of my latest visit to the region and also, most especially, in the light of the election of the new president, the new extended Parliament and the Government of Unity.

Recommendations to the new Government of Unity

68. The new Government selected through the Djibouti process will have enormous challenges, one of its main initial ones being to establish itself in Somalia and tackle the issue of security, to build on the steps already taken by the new president. Recommendations could include:

- **Making human rights as the foundation of the transition; focus on protecting lives**

- Security to allow humanitarian access; measures to reopen schools and develop health care
- Ensure that the new security apparatus which should be put in place has appropriate training and structures to hold perpetrators to account and respect human rights

69. I had suggested in my last report that the Government should seriously endeavour to reopen educational institutions which were shut down for various reasons; that it should refurbish Government hospitals, clinics and other health-care facilities; that it should be seen to be making serious efforts to improve the law and situation in areas under its control. The new Government, to that end, should, for example, ensure timely disbursement of police salaries, which has been a long-standing problem. The appointment of a new administration for the Banadir region is a good beginning. In addition, the efforts of the new President and Government to draw more and more recalcitrant elements into the peace process would be a good signal for the people. A genuinely inclusive approach should become the hallmark of the Government, and I am encouraged by the initial steps taken by the President.

70. In regard to the implementation of the Djibouti peace accord, the Government must ensure that the various processes already set into motion are diligently pursued. The discussions on transitional justice mechanisms initiated at the Djibouti conference must continue not only to enhance the awareness of the people but also to promote their participation in the process. The implications of the decisions on the possible establishment of an international commission of inquiry on past human rights and humanitarian law violations in Somalia and the need for the establishment of an international tribunal for the trial of key offenders must be openly discussed. The Government should officially welcome the views of the people on these ideas. A key recommendation in my last report was to ensure people's participation in peacemaking and peacebuilding efforts. The implementation of the provisions on justice and reconciliation in the Djibouti Agreement provides a good opportunity for considering innovative ways in that regard.

71. Another follow-up measure required in connection with the peace accord is capacity-building of members of the new extended Parliament and the new Government on human rights and humanitarian law issues. I am certain that concerned United Nations agencies are ready to help the Government's efforts in this regard.

Recommendations for the Alliance for the Re-Liberation of Somalia

72. For the Alliance for the Re-Liberation of Somalia (ARS), my key recommendation is that the commitment they have shown for peace and reconciliation in Somalia by their acceptance of the Djibouti peace accord should be followed up by their continued active promotion of the accord. By doing so they will not only reassure the people of Somalia but also help others, such as Asmara-based ARS, to choose the path of peace and renounce violence.

73. ARS should also take the necessary measures to build or enhance the capacity of their members to participate constructively in the processes aimed at developing appropriate laws and institutions for a more law-based and human rights-oriented society. It should commit itself to improve the capacity of the Government of Unity and the inclusive Parliament to improve the protection of all civilians.

Recommendations to the United Nations

74. A number of United Nations bodies are deeply involved in addressing the Somalia crisis. The longest involvement has been that of the Security Council. In recent years it has discussed the situation in Somalia on many occasions, and adopted important resolutions. In my oral report to its ninth session, I made some recommendations for the Council and I continue to see the protection and promotion of human rights and humanitarian law in Somalia as inextricably linked to the political process led by the Special Representative of the Secretary-General. In furtherance of that process, I cannot overemphasize the importance of the provision of peacekeeping/stabilization forces in Somalia as foreseen in the Djibouti Agreement. While I appreciate the caution of the members of the Security Council in authorizing troops before improvement of security conditions on the ground, I think it would be prudent to take the risk in acceding to the request of the parties in this regard because a sizeable number of both Government and opposition forces, as well as the respective clans behind them, have come together under a peace agreement. If this opportunity is not seized, it is likely that the situation will get worse.

75. I encourage the Security Council to consider the proposal I made in my last report, echoing that of my predecessor as well as that of some NGOs regarding the establishment of an International Commission of Inquiry or a similar mechanism to investigate violations of human rights and humanitarian law in Somalia (at least those committed in recent years).

76. As for UNPOS, I commend the commitment of the Special Representative to contribute to end impunity and hold those responsible for serious violations of human rights and international humanitarian law accountable. On the basis of my recent talks with people belonging both to the TFG, the Djibouti-based ARS, parliamentarians, as well as newly arrived refugees in Kenya and Yemen, I am convinced that the people of Somalia are fed up with war and destruction and genuinely desire the return of peace. If my reading is correct, there may be some hope for the remaining opposition groups to listen to arguments for peace. Even if they do not respond positively, the gesture may be useful and nothing would be lost.

77. I was requested by refugees both in Kenya and Yemen to inform the Special Representative about their wish to be included in the Djibouti peace process. I therefore recommend that appropriate travel authorizations arrangements are made with relevant authorities to consider the participation of refugees in meetings of the peace process outside the country of refuge.

78. I would like to make a recommendation for consideration of the Human Rights Council, which can play an important role in drawing the terrible human rights and humanitarian law situation in Somalia to the attention of the international community. The Council could call for a special session on the situation of human rights in Somalia or at least for a panel discussion. I have recently written to a number of thematic mandate-holders on getting together under some mechanism for this purpose.

79. The recommendations I made to UNHCR in my previous report remain valid.² In addition, I would recommend that UNHCR, together with OHCHR, and the UNCT, together with the International Organization for Migration (IOM) and civil society, make further representation to the Governments of Kenya and Yemen regarding the urgent need for more land for a potential spike in arrivals of Somali refugees in Kenya and for the burial of the dead bodies from the sea drowning in Yemen.

80. UNHCR should also consider, together with other relevant agencies, to undertake awareness campaigns on the dangers of crossing the Gulf of Aden in unsafe boats. To address the root causes of smuggling and trafficking of boat-people from the port city Bossaso in Somalia, UNHCR and IOM could also consider opening sub-offices in the relatively peaceful parts of Somalia. Such offices could also consider, with international support, small reinsertion projects for prospective asylum-seekers by providing them with humanitarian assistance in safe places. This may help mitigate the flow of new asylum-seekers to neighbouring countries and even attract returnees.

Recommendations to the Government of Yemen

81. I am impressed by the commitment of the Government of Yemen to welcome and assist Somali refugees in Yemen. Its generosity is indeed commendable. However, there are a few areas where the Government could further improve the situation of the refugees, such as through the issuance/renewal of refugee identification (ID) cards. I was promised that this would be done soon. If it is not done yet, I would welcome its expedition.

82. I am encouraged that the Ministry of Human Rights proposed the establishment of an inter-ministerial Drafting Committee for National Refugee Law, including UNHCR as a member of the Committee. I was told that refugees and asylum matters are governed by various national laws and institutions, and their implementation is sometimes ad hoc, inconsistent and not in accordance with international protection principles.

² In my report to the ninth session of the Council, I recommended that UNHCR seeks ways to improve its capacity to deal with large numbers of new arrivals in the Dadaab Camps in Kenya and gives serious consideration to develop a project aimed at providing young refugee girls and boys with scholarships so that they can continue their studies at the university level after completion of secondary level studies at refugee camps. I also further welcomed the attention of the Special Rapporteur on the right to education on the matter.

83. The Government could ensure that the travel-weary newly arrived refugees are spared the occasional arrests by army/patrol boats. As the Government of Yemen does not seem to provide clear guidelines, instructions or training to/for the concerned agencies on how to comply with international refugee protection principles in the course of maintaining the integrity of Yemen's borders, the appropriate United Nations agencies and the international community generally should provide the Yemen law enforcement institutions with relevant technical cooperation in terms of capacity-building to help them comply with refugee law and human rights law.

Recommendations to the international community

84. Apart from the long-standing humanitarian crisis, Somalia has also been in news for acts of piracy. This has at least led to international attention. In dealing with piracy, the international community should also consider the circumstances contributing to this phenomenon. I was told by many Somalis whom I spoke to that their windfall income from ransom money from the pirates is providing some important services to the poverty-ridden, war-ravaged population of Somalia. There is thus a link between the situation in Somalia and piracy in Somali waters.

85. I would also urge the international community to help the Government of Somalia with financial, technical and other assistance in discharging its responsibilities. There is now a greater need for such assistance in view of the fact that the Government would have to be engaged in activities and efforts to win over the support of the population towards efforts for peace and reconciliation.

86. The international community should consider the request of the Government of Yemen, conveyed to me in the course of my trip, regarding the health-care needs of the Somali and other refugees in that country. Providing scholarships to eligible Somali refugees in Yemen and Kenya would also be a good investment for human-resource development for Somalia of the future.

Recommendations for the Office of the United Nations High Commissioner for Human Rights

87. During my trip to Yemen, UNHCR raised concerns about the human rights violations in the refugee camps in Yemen, in particular on the need to monitor and document cases of sexual and gender-based violence. Refugees are also allegedly beaten up and women are stoned by elders in the name of sharia. It would, therefore, be useful if OHCHR could develop collaboration with the Yemen Ministry of Human Rights, UNHCR, IOM and the Danish Refugee Council (DRC) offices in Yemen to monitor and document the human rights abuses in the camps and identify solutions.

88. I welcome the process of strengthening the human rights presence in Somalia within UNPOS with the proposed four international and one national staff. However, in light of the difficult security situation, as exemplified by the recent attack of 29 October on the

United Nations compound in Hargeisa, the UNPOS HRU needs to be strengthened further, including by appointing additional human rights officers to the unit, to adequately address needs related to monitoring, public reporting, advisory services and capacity-building activities.

89. I support the Human Rights Watch recommendations to OHCHR, published in its latest report “So much to fear - war crimes and devastation of Somalia”, on the need for UNPOS Human Rights Office to have further expertise [on children, and] on monitoring of sexual and gender-based violence. If monitoring inside Somalia is not possible due to security concerns, OHCHR may consider focusing on documenting the experiences of refugees in Kenya, Djibouti, and Yemen and of displaced people in Somalia.
