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TECHNICAL ASSISTANCE AND CAPACITY-BUILDING

Report of the independent expert appointed by the Secretary-General on the situation of human rights in Somalia (Mr Ghanim Alnajjar)*

* The present report was submitted after the deadline so as to include the most recent information.

Summary

Somalia in 2007 witnessed intense and repeated rounds of fighting between Ethiopia military/Somali forces and insurgent groups, particularly in the capital city of Mogadishu. It was also a year of political deadlocks and fragmentation for the Transitional Federal Institutions (TFI), some of which were finally based in Mogadishu. These military and political conflicts further weakened the fledgling TFIs and fostered an environment of impunity resulting in a marked deterioration in the already dire human rights situation in Somalia.

It must be noted that human rights in Somalia have for almost two decades been marked by widespread insecurity, extrajudicial killings and disappearances, arbitrary arrests and detentions, threats to freedom of opinion and expression, violations of the human rights of women, children and minorities, and infringements on economic, social and cultural rights. To a large extent, the present report focuses on how the conflicts of the past year have in a great many cases made the human rights situation in Somalia worse.

In the several fierce battles which took place in Mogadishu commencing in December 2006 and continuing throughout most of 2007, there were widespread reports of indiscriminate artillery fire, shelling and car bombs in civilian areas and that non-military targets, such as hospitals and schools were bombed in the fighting. It was also reported that the wounded were prevented from fleeing or from receiving humanitarian assistance and protection and that urgent deliveries of food aid and other humanitarian assistance were hampered or blocked. Cycles of massive internal displacement took place. Many of the reports suggest violations in contravention of international humanitarian law and international human rights law.

However, independent and corroborated information about the battles continues to be difficult to obtain in south and central Somalia due to the security situation and the relative weaknesses in reporting on human rights issues. What can be identified is that virtually all parties to the conflict violated human rights, that the general human rights situation has further seriously deteriorated and that civilians have overwhelmingly paid the price. The independent expert supports a thorough human rights investigation of the events of last year as well as other serious violations of Somalia's past.

The independent expert, Ghanim Alnajjar, undertook his annual mission to Kenya and Somalia from 17 to 21 September 2007. During this mission, he visited Mogadishu and Nairobi. Due to time constraints he was unable to undertake visits to "Somaliland" and "Puntland". A planned and authorized visit to Baidoa was prematurely cancelled when he was prevented by authorities from disembarking from the plane at the airport.

The expert met with various staff of the United Nations, representatives of the international community, Somali civil society, clan and tribal leaders, as well as senior officials of the TFIs, including President Abdullahi Yusuf and (then) Prime Minister Ali Mohamed Gedi. He was also able to hold productive meetings with the newly-appointed Special Representative of the Secretary-General for Somalia, Mr. Ahmedou Ould Abdallah. Despite the deterioration in Somalia in the past year, the independent expert noted optimism surrounding the appointment of the new Special Representative of the Secretary-General and the continued commitment among

the Resident and Humanitarian Coordinator, Eric Laroche, and United Nations Country Team to continue working together on the difficult issues of Somalia.

The independent expert also noted that despite the overall worsened situation, very small, yet incremental changes in terms of human rights awareness and knowledge, if not human rights compliance, were taking place in pockets around Somalia.

He encourages the international community to continue to support the Transitional Federal Government (TFG) and Somali civil society in the critical human rights work that must occur if peace and security are to prevail in Somalia. He especially underlines technical and financial support in order to establish independent national institutions, protect internally displaced persons, establish and uphold the rule of law and protect economic, social and cultural rights. The expert also underscores the need for continuing dialogue and engagement between the TFIs and the international community on human rights and humanitarian issues and urges that a standing dialogue mechanism be established in this regard.

Finally, the independent expert continues to urge the TFG and TFIs to make decisions and take actions, with the meaningful inclusion of women, minorities and civil society that promote and protect human rights in Somalia. He underlines that it is the ultimate responsibility of the Somali authorities to provide protection for the Somali people and to effectively govern the country based on the rule of law and international human rights standards.

CONTENTS

| | <i>Paragraphs</i> | <i>Page</i> |
|---|-------------------|-------------|
| Introduction | 1 – 5 | 5 |
| I. POLITICAL DEVELOPMENTS..... | 6 – 15 | 5 |
| II. HUMAN RIGHTS ABUSES DURING THE PERIOD COVERED BY THE REPORT..... | 16 – 44 | 7 |
| III. GOVERNANCE, RULE OF LAW ISSUES AND IMPUNITY.. | 45 – 53 | 13 |
| IV. INTERNALLY DISPLACED PERSONS | 54 – 59 | 14 |
| V. “MIXED MIGRATION”..... | 60 – 63 | 15 |
| VI. HUMANITARIAN ASSISTANCE..... | 64 – 67 | 16 |
| VII. FIELD VISITS | 68 – 77 | 17 |
| VIII. “SOMALILAND” | 78 – 79 | 19 |
| IX “PUNTLAND” | 80 – 81 | 19 |
| X. RECOMMENDATIONS | 82 | 20 |
| Annex | | |
| List of persons consulted | | 22 |

Introduction

1. In accordance with the mandate established by the Commission on Human Rights in its resolution 1993/86 and decision 5/1 of the Human Rights Council, the independent expert presents this report to the seventh session of the Human Rights Council. It is to be recalled that due to extreme insecurity which forestalled his planned annual mission to Somalia in early 2007, the independent expert gave a mid-term oral presentation to the fifth session of the Human Rights Council in Geneva on 12 June 2007. The present report covers the period from January 2007 to January 2008.

2. The independent expert wishes to express his gratitude to the Somali people whom he was able to meet in during this particular visit. He is always particularly impressed by the openness, dedication and bravery of such Somalis living and working under extremely difficult conditions. Despite some initial difficulties encountered with access to Baidoa, the independent expert expresses his appreciation to the Somali authorities for facilitating his visit to Mogadishu. He is grateful to President Abdullahi Yusuf, (then) Prime Minister Ali Mohamed Gedi and other members of the Transitional Federal Government (TFG) for taking the time to meet with him to discuss the human rights challenges facing Somalia and for considering ways to address them.

3. Once again, the independent expert wishes to express his particular gratitude to the professional, committed and courageous staff of the United Nations with whom he met and who shared their information and experience. Logistical, security and public relations support was ably provided by the staff of the United Nations Country Team and the Office of the Resident and Humanitarian Coordinator for Somalia, Eric Laroche. The independent expert also met with colleagues of the United Nations Political Office for Somalia (UNPOS) and the newly-appointed Special Representative of the Secretary-General, Ahmedou Ould Abdallah.

4. The independent expert also wishes to thank the representatives of the diplomatic community with whom he met in Nairobi. During various meetings, he was able to exchange views on the role and approaches of the international community with respect to Somalia.

5. Finally, the independent expert is also grateful to the representatives of the international institutions and non-governmental organizations (NGOs) such as Oxfam-NOVIB, who provided him with helpful briefings on the situation of human rights in Somalia.

I. POLITICAL DEVELOPMENTS

6. By early January 2007, TFG forces backed by Ethiopian troops dislodged the Islamic Courts Union (ICU) from south and central Somalia and took control of the capital city of Mogadishu. While the two-week military campaign was very swift with reports of violations of human rights and international humanitarian law, ICU remnants and Somali clan militias continuously challenged the authority of the TFG to govern and the presence of Ethiopian troops in Somalia, and deadly clashes between them periodically took place.

7. In February 2007, in an attempt to assist in the stabilization in south and central Somalia and in support of the TFG, the United Nations Security Council in its resolution 1744 (2007) authorized the deployment of an African Union peacekeeping force (AMISOM) for a six-month operation leading to a possible United Nations peacekeeping operation. AMISOM includes a

mandate to protect the TFG and other transitional federal institutions, but it is not mandated to protect civilians. To date, approximately 1,700 Ugandan troops and 100 Burundian troops out of a planned multi-national force of 8,000 have been deployed to Mogadishu with the intention of eventually replacing the Ethiopian troops. On 18 July 2007, the Security Council approved the extension of the AMISOM mandate a further six months to January 2008.

8. Most of 2007 saw recurrent clashes between the TFG/Somali forces, Ethiopian troops and insurgents/clan militias. Various government buildings, military installations and public figures were targeted. Two particularly heavy rounds of fierce fighting took place in Mogadishu between March and April 2007 causing high numbers of fatalities and casualties as well as massive internal displacement. Once again, there were reports of serious violations of human rights and international humanitarian law. In a statement issued on 1 May 2007, the independent expert and 12 other mandate-holders¹ expressed deep concern at the latest round of fierce fighting in Mogadishu, urging respect for international humanitarian law and calling for a cessation of hostilities. Throughout the year, intermittent but intense clashes, suicide car bombs, assassination attempts and targeted killings took place in Somalia, resulting in thousands of fatalities and casualties, destruction of property and massive internal displacement.

9. A Technical Assessment Mission (TAM) to Somalia, sent pursuant to Security Council resolution 1744 (2007), took place from 15 to 26 March 2007 charged with providing recommendations about further United Nations engagement in support of peace and security in Somalia, as well as recommendations on stabilization and reconstruction. Further to the TAM, on 24 April, the Security Council authorized the beginning of contingency planning for a possible United Nations mission for Somalia.

10. In the context of the armed conflicts in south and central Somalia, a parallel political crisis was also taking place in Somalia. While 2006 seemed to hold some promise of political consolidation and progress for Somalia, 2007 was unfortunately a year of political wrangling, fragmentation and deadlock. Under pressure of the armed insurgency, a deep conflict arose between members of the Transitional Federal Parliament and the TFG, wherein the former accused the latter of a lack of governmental financial transparency and accountability. There were also political difficulties within the TFG itself, eventually leading to the conciliatory resignation of Prime Minister Ali Mohamed Gedi in late October 2007. President Abdullahi Yusuf appointed Nur Hassan Hussein as his successor on 22 November 2007.

11. Political opposition to the TFG also continued in the form of the so-called “Asmara Group” based in Eritrea. This group comprised of former ICU members, warlords, business

¹ The Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston; the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy; the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, John Dugard; the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk; the Special Representative of the Secretary General for human rights in Cambodia, Yash Ghai; the Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes, Okechukwu Ibeanu; the Special Rapporteur on the highest attainable standard of physical and mental health, Paul Hunt; the Representative of the Secretary General on the human rights of internally displaced persons, Walter Kälin; the Special Rapporteur on adequate housing, Miloon Kothari; the Special Rapporteur on the right to education, Vernor Muñoz Villalobos, and the Special Rapporteur on the right to food, Jean Ziegler

people and clerics, primarily contests the legitimacy of the TFG and the presence of Ethiopian troops in Somalia. In 2007, the Asmara Group held a Somali Congress for the Liberation and Reconstitution (SCLR) to devise a political formula for Somalia.

12. The TFG-sponsored Somali National Reconciliation Congress, which had been delayed on three occasions due to a number of security, planning and logistical reasons, took place from 15 July to 30 August 2007 in Mogadishu. Some 1,325 delegates from within the country and the Somali diaspora attended on the basis of the “4.5 clan power-sharing formula”. The international community provided technical advice through the International Advisory Committee; however, there were concerns about the inclusiveness, the representation of civil society and minority groups, and the agenda of the Congress.

13. The independent expert has stated on several occasions that sustainable peace in Somalia can only be attained through an inclusive dialogue leading to a political solution and national reconciliation. It must be underscored that the National Reconciliation Congress is a first step within the broader framework of a longer term reconciliation process for Somalia. Somalis must be urged and supported to continue to hold public and inclusive discussions about transitional justice, reconciliation and any future processes. The “right to the truth” must be upheld on behalf of all victims and Somalis must work to ensure that impunity will not undermine the future peace of Somalia.

14. The independent expert acknowledges the regional dimensions of the conflicts and developments of the past year in Somalia. The insecurity and instability in Somalia affects its neighbours and situations such as the border impasse between Eritrea and Ethiopia or the escalation of the crisis in the Ogaden region of Ethiopia affects Somalia. Similarly, in the aftermath of the initial fighting in January 2007, ICU militia had been chased to the Kenyan border area in the south-western part of the country. Since then, the Kenyan border has been effectively “sealed” and asylum-seekers have been stranded in the border zone or have been turned back. These regional conflicts and issues also affect Somalia’s ability to secure its peace and stability.

15. Finally, the independent expert has been following Security Council discussions to establish a United Nations peacekeeping operation for Somalia in an effort to further stabilize the country and allow for a phased withdrawal of Ethiopian forces. He is supportive of a peacekeeping operation, provided that it will have a mandate to assist in the protection of civilians and that it will feature a significant human rights component. As he has advocated for several years, a human rights presence for Somalia is necessary - either as part of a peacekeeping operation or more advisable, as a separate entity. The human rights situation in Somalia is sufficiently grave that a focused human rights presence is required to monitor and report regularly on the situation and provide much-needed human rights expertise.

II. HUMAN RIGHTS ABUSES DURING THE PERIOD COVERED BY THE REPORT

16. The entire group of interdependent and universal human rights are at extreme risk in the current context of Somalia. The following summary does not intend to reflect all of the long-standing and previously documented human rights issues and violations, but presents thematically key human rights issues and abuses brought to light during the period under

consideration. The expert also notes that while the situation in Somalia has always been of serious concern, the repeated peaks of violence which occurred over the past year have reportedly led to graver and deeper violations taking place in an environment of impunity.

17. Allegations have been raised that serious violations of human rights and international humanitarian law, perpetrated by all sides, including TFG/Somali forces, Ethiopian troops and insurgents/clan militias took place during the fighting. The possibility to verify and confirm reports on human rights violations is limited. There are also concerns that an independent account of fatalities and casualties as well as of the very serious events has not been undertaken.

A. The right to life and safety and security of the person

18. As noted above, the recurrent and fierce cycles of violence in Somalia last year led to grave and widespread violations of the right to life. While there is no independent and official account, it is estimated that more than 3,500 people died and thousands were wounded as a result of the conflicts. It has also been estimated that about 60 per cent of the dead and wounded are the elderly, women and children. The situation in Mogadishu and other parts of south and central Somalia continues to be insecure and highly unstable as at the writing of this report.

19. In the several fierce battles which took place last year (particularly in Mogadishu), there were widespread reports of indiscriminate artillery fire, shelling and car bombs in civilian areas and that non-military targets, such as hospitals and schools were bombed in the fighting. It was also reported that the wounded were prevented from fleeing or from receiving humanitarian assistance and protection and that urgent deliveries of food aid and other humanitarian assistance were hampered or blocked. The fighting also resulted in massive internal displacement. The high displacement figures of 600,000 persons (in addition to the 400,000 internally displaced persons (IDP) previously displaced around Somalia) appeared to have decreased just marginally as some IDPs have reportedly returned to Mogadishu, often only to flee yet again.

B. Arbitrary arrest and detention, disappearances and summary executions

20. In early July 2007, a reported wave of arbitrary arrests and unlawful detentions took place following house-to-house searches by TFG forces/Ethiopian troops. At that time, it was reported that 1,500 persons were unaccounted for. There are also reports of persons being summarily executed and a number of civil society, human rights defenders and political leaders have been assassinated. It was alleged during the independent expert's mission that authorities had been unlawfully detaining people in hidden makeshift prisons, and well as notorious jails such as that reputed to lie underground near the State house, "Villa Somalia" in Mogadishu. There were also allegations that detainees were being held by Ethiopian forces in Somalia.

21. It was also stated that people were allegedly being captured, tortured and held for ransom by both TFG and assorted militia. There were also some reports that renditions were occurring and that detainees were being held incommunicado outside the country. It was alleged that authorities were using "security sector reform" or the "war on terror" as to conceal violations of human rights. During his mission, the expert also raised the issues of reports of persons detained in hidden prisons or alleged cases of "rendition" outside Somalia. He was told by authorities that they did not have any information about such allegations but was assured that these reports would be investigated.

C. Intentional attacks on personnel involved in humanitarian assistance

22. On 28 June 2007, Mohamed Muse Ali, Somali district programme manager of the NGO International Medical Corps (IMC) was killed by three gunmen in the town of El Berde, 250 kilometres northwest of Mogadishu. On 28 January 2008, three staff members of Médecins sans Frontières (MSF) – Holland in Somalia were killed in a roadside explosion in the town of Kismayo. Victor Okunnu, a Kenyan doctor, Damien Lehalle, a French logistician and their Somali driver, Billan were killed when their car was hit by the blast and Somali journalist, Hassan Kafi Hared, as well as a Somali boy - both who were nearby were also reportedly killed. The independent expert issued a press statement on 29 January condemning the killings of the MSF staff and all attacks on aid workers, journalists and human rights defenders in Somalia. He strongly reiterated that the international aid community must be allowed to carry out their humanitarian and human rights work in safety and without fear of retaliation. He appealed to all authorities and groups concerned to ensure safe and secure conditions for humanitarian and human rights activities and urged the Somali authorities to investigate this case and all cases in order to bring the perpetrators to justice.

23. These killings are only some examples of several direct and intentional threats to humanitarian personnel which took place in the past year. In the period covered by this report, harassment and intentional attacks on international and national personnel involved in humanitarian assistance continued to occur. Such actions threatened assistance to vulnerable persons and groups, especially the more than 1 million internally displaced persons dispersed across Somalia.

D. The right to freedom of opinion and expression

24. A pervasive climate of fear and intimidation amongst journalists and media professionals has had a chilling effect on the right to freedom of opinion and expression particularly in Mogadishu, but throughout Somalia as well. Between January 2007 and January 2008, nine media professionals were killed and dozens more threatened into silence for their work, while several fled Mogadishu in fear.

25. Somali journalist Mahad Ahmed Elmi of Capital Voice radio was shot dead near his office on 11 August 2007. Hours later, as he returned from Mr Elmi's funeral, Ali Sharmarke, founder and co-owner of HornAfrik Media, was killed when his car was reportedly hit by a remotely detonated landmine explosion. In December 2007, a group of 24 journalists from Mogadishu who had sought safe haven in Hargeisa in "Somaliland" were then expelled by authorities a few weeks later. These are only a few examples.

26. In the period covered by the report, there were several other attacks by clan militia as well as Government authorities on the media and threats to freedom of the press, including cases of censorship, banning of journalists, arbitrary detention and torture of media personnel. It was also raised that journalists were at times labelled as terrorists as a means of silencing them and that authorities have repeatedly cracked down on various media for covering the plight of civilians. Such attacks and targeted killings made Somalia the second most dangerous place in the world for journalists (according to *Reporters Without Borders International*).

27. There was also constant intimidation which caused some media outlets to self-censor their reporting or there were outright attacks on media premises causing them to cease operations. For example, from 19 to 20 September 2007, the premises of the Radio Shabelle network came under intense gunfire trapping a technician inside and forcing its closure and termination of media activities. This attack was allegedly carried out by government forces. In addition, following months of intimidation and harassment, by November, three media organisations - Shabelle Media Network, Banadir Radio and Radio Simba, were effectively closed by the TFIs.

28. The independent expert has learned that in almost all cases, no investigations have been carried out and no perpetrators have been brought to justice. Last year, he continually condemned all these acts in public statements and private discussions and has called for investigations into all these threats, attacks and killings against the media and the prompt re-opening of the closed media organisations. He held meetings with officials in cities such as Geneva and London on this topic. He also raised this issue with authorities during his mission and was informed that some media organizations were legitimate security concerns as they were involved in terrorist activities. He was informed that the TFG condemns violence against the media and that investigations would be undertaken.

E. Economic, social and cultural rights

29. In the realms of economic, social and cultural rights, the situation is still gravely concerning. Somalia continues to be one of the poorest countries in the world and has amongst the lowest indicators for life expectancy, infant and under-five mortality, adult literacy and school enrolment. Diseases such as tuberculosis and cholera are widespread and chronic malnutrition, especially among children, is common.

30. Due to the limited influence of the TFIs and weak local authorities, basic service provision is very poor, especially in the education and health sectors. Livelihoods and the economy as a whole are susceptible to drought, flooding, conflict and bans on livestock importation. These factors presented significant obstacles to the ability of Somalis to realize the right to food, to access education and to earn livelihoods and gain employment. In addition, Somalia's pre-existing and unresolved land and property rights issues were in many ways exacerbated by the conflict, as there were further population movements of IDPs, land and property confiscation as well as evictions by authorities of people, including IDPs, from public buildings.

31. As the independent expert has stated on several previous occasions, the waters off the extensive unmonitored Somali coast are rife with human rights abuses. Unfettered fishing and environmental degradation by foreign vessels continues. Piracy – which often hampers much-needed humanitarian assistance was increasing, and in 2007 and early 2008, humanitarian aid deliveries by ship were increasingly accompanied by French and Danish navy vessels for protection. The independent expert reiterates that efforts to control and protect the coastline should be intensified. In the long term, this should be achieved through the establishment of an effective coastguard and adequate monitoring structures. To ensure coastline protection in the medium term, the independent expert calls for the establishment of an organization (similar to Somalia's current civil aviation model), mandated to safeguard the Somali coastline until such a time that the Somali authorities are able to do so.

F. Minorities

32. Discrimination and abuse of marginalized groups and minorities also appeared to continue unabated. Predominantly landless, destitute and unarmed minority groups such as the “African” Bantu/Jarir, the Benadir/Rer Hamar and the Midgan (Gaboye), were at greater risk of international displacement, discrimination, exclusion and abuse in the period covered by the report.

33. The fighting taking place in south and central Somalia also adversely affected their ability to earn a livelihood as labourers, metal-workers, herbalists and hunter-gatherers. They also reportedly faced greater difficulties in accessing humanitarian assistance and were more at risk in IDP camps. Sexual and gender-based violence and exploitation of minority women and girls, especially of the Bantu ethnic group, appeared more pronounced last year.

34. The independent expert learned that in the context of the National Reconciliation Congress, minority groups gained some recognition as a “fifth clan.” While they are still only attributed .5 of seats, the independent expert considers this a small but important gain and urges that minority groups continue to be represented, reflected and involved in Somalia’s reconciliation, constitution-drafting and governance processes.

G. The human rights of women

35. The situation of women and girls in Somalia continues to deteriorate with the massive internal displacement, militarized environment and lack of governance leading to an increase in discrimination and sexual and gender-based violence.

36. While sexual violence has always been of concern in Somalia due to the ongoing conflicts, the lack of a justice system and the limited law and order, and the huge IDP population in camps; it also proved to be the case that the peaks of violence of the past year and the deteriorating security situation had further detrimental consequences for the protection of women and girls. According to reports received from Kismayo and Mogadishu, IDP women and girls, particularly those belonging to minority groups, are increasingly becoming the targets of sexual violence by youth gangs. The lack of security in and around IDP settlements, the re-emergence of armed groups and freelance militias and the new large population of military troops have also contributed to the increase of incidents and to the atmosphere of utter impunity in which they occur. Increased and often forced prostitution has also been linked to the militarized presence in Mogadishu and south-central Somalia.

37. Outside the context of the ongoing conflicts, revenge or “honour” killings still took place and women continued to be discriminated against with regard to property rights and inheritance. The most serious forms of female genital mutilation(FGM) are still also commonly practiced.

38. The independent expert continues to advocate for the improved representation and meaningful participation of women in the TFG, Transitional federal parliament (TFP) and other government institutions. He notes, however, that among the “Financial Decisions and Suggestions of the National Reconciliation Congress” are that “women should receive their 12 per cent share in the Parliamentary seats” and that “women should get their share in the Government and Judiciary organs.”

H. The human rights of children

39. According to several sources, children featured prominently in recent fighting as active combatants – they are recruited by militias as “child recruits” and are reportedly used by insurgent groups to throw grenades for small compensation. The independent expert finds this completely unacceptable and urges all parties to immediately release from their ranks (or from detention centres where they might currently be held) all children associated with armed forces or groups. In this regard, he welcomed the recent report about Somali children in armed conflict submitted to the Security Council, pursuant to its resolution 1612 (2005).²

40. Traditional protection systems such as community and schools have been supplanted by violence, conflict and displacement. It was reported that new cases of child rape occurred every week, but that the response was often one of social denial and stigma. The numbers of orphans and street children was also increasing due to internal displacement and children were malnourished and often abused in the unregulated and haphazard IDP camps. It was noted that children of minority groups and clans faced greater discrimination and abuse.

41. The recent fighting has also severely affected school enrolment; with enrolment numbers decreased by 50 per cent from the previous year. Most Somali children have very limited chances of accessing formal education and the conflicts of the past months have only exacerbated this situation. When not in school, children were more likely to be recruited, killed or severely injured, forced into child labour and were more vulnerable to trauma and attacks. Young girls in Somalia were the most disadvantaged in accessing what little education there is available.

42. In meetings with United Nations Children’s Fund (UNICEF) officials, the independent expert learned that while UNICEF had committed to building some new schools last year, plans had been hampered by the insecurity and many of the schools which had been operational had been closed due to the insecurity.

43. UNICEF representatives also confirmed to the independent expert that the custom and practice of *asi walid*, where some parents enforced disciplinary action on their children by placing them in prison without due process continued. As a result, a very high number of children were housed with adult detainees and inmates, in gross violation of the human rights of the children. Despite his previous dialogues with TFG, “Somaliland” and “Puntland” officials, the independent expert learned that there had been little action to address these violations.

44. One positive child rights development was that the Child Justice Bill was making progress through the TFP and was expected to be passed in the coming months. During the independent expert’s meeting with (then) Prime Minister Gedi in Mogadishu, the latter agreed that Somalia must endeavour to sign and ratify the Convention on the Rights of the Child and that there should be monitoring and reporting instruments in place to support that ratification.

² S/2007/259.

III. GOVERNANCE, RULE OF LAW ISSUES AND IMPUNITY

45. Lack of governance and rule of law, weak institutions and impunity are not in and of themselves human rights issues. Rather, they are the circumstances and context which create and allow for human rights infringements and violations, enable them to continue unabated or prevent their remedy or redress. Principles of good governance and the rule of law are built on human rights standards and norms such as due process, gender equality, participation and non-discrimination.

46. It has too long been the case in Somalia that a weakly functioning central Government has resulted in an absence of order, security, the rule of law and justice. There is no central trained police service and there is often no independent and professional judiciary, which creates a climate of utter impunity. The judiciary and police or security services do not function and customary (*xeer*), Islamic law (*sharia*) and various national legal standards are applied arbitrarily in the absence of a national legal framework. Decisions are often taken by officials without regard to transparency, fairness and accountability.

47. On the second day of his mission on 18 September, the independent expert experienced first-hand arbitrary treatment when he was prevented from disembarking at the Baidoa airport despite having received prior authorization. He was obliged to return to Nairobi, where he was met with official apologies from the TFG and the promise of an investigation into the matter. Also, while on mission, the independent expert learned that the President of the Supreme Court, Yusuf Ali Harun and another judge of the Supreme Court had been arrested and that the Attorney-General, Abdullahi Dahir and his deputy had been dismissed. As at the writing of this report, the President of Supreme Court and his associate were still awaiting trial. The independent expert condemns these decisions taken without regard to rules and procedures and which clearly violate the doctrines of the separation of powers and the independence of the judiciary.

48. The independent expert contends that the most pressing governance areas in need of reform and strengthening include the executive office or cabinet, ministry of the attorney-general and the judicial branch, and ministries such as interior and those responsible for the security sector.

49. During the mission, the independent expert was updated on rule of law and security issues by colleagues of the Rule of Law and Security Program of the United Nations Development Programme (UNDP). The independent expert learned that in Baidoa there is a semblance of a law system, in which arrests and cases were being channelled through. It was also noted that in Mogadishu, cases were being considered in a new system applying a mixture of customary and civil law. Customary law was also slowly being introduced into the penal code in some courts in south and central Somalia, allowing for the enforcement of customary laws. Some local communities were also beginning to vet nominees to the judiciary in south and central Somalia.

50. The independent expert was also briefed about the introduction of a civilian advisory committee or monitoring mechanism for policing in Mogadishu. It was stated that 8 of 16 police stations were currently being monitored in order to avoid the transfer of prisoners from monitored to unmonitored prisons. In addition, monitoring ensured that persons were not

detained without cause and that detainees were allowed access to legal representation. The independent expert was urged to advocate with TFG officials the expansion of this system to the remaining prisons, to which he agreed. He learned that police trainees from all over Somalia attended the police academy in “Puntland” where they were trained in human rights, code of conducts and rules of engagement. It was also noted that United Nations training did not provide for arms training which presented a major challenge given the security environment in which heavy weaponry was widely used. One solution proposed was training and provision of equipment by bilateral partners.

51. The independent expert maintains that while some slow progress is being made with respect to police training and establishing of some courts in Somalia, the building of key state institutions with the rule of law and human rights as their cornerstone must be emphasized, strengthened and strongly supported by the international community.

52. In addition, Somalia’s Transitional Federal Charter contains positive human rights provisions, including specific reference to international human rights treaties ratified by Somalia; however, implementation of these provisions is severely lacking. It is clear that the TFIs are severely hampered in their ability to protect civilians and provide even the most basic services such as health, education, justice and security. The independent expert feels that the drafting of the national constitution will be an important next step in building such a legal framework with strong provisions for the protection of human rights.

53. During his mission, the independent expert was briefed by various sources about the intense violence and allegations of serious violations of human rights which had occurred in Mogadishu over the past year. As he has done in the past, he strongly urged for the investigation of all human rights abuses committed in Somalia, past and present. He also called for justice and accountability, so that Somalia's fragile peace will not be built on impunity.

IV. INTERNALLY DISPLACED PERSONS

54. According to United Nations estimates close to 600,000 people fled Mogadishu and surrounding areas in the past year due to the fighting. This figure is in addition to the more than 400,000 IDPs already scattered around Somalia. Many of the displaced went to outlying areas near Mogadishu, Lower and Middle Shabelle, as well as “Somaliland” and “Puntland” and beyond. It was raised during meetings with the independent expert that it appeared that many Hawiye clans had displaced further inland returning to claimed places of origin or ancestral lands.

55. Many of the people in IDP camps, when asked, stated that they would opt to return to their homes, if they were able to do so. However, difficulties associated with ancestral lands often prevented this. While many IDPs claimed to originate from a certain ancestral area, they had not in fact lived on that land for generations and often discovered that other people had been residing on these lands for a long period of time.

56. It was also discussed that the large numbers of IDPs had resulted in several unofficial IDP settlements being established. For example, on the road between Afgooye and Marka, there was an IDP settlement every 100 metres. These settlements were not acknowledged by the authorities and as a result displaced persons there received little or no humanitarian assistance.

The independent expert wishes to note that there is a divergence of opinion between Somali authorities and the international community about exact IDP figures, and that accurate figures are difficult to establish given often cyclical population movements and insecurity.

57. It was again brought to the attention of the independent expert that internally displaced persons were subject to threats, intimidation, looting, assault and sexual and gender-based violence. Due to a lack of humanitarian access, thousands of IDPs went without any form of assistance for weeks, living in the open and often forced to pay a “shade tax” to shelter from the sun and the coming rainy season. Many were and are forced to live in crowded camps where there is a lack of water, food, sanitation, basic health services and shelter and where there exist infectious diseases, like cholera.

58. It has been reported that several thousand IDPs have at various times this past year also returned to Mogadishu, when there has been a lull in the fighting. There are, however, reports that some returnees have been prevented from returning to their homes and that some are facing discrimination, confiscation of property, lack of compensation or forced relocation. There is also an ongoing issue whereby the Government has been forcibly evicting IDPs from public buildings in Mogadishu and Kismayo without offering acceptable alternatives.

59. As he has done so in the past, the independent expert maintains that Somali authorities should accept greater responsibility for the IDP population and their protection, and the international community should not be considered a substitute. Nevertheless, the United Nations and donors should increase their assistance and presence with respect to IDPs in Somalia and should be more active.

V. “MIXED MIGRATION”

60. Last year, over 23,000 “boat people” made the crossing from Bossaso in “Puntland” across the Gulf of Aden to Yemen. It is estimated that about 10,000 of these people are from Somalia. As at November 2007, it was reported that 497 people died and 524 went missing in their attempts to migrate. (IASC Migration Task Force). It is also reported that a sizeable group of the migrants are trafficked women and children.

61. During his mission, the independent expert received updates about the apparent increase in the number of migrants arriving in the north-eastern port of Bossaso in “Puntland”, hoping to make the crossing to Yemen, and from there, on to Saudi Arabia and the Gulf States. The term “mixed migration” is used because the migrants can be from various backgrounds, countries and ethnic groups, and while the causes of their migration can be economic, nomadic or forced, the migration patterns are usually linked to violent conflict and political instability in the region. He heard that many migrants became victims of attacks, theft, harassment or sexual assault in their attempt to reach the port town by road or during their “stay” in Bossaso awaiting passage. Crowded onto fishing boats, there was also the risk that they would be denied food, water and air or that human traffickers would verbally and physically abuse their human cargo or throw passengers overboard to their deaths. The independent expert deplores the conditions the migrants are forced to endure and strongly denounces those who profit from their desperation.

62. On 13 June 2007 at a parallel event during the fifth session of the Human Rights Council in Geneva, the independent expert chaired a panel discussion on the situation of human rights in

Somalia, which included representatives from Amnesty International and the East and Horn of Africa Human Rights Defenders Network. Another panellist was French filmmaker, Daniel Grandclément, who in 2006 captured one such harrowing crossing of the Gulf of Aden between Bossaso and Yemen in his film, “Les Martyrs du Golfe d’Aden”.

63. The film and the parallel event attracted some attention to this dreadful phenomenon. However, it is clear that this mixed migrant population requires protection against sexual and gender-based violence, targeted harassment, trafficking, insecurity and vulnerability to common criminality, inequitable access to social services and humanitarian assistance and forced deportation/expulsion upon arrival without respect for their right to seek asylum. The independent expert is very pleased with the good work carried out by the Mixed Migration Task Force (comprised of United Nations agencies and NGOs) and calls on international community to mobilize more funds in order for them to implement much-needed awareness-raising and protection strategies in the future.

VI. HUMANITARIAN ASSISTANCE

64. The provision of humanitarian assistance in south and central Somalia is still often problematic, and the ability of people in dire need to access humanitarian aid is hampered. Convoys delivering food and humanitarian assistance have been delayed by weeks and months and face illegal “taxation” at numerous temporary checkpoints. Food deliveries by ship have been hijacked by pirates in Somali waters and there are reports of theft of food from beneficiaries - particularly from minority groups - occurring during and immediately after food distribution.

65. Access to humanitarian assistance - such as food and basic amenities, water and sanitation, and primary medical care - is also compromised by threats and intimidation of aid personnel and the targeting of actual aid operations by various parties. In some places, aid vehicles have been shot and in the course of their work, humanitarian aid personnel are forced to navigate roads possibly mined or planted with improvised explosive devices.

66. During the independent expert’s mission, it was raised by some observers that the scale and magnitude of the human tragedy in Somalia justified a declaration of a state of emergency by the humanitarian community. It was underscored that the humanitarian needs of the civilian population, including now more than one million internally displaced persons and attacks against aid workers must be addressed and that all parties to the conflict must be pressed to preserve this vital humanitarian space.

67. The independent expert emphasized the need for the establishment of a standing dialogue/engagement mechanism for the United Nations to address humanitarian and human rights issues with the TFIs. He urges that this useful mechanism be put in place rapidly to foster understanding and communication on key human rights and humanitarian issues, possibly benefiting from the recent appointment of Prime Minister Nur Hassan Hussein and a new TFG cabinet.

VII. FIELD VISITS

A. Visit to Baidoa

68. The independent expert's mission to Somalia included a planned and authorized visit to Baidoa on 17 September 2007 in order to meet with various officials of the TFIs. Unfortunately, that morning he was prevented from disembarking the plane on arrival in Baidoa and was obliged to return to Nairobi. Following this incident, he received numerous apologies from various members of the TFG and an undertaking that the incident would be investigated. While appreciating all the apologies and explanations received after this incident, the experience starkly highlighted for the independent expert the arbitrariness of decision-making by authorities and the deficiencies in institutional structures in Somalia.

B. Visit to Mogadishu

69. On 20 September 2007, the independent expert met with President Abdullahi Yusuf. The President began by offering renewed apologies over the Baidoa incident stating that the independent expert was always welcome. The independent expert raised the issue of the negative environment for journalists and the media to which the President stated that some media organizations presented legitimate security concerns in that they were "hiding terrorists." President Yusuf also noted that human rights reports were often mere allegations by human rights organizations which very often could not be corroborated or considered credible.

70. The independent expert also met with the (then) Prime Minister of the TFG, Ali Mohamed Gedi, in Mogadishu. The latter also apologized for the Baidoa incident and assured the independent expert that those responsible would be held accountable. The independent expert then briefed the Prime Minister on his previous reports and presentations to the Human Rights Council.³ The independent expert raised several issues arising from his current mission with the Prime Minister, including reiterating his recommendation that the Somali Government sign and ratify all key international human rights instruments, as well as his opinion that the establishment of a national human rights commission would assist in addressing some of the pressing human rights challenges facing Somalia. He encouraged the TFG to request the assistance of the Human Rights Adviser deployed to the United Nations Country Team. The Prime Minister stated that the TFG remained committed to the idea of a national human rights institution and stressed that international assistance and support would be necessary in order to achieve this goal.

71. In a meeting with the Chair of the National Governance and Reconciliation Commission, Ali Mahdi, the independent expert was apprised of the outcomes of the National Reconciliation Congress. He learned that the Congress will be followed by discussions facilitated by participants within their communities in a parallel track to the constitution drafting process.

72. The independent expert also met with 15 members of the Hawiye Elders Council while in Mogadishu. The Elders expressed dissatisfaction with the presence of Ethiopian military and argued that their withdrawal presented the starting point for securing stability in Somalia. They also strongly condemned the fighting and conflicts of the past year, comparing the situation to

³ See A/HRC/5/2, A/HRC/2/CRP.2 and E/CN.4/2005/117.

that of the “genocide in Rwanda.” They also denounced the recurrent crackdowns on the media, including the latest attacks on the Shabelle media network premises.

73. The independent expert also met with some civil society representatives and journalists who reinforced many of the reports about attacks, harassment and intimidation against media personnel and human rights defenders.

C. Meetings in Nairobi

74. On various occasions during his mission, the independent expert met with the United Nations Resident and Humanitarian Coordinator for Somalia, Eric Laroche and also held meetings with several other members of the United Nations Country Team (UNCT), including UNDP, UNICEF, the Office of the United Nations High Commissioner for Refugees (UNHCR), the World Health Organization (WHO) and the Office for the Coordination of Humanitarian Affairs (OCHA). In discussions with UNCT on 21 September 2007, the independent expert briefed them on his visit to Mogadishu and his various meetings. He also underscored the human rights themes of his mission including the repeated conflicts of 2007 and its deleterious effects on human rights. The independent expert also welcomed the United Nations Transition Plan (UNTP) which provides the comprehensive framework for United Nations action in regard to Somalia and which intends to address some of the human rights issues and challenges raised by the independent expert and others.

75. The independent expert met the newly appointed Special Representative of the Secretary-General, Ahmedou Ould Abdallah and the staff of UNPOS to discuss the political developments in Somalia, strengthening the TFIs, as well as political and national reconciliation processes, including the National Reconciliation Congress.

76. The independent expert also held several meetings with representatives of interested donor countries while in Nairobi, during which he exchanged views on the situation of human rights in Somalia and he briefed them on his recent mission. During these discussions, he raised numerous human rights issues such as the human rights of women, children and minorities; the weaknesses of TFIs and the need for the improved governance and the rule of law; reconciliation processes and the right to the truth; the desperate conditions of IDPs in Somalia and the need for international support for the establishment of human rights institutions in Somalia, “Somaliland” and “Puntland”.

77. On 21 September 2007, the independent expert held a final press conference outlining the key findings of his mission. During the press conference he paid tribute to the journalists and human rights defenders who were operating under very difficult conditions in Somalia. He also underscored the importance played by civil society groups and NGOs in the absence of fully-functioning civil authorities. He encouraged the Somali authorities, as well as donors and United Nations agencies, to give increased support to these civil society organizations who are undertaking vital human rights work.

VIII. “SOMALILAND”

78. As documented in the last report of the independent expert⁴, there appeared to be progress in respect of the border dispute between “Somaliland” and “Puntland” in the regions of Eastern Sool and Sanaag. However, between April and October of last year, several clashes erupted between “Puntland” and “Somaliland” forces which resulted in an estimated thirty deaths and raised tensions over the disputed territories which had been dormant for sometime. These incidents also generated additional waves of internal displacement. The independent expert hopes that this was an errant period and that both sides will refrain from further hostilities or provocative acts.

79. Otherwise the situation in “Somaliland” was comparatively peaceful in contrast to south and central Somalia. Following the first-ever parliamentary elections in 2005, “Somaliland” continued to make incremental progress on public administration and governance. Authorities continued to undertake modest infrastructure projects and NGOs carried on with their local human rights work, albeit with little or no resources. However, in “Somaliland,” the independent expert remains concerned about police brutality, arbitrary arrests of journalists and human rights defenders, reports of impunity and so-called security committees which continue to exercise judicial responsibilities by issuing sentences without due process. During past missions to “Somaliland”, the independent expert has been impressed with the activities of the Rule of Law and Security Program of UNDP and further to his briefing while in Nairobi on this mission, it is his understanding that UNDP will expand further these activities to other parts of Somalia.

IX. “PUNTLAND”

80. In “Puntland” the issues of coastline protection, the living conditions *in* and the need for humanitarian assistance *to* IDP camps, sexual and gender-based violence, harassment of the media, and the lack of rule of law and an effective justice system continue to be problematic. “Puntland” also witnessed increased instability in the form threats to humanitarian workers, civil unrest and police brutality.

81. In 2006, and as reflected in the previous report of the independent expert, the political outlook for “Puntland” looked positive. As noted above, it appeared that both “Puntland” and “Somaliland” were reinforcing their positions in the contested Sool region, following fighting in the town of Lasanod. This seemingly renewed military conflict may threaten “Puntland”’s recent political consolidation. Once again, observers have expressed their concern over the economic crisis in “Puntland” and highlighted the risks that a lack of economic growth could also pose to the region. The independent expert continues to urge authorities to take action against the human traffickers and smugglers who are responsible for such misery and human rights abuses against the “boat people” which was mentioned in paragraphs 59 to 62 above.

⁴ A/HRC/2/CRP.2.

X. RECOMMENDATIONS

82. The independent expert:

(a) Calls upon the United Nations to encourage greater support to the Transitional Federal Institutions to press them to provide protection to the Somali population and to implement the human rights principles contained in the Transitional Federal Charter. The independent expert supports the establishment of a standing dialogue/engagement mechanism for the United Nations to address humanitarian and human rights issues with the TFIs;

(b) Calls upon the Transitional Federal Parliament and Transitional Federal Government of Somalia to ensure that human rights safeguards and principles are included in all their deliberations, documentation, institutions and actions;

(c) Calls upon all Somali authorities to provide full protection and independence for journalists and media personnel, human rights defenders and international humanitarian aid personnel operating in Somalia;

(d) Calls upon the Transitional Federal Parliament to undertake discussions to work towards signing and ratifying the core international human rights treaties, in particular the Convention on the Rights of the Child;

(e) Urges that in their engagement with the TFIs, the international community should emphasize and strongly support the building of key State institutions with the rule of law and human rights as their cornerstone;

(f) Calls upon the United Nations and the Somali authorities to increase their efforts to address the immediate humanitarian needs and protect the human rights of the approximately 1 million internally displaced persons in Somalia;

(g) Calls upon the United Nations and the international community to work with Transitional Federal Government officials to address, possibly through an inquiry or investigation, the issue of the very limited information available on the current human rights situation in Somalia and on any violations which allegedly took place in 2007 during the various rounds of fighting. Similarly, past injustices and human rights violations which have occurred during Somalia's 14-year civil conflict as well as under the previous regime must also be addressed;

(h) Calls on the Secretary-General and the Security Council to establish a committee of independent experts to examine allegations of past massive human rights violations and crimes against humanity committed in Somalia, and to report on options for how these might be addressed;

(i) Calls upon the international community to support Somalis in their reconciliation efforts and processes, bearing in mind that an event such as the recent National Reconciliation Congress is within a larger framework of reconciliation and as such is the beginning of a process which does not preclude other transitional justice initiatives or processes;

(j) Urges that in the event that a United Nations mission is authorized for Somalia, such an operation include a human rights component to conduct monitoring and investigations as well as undertaking capacity development and awareness-raising, and have a strong mandate for the protection of civilians;

(k) Urges that a human rights presence for Somalia be established, either as part of a peacekeeping operation or, more advisable, as a separate office. The human rights situation in Somalia is sufficiently grave that a focused human rights presence is required to monitor and report regularly on the situation and provide much-needed human rights expertise;

(l) Calls upon Somali authorities to establish independent human rights institutions for the protection and promotion of human rights, and encourages the United Nations agencies as well as donor countries to provide technical assistance and financial support;

(m) Calls upon all Somali authorities to pay serious attention to the protection of children and to coordinate with UNICEF and relevant international NGOs to achieve the goal of a better life for the children of Somalia;

(n) Calls upon the Transitional Federal Government to increase its support for the Ministry of Gender and Family Affairs and to keep the human rights of women at the top of their agenda. The independent expert also urges the international community and the United Nations Country Team to support projects and programmes which benefit Somalia's women;

(o) Urges the international community to reinforce their financial support and technical assistance to the Transitional Federal Parliament and Transitional Federal Government, with a view to ensuring that human rights are thoroughly integrated in the institutions, frameworks and laws which are being forged.

Annex**LIST OF PERSONS CONSULTED**

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| Mogadishu, Somalia | <p>President Abdullahi Yusuf, Somali Transitional Federal Government Prime Minister Ali Mohamed Gedi (then), Somali Transitional Federal Government Ali Mahdi, Chair of the National Governance and Reconciliation Commission Abdullahi Sheikh Ismail, Minister of Constitutional and Federal Affairs Representatives of the Hawiye Elders Council Group of journalists and media professionals</p> |
| Nairobi, Kenya | <p>Ahmedou Ould Abdallah, Special Representative of the Secretary General and Head of the United Nations Political Office for Somalia (UNPOS) Eric Laroche, United Nations Resident and Humanitarian Coordinator for Somalia Christian Balslev-Olsen, Head of UNICEF Somalia Freddie Bategereza, DDR Officer, UNPOS Anna Bengtsson, UNFPA Genevieve Boutin, Head of Office, United Nations Resident and Humanitarian Coordinator for Somalia Tariq Chaudhry, Political Affairs Officer, UNPOS Renaud Detalle, Human Rights Adviser, Office of the United Nations Resident and Humanitarian Coordinator for Somalia Rene Desiderio, UNFPA Nuradin Diriye, UNICEF Miriam Ghalmi, Human Rights Adviser, UNPOS Reena Ghelani, UN Office for the Coordination of Humanitarian Affairs - Somalia Katy Grant, UNICEF Moe Hussain, Political Adviser, UNDP Roy Mentzen, Military Adviser, UNPOS Fuad Mojallid, WHO Country Director for Somalia Bruno Mpondo, Senior Political Advisor, United Nations Political Office for Somalia (UNPOS) Tore Rose, UNDP consultant to the National Reconciliation Commission (NRC) Sidi Zahabi, Rule of Law and Security Program, UNDP/ROLS, UNDP Somalia Representatives of the United Nations Country Team</p> <p>---</p> <p>Nabeel Ashour, Ambassador of the Kingdom of Saudi Arabia to Kenya, Dean of the Diplomatic Corps and Ambassador to the Somali TFIs Matt Bryden, Somali Affairs Analyst, Development Alternatives Inc. Stefano Dejak, Ambassador, Embassy of Italy Walid Musa, Political Adviser, European Commission Delegation Senator Mario Raffaelli, Special Envoy of the Italian Government for Somalia Colonel Lisa R. Schade, Marine Corps attaché, Embassy of the United States of America Jeremie Robert, First Secretary, Embassy of France</p> <p>---</p> <p>Robert Maletta, Oxfam NOVIB Dr Ulaso, Former Central Bank Governor and Head of Hawiye/Habr/Gedir/Ayr sub-clan Political Committee Asha Hagi Elmi, SSWC (Somali NGO) Hibo Yassin, COSPE NGO</p> |
