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ADVISORY SERVICES AND TECHNICAL COOPERATION IN THE FIELD OF HUMAN RIGHTS

Situation of human rights in Somalia

Report of the Special Rapporteur, Ms. Mona Rishmawi, submitted in
accordance with Commission on Human Rights resolution 1998/59

CONTENTS

	<u>Paragraphs</u>	<u>Page</u>
I. MANDATE	1 - 7	3
II. INTRODUCTION	8 - 22	4
III. THE POLITICAL SITUATION	23 - 32	6
IV. LEGAL FRAMEWORK	33 - 39	8
V. RESPECT FOR HUMAN RIGHTS AND HUMANITARIAN LAW . .	40 - 99	11
A. Violations of the right to life	41 - 43	11
B. Intentional attacks against the civilian population and civilian objects	44 - 49	11
C. Treatment of the wounded and sick	50	12
D. Pillage	51 - 52	13

CONTENTS (continued)

	<u>Paragraphs</u>	<u>Page</u>
E. Hostage-taking	53 - 58	13
F. Conscription of children under 15	59	14
G. Irregular judiciary	60 - 73	14
H. Rape and other sexual violence	74 - 76	16
I. Discrimination against minorities	77 - 80	16
J. Displacement	81 - 99	17
VI. VISIT TO HARGEISA	100 - 130	21
A. General	101 - 113	21
B. The administration of justice	114 - 125	23
C. The mass graves	126 - 130	25
VII. BUILDING A HUMAN RIGHTS NUCLEUS IN SOMALIA	131 - 152	25
A. Office of the High Commissioner for Somalia	131 - 137	25
B. Current technical cooperation programmes in the fields of human rights	138 - 152	27
VIII. CONCLUSIONS AND RECOMMENDATIONS	153 - 157	29

I. MANDATE

1. In its resolution 1998/59 the Commission on Human Rights welcomed the report of the independent expert on the situation of human rights in Somalia (E/CN.4/1998/96) and requested her to report on the human rights situation in Somalia to the Commission at its fifty-fifth session, in particular on the basis of a detailed assessment of the means necessary to establish a programme of advisory services and technical assistance through inter alia, the contribution of agencies and programmes of the United Nations in the field, as well as of the non-governmental sector.

2. Pursuant to that request, the independent expert has been following developments in the human rights situation in Somalia. She also visited the region from 31 October to 13 November 1998. Taking base in Nairobi, Kenya, where the United Nations and international agencies that operate on Somalia are located, she carried out visits to Jowhar in the south of Somalia on 4 and 5 November 1998 and Hargeisa from 9 to 12 November 1998. An attempt to visit Puntland, in particular the towns of Garowe, Gardo and Bossaso, did not materialize for logistical reasons. Moreover, once again, the security situation did not allow the independent expert to pay even a one-day visit to Mogadishu.

3. The independent expert is grateful to all those who assisted her during this mission. Special thanks are due to the Somali human rights defenders, women's groups, other NGOs and individuals. The expert is grateful to all Somali officials who facilitated her visit and provided her with useful information.

4. The independent expert is also thankful to the staff of all the international agencies that met with her. Particular thanks are due to the Resident Humanitarian Coordinator and to the Special Representative of the Secretary-General in Somalia and their staff for their enthusiasm and support for human rights work on Somalia.

5. The independent expert wishes to thank the United Nations Development Programme (UNDP), the United Nations Political Office for Somalia (UNPOS), the United Nations Children's Fund (UNICEF), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Office of the United Nations High Commissioner for Refugees (UNHCR) and the United Nations Development Fund for Women (UNIFEM) for sharing their insights and experience with her, especially UNDP, which facilitated the mission. On 13 November 1998, the independent expert attended a regular United Nations country team meeting, which she found useful. The Expert is also thankful to the representatives of intergovernmental organizations, such as the International Organization for Migration (IOM), with whom she met, as well as those of international non-governmental organizations.

6. Thanks are also due to the representatives of various Governments, in particular, those of Denmark, Italy and the United States of America, who spared time to meet with her. Gratitude is also due to the staff of the European Commission - Somalia Unit in Nairobi.

7. On 12 November 1998, the independent expert had a fruitful meeting with Sir Kieran Prendergast, the United Nations Under-Secretary-General for Political Affairs, during his visit to Kenya in relation to the Sudan and Somalia. The objectives of the visit with regard to Somalia were to enable the Under-Secretary-General to listen to the various Somali leaders, as well as external actors, to see what conclusions could be drawn at that stage. Although the Under-Secretary-General did not go to Somalia, he met with the various Somali personalities in Nairobi. The expert discussed the human rights situation in Somalia with him. Questions relating to the integration of justice and human rights issues in the political process were also discussed. The expert was encouraged by the support he expressed for reinforcing human rights work with regard to Somalia.

II. INTRODUCTION

8. Ironically, Somalia is one of the most homogeneous countries in Africa. The vast majority of its population speak the same language, share the same ethnic and tribal background, have the same cultural heritage and practise the same religion, Islam.

9. During 1998, the complex emergency situation continued in Somalia. Most of the country remained submerged in the internal clan conflict that led to the collapse of the central government in 1991. Human life continues to be endangered by the frequent eruption of internal fighting, famine and disease.

10. Somalia is classified among the least developed countries. According to the UNDP Human Development Report 1998 Somalia, average life expectancy in Somalia is estimated at between 41 and 43 years. The mortality rate for children under five years of age exceeds 25 per cent; the primary school enrolment rate is between 13 and 16 per cent; and gross national product (GNP) per capita is between US\$ 176 and 200. ¹

11. As UNDP puts it, in most other countries, "any one of these indicators would be considered a national emergency. Yet Somalia's prolonged humanitarian crisis has raised the threshold for what is considered an emergency there - only outright famine conditions and deadly epidemics generate humanitarian response. ²

12. This humanitarian crisis is frequently attributed to the fact that minimal foreign development aid is allocated to Somalia because of the fighting, since development is not sustainable in this country. What is often overlooked, however, is that although, before 1991, Somalia received one of the highest levels per capita of foreign aid in the world, it still ranked at the bottom of the listing for development indicators, largely owing to the fact that most of the aid was spent on unsuitable projects or lost to widespread corruption. ³

13. Moreover, the daily consumption of qaat, a mildly narcotic green leaf not considered a controlled drug under United Nations conventions, by most Somali men has a serious adverse impact on Somali society. It contributes to violence within the family and diverts meagre household income away from health and educational needs. It also reduces work hours, and therefore productivity, as chewing sessions normally begin in the early afternoon.

14. Historically, Somalia mainly relied for income on the export of livestock, the most productive part of its economy. The lack of central planning, the destruction of the export infrastructure, such as ports and airports, and outbreaks of livestock disease have severely restricted this source of income. In January 1998, the United Arab Emirates announced a ban on imports of livestock from Somalia, allegedly because of Rift Valley Disease, which affects both livestock and humans. In addition a Saudi Arabian ban on imports, also in 1998, seriously affected the Somali economy and led to population displacement. This issue was discussed during a meeting of the partners of the Inter-Governmental Authority on Development (IGAD) in Rome on 19 and 20 November 1998 and it was decided that the Government of Saudi Arabia would be approached on this matter.

15. The economy is chronically short of labour. As a result, in some areas, particularly in southern Somalia, there are disturbing allegations of seasonal and ad hoc forced labour practised by the militias. Some unprotected minorities, such as the Bantus, are especially affected by this practice. Forced labour takes place in particular on banana plantations that are used by an Italian company, or on former State farms that are currently controlled by the militias. Militias force workers to work on the plantations during the harvesting season. Girls as young as six years old are forced to work.

16. In fact, children often constitute a part of the labour force. Animals are often herded by children. Only 14 to 17 per cent of children between the ages of 6 and 14 are enrolled in school.⁴ The number of boys enrolled is double that of girls. Girls often drop out of school earlier, as the family prefers to invest in a male child. This will undoubtedly have a serious adverse impact on the future participation of women in public life in Somalia, as most will be uneducated.

17. The social and political structure generally favours men. The clan, its elders and militias are the top influential forces in Somalia. The elders and militia are typically men. Although women sometimes encourage clan-based partisan politics, they often make strong calls for peace and reconciliation.

18. Also unfavourable to women is the emergence in several parts of Somalia of a cross-regional and cross-clan Islamic movement known as Al-Itihad. Although Islam has always played a strong role in the country, this fundamentalist movement has introduced a stricter interpretation of Islam to Somalia.

19. Nevertheless, women play a special role in the business community, as well as in the intergovernmental sector. The business community is gaining strength in Somalia, which reflects positively on women. It has been ensuring a level of stability in the country. For instance, businessmen were said to have been responsible for the release of the 10 workers of the International Committee of the Red Cross (ICRC) who were kidnapped in Mogadishu in April 1998 (see para. 52 below).

20. Much of the human rights abuse in Somalia is linked to control of the country's resources. Dispute over land is extremely common. Most affected by these conflicts are minority groups such as the Bantus and Rahanweyn, as will be elaborated on below.

21. On a separate issue, the independent expert remains concerned about the actions of foreign troops in Somalia in 1992 and 1993, which she discussed in her previous report (E/CN.4/1998/96). In the spring of 1998, the United States press revealed further allegations concerning the actions of United States troops in Somalia. In May 1998, a military court in Belgium sentenced a soldier to six months in prison after finding him guilty of racist behaviour while serving with the United Nations Operation in Somalia (UNOSOM) in 1993. The soldier was reportedly accused of sexually abusing a Somali girl, tying a child to a vehicle and forcing a Somali Muslim to eat pork.

22. On 23 December 1998, the Government of Italy transmitted to the independent expert the report of the Gallo Commission of Inquiry into allegations of violations of human rights committed by Italian soldiers serving with UNOSOM. The report is in Italian. The independent expert will reflect on this issue at a later stage, when an English translation is available.

III. THE POLITICAL SITUATION

23. Somalia has been without a central government since 1991 and over 30 factions are fighting in the country. Since 1995, when the mandate of the United Nations Operation in Somalia (UNOSOM) was terminated, several initiatives have been launched to bring peace to Somalia. Most, if not all, of these initiatives were encouraged by external actors. Agreements were reached by the warring factions in Nairobi in 1996, Sodere in January 1997, Sana'a in May 1997 and Cairo in May 1997. None of these agreements were honoured, however.⁵

24. Two initiatives are currently under way. The first initiative was encouraged by the League of Arab States and mediated by Egypt. A meeting was held in Cairo from 12 November to 22 December 1997 at which it was decided to convene a national reconciliation conference in the town of Baidoa, controlled by Hussein Aidid, in February 1998, which would consist of 465 delegates who would elect a presidential council and a prime minister and would adopt a transitional charter, based on a federal system. The venue of the Conference became controversial. There had been previous agreements to hold such a conference in November 1997 in Bossaso, in north-east Somalia, which is controlled by another faction, the National Salvation Council. The leaders of the National Salvation Council considered that the Cairo process intensified conflict among the factions. The unrecognized State of Somaliland also strongly criticized the Cairo process and indicated that it would not attend the Conference, as it does not consider itself part of Somalia. In any event, neither the Bossaso conference nor the Baidoa conference took place.

25. One of the main effects of the Cairo meeting was to bring together the three main Mogadishu faction leaders, Messrs. Ali Mahdi, Osman Atto and Hussein Aidid. They agreed, inter alia, to take all the necessary action to reopen the port and the airport of Mogadishu as soon as possible. However, the port and the airport remain closed at the time of writing this report.

26. Since the Cairo meeting, the factions operating in Mogadishu have been trying to negotiate a common administration. This administration, known as the Benadir government, is only supported by the three main factions, led by

Mr. Ali Mahdi, Mr. Hussein Aidid and Mr. Osman Atto. Three other factions, however, dispute the legitimacy of this administration. Its effectiveness is therefore limited.

27. Another peace initiative is under way under the auspices of IGAD, a subregional entity concerned with issues of development in the Horn of Africa, chaired by President Daniel Arap Moi of Kenya. Ethiopia is leading this initiative in close collaboration with the IGAD Partners' Forum, which comprises several international actors interested in issues relating to development in the Horn of Africa. Italy leads this group for issues concerning Somalia. Although IGAD is considered to be a weak regional forum, many States support the current IGAD initiative and consider that it needs strengthening.⁶ The process is difficult not only because it is not supported by all the factions, but because of differences of opinion between Ethiopia and Egypt on how to achieve peace in Somalia. Several meetings were held under the auspices of IGAD and its partners. The latest such meetings were held in Rome, on 16 and 17, and on 19 and 20 November 1998. The Under-Secretary-General for Political Affairs headed the United Nations delegation to this meeting.

28. The protection of human rights and respect for humanitarian law have not featured prominently in these talks. The independent expert considers that human rights, an issue that cuts across all United Nations activities, including peace-making, should be given more significance in these negotiations. Ethiopia and Egypt have a particular role to play in this regard and should call upon the warring factions in Somalia to sign undertakings at a minimum to refrain from committing the international crimes that are referred to in part III of the present report.

29. The fact that none of these initiatives have produced radical changes on the ground shows the limitations of a top-down peace-making approach in the context of Somalia. Meanwhile, local initiatives to create regional governments generate more hope, for some of them can be considered as building blocks for a federal State.

30. In addition to the self-proclaimed and unrecognized State of Somaliland, Puntland was created in 1998. Unlike Somaliland, which aspires to independence, Puntland envisages regional autonomy within Somalia. The Puntland Constitutional Conference held in Garowe between 15 May and 30 July 1998, was attended by 470 delegates from the Bari, Nugal, Sool and Sanaag regions, and by hundreds of observers from these regions. None of the delegates were women. This is typical: women throughout Somalia are not invited to any of the reconciliation meetings. They sometimes attend anyway, however.

31. The conference ended by formulating a new "social contract" as a basis for the restoration of effective State authority. The creation of Puntland and the attendance at the Conference of representatives of the Sool and Sanaag regions intensified the tension between the north-east and the north-west, since both Somaliland and Puntland claim authority over Sool and Sanaag. Proposals for the creation of Hiranland and Jubbaland, with a status similar to Puntland, are also being discussed.

32. The northern regions of Somalia are the most stable, with some form of administration, the most advanced of which is Somaliland. The rest of the country consists either of regions in crisis, such as Mogadishu and Kismayo, or regions in transition, such as Hiran and Jobba.

IV. LEGAL FRAMEWORK

33. As the independent expert pointed out in her two previous reports, as long as the warlords, the militias and other irregular armed forces continue their fight in Somalia, and until a peaceful settlement is reached, international humanitarian law relating to non-international armed conflict applies in the whole territory of Somalia, irrespective of whether a specific area is engulfed in active fighting or not. This includes the Puntland regional government in the north-east which considers itself as part of Somalia and separatist Somaliland, which is asserting independence, in the absence of international recognition of its separate status.

34. As a result, all parties to the conflict are bound by the laws and customs applicable in armed conflicts not of an international nature, which are mainly aimed at protecting the civilian population from hostilities. They prohibit deliberate attacks upon civilians and outlaw indiscriminate attacks. They forbid attacks on non-military objectives and require precautions when attacking military targets.

35. These rules are embodied in article 3 common to the four Geneva Conventions of 12 August 1949. This jus cogens provision, considered absolutely binding, constitutes the backbone of humanitarian law.⁷ It provides that

"... each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(b) taking of hostages;

(c) outrages upon personal dignity, in particular humiliating and degrading treatment;

(d) the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for."

36. Moreover, the Rome Statute of the International Criminal Court ⁸ provides an indication of what constitutes customary international law norms with regard to war crimes committed in an armed conflict not of an international character. In addition to the provisions of common article 3 of the Geneva Conventions mentioned above, the following acts are considered as war crimes under article 8 (2) (e) of the Rome Statute:

- "(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
- (ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
- (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the Law of armed conflict;
- (iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
- (v) Pillaging a town or place, even when taken by assault;
- (vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f) [of the Statute], enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;
- (vii) Conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities;
- (viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
- (ix) Killing or wounding treacherously a combatant adversary;
- (x) Declaring that no quarter will be given;
- (xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the

medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

- (xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict."

37. All the fighting forces and militias in Somalia are bound both by the provisions of common article 3 of the Geneva Conventions and by article 8 (2) (e) of the Rome Statute.

38. In addition, the Rome Statute defines crimes against humanity, which are also prohibited in the context of Somalia. Crimes against humanity are also prohibited by customary international law and it is now clearer than ever that this category of crimes applies both to government agents and to non-State actors. These crimes, enumerated in article 7 of the Statute, consist of the following acts:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, forced sterilization, or any other form of sexual violence of comparable gravity;
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law;
- (i) Enforced disappearance of persons;
- (j) The crime of apartheid;
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

The definition of these crimes is further elaborated in the Statute.

39. In addition, the Somali factions are bound by the fundamental principles of humanity, even if violations of these principles do not rise to the level of crimes. This topic is currently being considered by the United Nations

Secretary-General, as mandated by the Commission on Human Rights, and the independent expert will reflect on it as the discussion evolves.⁹

V. RESPECT FOR HUMAN RIGHTS AND HUMANITARIAN LAW

40. The ways in which some of the fundamental principles mentioned in the previous section are violated in Somalia are presented below. All the action described constitutes war crimes and/or crimes against humanity which could give rise to universal jurisdiction under customary international law. As a result, domestic courts in any country in the world could exercise jurisdiction over the individuals accused of committing such crimes and could bring them to justice. The Spanish request for the extradition of the Chilean General Pinochet when he visited the United Kingdom in October 1998, should serve as an important signal in this regard. In the light of the severity of the violations in Somalia, the establishment of an international tribunal for Somalia might be envisaged at some stage.

A. Violations of the right to life

41. Violations of the right to life are extremely common in Somalia. Civilians, in particular, children, women and the elderly are the main victims of these attacks. The independent expert was extremely saddened by the killing of Mr. Hassan Gaal, a Somali staff member of the United Nations Development Office for Somalia (UNDOS), on his way from Jowhar to Mogadishu on 4 November 1998. When the vehicle he was travelling in was about 20 kilometres away from Mogadishu, it was apparently attacked by bandits, looking for money. Six of the seven passengers were massacred; the seventh survived because the killers assumed he was dead. The United Nations agencies were deeply affected by this incident.

42. The independent expert was alarmed to learn during her visit to the hospital in Jowhar, a relatively peaceful town in southern Somalia, that two to three persons enter the hospital daily with gunshot wounds as a result of militia or bandit activities.

43. Landmines present a major threat to the right to life. In February 1998, for instance, two landmine explosions in southern Somalia killed eight people and wounded nine others. The first occurred when a vehicle ran over a landmine near the western border with Ethiopia. Clan elders in the region accused the militant Muslim faction, Al-Itihad, of planting such mines. The other explosion occurred the next day on the dusty road between Garbaharrey and El-Al, about 400 kilometres south of Mogadishu. Landmines are a serious problem in Somalia, which is considered to be one of the most mined countries in Africa.

B. Intentional attacks against the civilian population and civilian objects

44. Clan identity in Somalia is stronger than any other identity and beyond the clan there is little sense of community. To the members of a clan the lives of members of other clans simply have less meaning. This often leads to measures close to ethnic cleansing. Minority groups, such as the Bantus and the Rahanweyn, are the main victims of such attitudes.

45. Allegations of the existence of mass graves in Hargeisa and elsewhere are particularly disturbing in this regard. The independent expert examines this issue below in the section on her visit to Hargeisa (sect. VI). The report of a team of forensic experts who examined the sites in Hargeisa is provided in the addendum to the present report (E/CN.4/1999/103/Add.1).

46. In the fighting in the south of Somalia, warriors do not differentiate between combatants, civilians and those who have fallen hors de combat. The fighting factions often use what are known as "technicals", vehicles that have been converted into semi-automatic weapons, to shell areas in a massive and indiscriminate manner. The May and November 1998 fighting around the southern port town of Kismayo claimed many lives. The United Nations and the international aid agencies called for a halt to the use of force, but in vain.

47. Not only the population, but also their property is intentionally attacked. In May 1998, it was reported that during clan fighting between Mr. Hussein Aidid and General Morgan near Kismayo, the road bridge linking Kismayo and Mogadishu was destroyed by General Morgan, causing thousands to flee. The destruction of the bridge made it more difficult to reach the agricultural heartland of the lower Jubba valley and created a food emergency that was difficult for the aid agencies to tackle.

48. Often when the Habir Gedir clan of Mr. Hussein Aidid launches attacks in the Bay and Baikal regions, for instance, villages are looted and burned. The villages around Baidoa have suffered greatly, which has led to mass displacement. Villages are burned to drive the villagers from their land, thereby clearing the area of the other clan. The current occupation of Bay by the Aidid forces is said to be one of the most violent events to have occurred in southern Somalia. It should be noted, in this respect, that ordering the displacement of civilians constitutes a war crime.

49. The United Nations sent a mission to assess the humanitarian needs in the area on 9 November 1998, but the aircraft carrying the members of the mission was shot at and could not land. Another United Nations aircraft was shot at on 18 November 1998 at Bardera as it taxied to the unloading area. The front wheel and cargo bay of the aircraft were damaged. There were no casualties. The pilot was alone in the aircraft. He was extracted by the crew of another United Nations aircraft. The attacker is thought to have been angry with the United Nations for not hiring his car.

C. Treatment of the wounded and sick

50. Hospitals are often raided and civilians and sick militia members in the hospital are attacked and killed. During the independent expert's visit to the region, there was extensive fighting in Kismayo, which claimed civilian lives. The four-member team of Médecins Sans Frontières-Belgium was evacuated on 3 November 1998 because it was anticipated that if the Aidid militia, who were about 12 kilometres away from the hospital, took over, they would attack the hospital looking for wounded militia members. Expatriates were therefore evacuated. Similar action was taken in May 1998 when Kismayo was under siege, also by Aidid forces.

D. Pillage

51. Looting is carried out systematically by members of the militias and by bandits, for instance, during the occupation of the Bay and Baikal regions by the Habir Gedir clan of Mr. Hussein Aidid.

52. Tension was growing in Jowhar when the independent expert visited the town on 4 November 1998, because a businessman contracted by the United Nations to construct a bridge in Belet Weyne had decided to dismantle and loot part of the bridge in Jowhar to fulfil his contract. The United Nations had to reassure the residents of Jowhar that it did not intend to steal their bridge. As a result of this situation, United Nations aid workers were unable to go to Jowhar for several days for fear of revenge.

E. Hostage-taking

53. Abduction and hostage-taking of Somali citizens and of international relief workers have been widespread in Somalia since 1991. Aid workers are kidnapped either for ransom, or to attract attention, or in revenge by Somalis working with them who are dissatisfied with their contracts or salaries. Humanitarian agencies do not operate in areas where there is a high risk of kidnapping and hostage-taking. This inevitably leads to humanitarian crises in these areas.

54. The most serious incident of hostage-taking in 1998 involved the abduction of the 10 members of an ICRC delegation on 15 April 1998, as their aircraft landed in north Mogadishu airport. Five of the abducted were ICRC expatriate staff, two were staff of the International Federation of Red Cross and Red Crescent Societies, one was a staff member of the Somali Red Crescent Society, and two were the plane's pilots. There was one woman among the hostages. The captives included a United States citizen of Somali origin, two Swiss, a Norwegian, a German, a Belgian, a French woman and a Somali. The pilots were from Kenya and South Africa. The hostages were held for 10 days and then released. The elders of the Abgal sub-clan that controls north Mogadishu intervened for their release. There were conflicting reports about the abductors' demands.

55. The kidnapping had very serious consequences for Somalia. As a result of it, ICRC decided to withdraw its remaining expatriate staff in Somalia to Nairobi. United Nations aircraft and those of the international agencies no longer land in north Mogadishu, so that the city is even more isolated than previously.

56. This was not the only incident of kidnapping in Mogadishu in 1998. The independent expert interviewed a UNHCR staff member who had been kidnapped with two other colleagues in February 1998, also in Mogadishu. Their delegation, composed of two women and one man, had been stopped by 15 armed young people, aged about 13 to 16, as it came out of a meeting with faction leader Mr. Osman Atto, whose militia controls part of Mogadishu. The two armed guards accompanying the delegation surrendered. The delegation was brought to an abandoned house for about half an hour. It seems that the kidnapping was carried out by members of a group controlled by Mr. Atto in

order to attract his attention because they had certain grievances with him. The kidnapped persons were released half an hour later by Mr. Atto himself.

57. Piracy at sea is another source of serious concern, especially in the north-eastern zone of Somalia. Occasionally, crews and fishermen are held hostage. Two ships, one Bulgarian and one Syrian were reportedly seized by armed pirates on 13 January 1998. The Bulgarian ship, which had 11 sailors on board, was being towed by the Syrian ship, which had 22 sailors on board, because of engine failure. All 33 men were taken hostage. They were released at the end of January after a ransom was paid.

58. The crew of a ship flying the Taiwanese flag were reportedly captured and held for eight months. They were eventually released in August 1998 after payment of a large sum of money. The amount was considered as a fine imposed by the local shariah court for failure to obtain a fishing licence from the local militia controlling the area.

F. Conscription of children under 15

59. As is clear from the case of the kidnapping of UNHCR staff referred to in paragraph 54 above, children under 15 are commonly recruited by the militias. This is a war crime.

G. Irregular judiciary

60. The unified justice system collapsed in Somalia with the collapse of the central government. Various communities in Somalia apply different rules: the community elders enforce the legal framework that suits them. These rules are usually based on either the customary system, shariah, a combination of both, the laws which before Siad Barre's takeover in 1969 or during his dictatorship, or a mixture of all of them.

61. In her two previous reports (E/CN.4/1997/88 and E/CN.4/1998/96), the independent expert elaborated on some court structures, particularly in Hargeisa and Bossaso. During her latest mission, she was able to gather some information on the shariah courts that are operating in north Mogadishu.

62. The shariah courts are perceived by the population as instruments to establish some law and order in a time of anarchy and therefore help in the fight against criminality. The courts are not set up by the fundamentalist *Al-Itihad* movement, but by the faction leaders who act as interlocutors for the Somali people with the international community.

63. These courts create serious dilemmas for the international agencies whose priority is to carry out humanitarian relief work. The agencies have established as a condition for operating that there must be peace in the communities where they work. When the local community responds by establishing shariah courts that carry out corporal punishment to deter criminals and bandits, the international community is disconcerted. On the one hand, it needs tranquillity, on the other hand, tranquillity is established at the expense of human rights.

64. In Jowhar, the independent expert had the opportunity to interview a former senior judge, who explained the history and functions of the shariah court in Jowhar.

65. After the shariah court in north Mogadishu, which is under the control of Mr. Ali Mahdi, was established in 1994, it established a shariah court in Jowhar in February 1995. The Jowhar court ceased to exist in May 1998 when the judges resigned owing to conflict between the court system and Mr. Ali Mahdi.

66. The court in Jowhar was composed of 11 judges, said to have been selected by the local population, 10 of whom had been educated in mosques. One had graduated from the Teachers College in Mogadishu. All the judges were men. When asked why women were not appointed to the judiciary, the judge answered that judges must be independent. A wife was under the authority of her husband; as long as she was a wife and gave birth to his children, she could not serve as a judge. The response is an example of the deep bias against women in Somalia.

67. The court had considered civil and criminal disputes, as well as family and commercial disputes. As for the applicable law, it had enforced its understanding of the Koran and Sunna following the Shafi'i school of thought.

68. The court had considered an average of four civil cases and one criminal case a day. The criminal cases were brought to the court by the local militias. The local militias also run a prison where persons under arrest are placed.

69. The court had enforced a number of punishments, including the cutting off of hands as a punishment for theft; the cutting off of opposite hand and leg for looting and robbery; and stoning for adultery. The court had enforced five punishments of stoning. In cases of killings, and following the customary law, the killer could be spared the punishment of death if he or she paid the diya, which is a material compensation for the wrongful act.

70. The independent expert was informed that several cases of wife-beating and abuse had been brought before the court by women. The court had reportedly requested the families to mediate between the husband and the wife. Sometimes, the court also seems to have required the husband to give guarantees that he would not abuse his wife. It was also said that in some cases the court had ordered the imprisonment of husbands for wife-beating.

71. There had been no provision for appealing against decisions of the Jowhar court. However, there had been an internal review process to reconsider cases in which there was doubt.

72. The independent expert also learnt that there are five courts functioning in south Mogadishu.

73. It is essential that the international community give a clear message with regard to these courts. Mutilation, cruel treatment and torture, as well as the passing of sentences and the carrying out of executions without judgments being pronounced by a regularly constituted court that affords all

the judicial guarantees recognized as indispensable by civilized peoples, common article 3 of the Geneva Conventions, which specifies crimes that are also considered as war crimes under the Rome Statute of the International Criminal Court. An illustration of the judicial guarantees of fair trial can be found in article 14 of the International Covenant on Civil and Political Rights. It is vital that the international community does not encourage or support these war crimes. As several international agencies are planning training programmes for law enforcement agencies, including the judiciary, it should be made clear that the judiciary can be assisted only when these practices are abandoned and abolished.

H. Rape and other sexual violence

74. Gender discrimination is deeply rooted in Somali society, where the rights of women in both the private and public spheres are seriously undermined. Rape, which was uncommon in Somalia before the war, has become a weapon of war for the militia and bandits, as well as in camps for displaced persons and returnees. Women belonging to minority groups, such as the Bantus and the Rahanweyn, are particularly subject to these crimes.

75. More than 95 per cent of Somali women undergo female genital mutilation, approximately 90 per cent of them the most severe "pharaonic" form. It seems that younger women are more hesitant about the practice, while the older generation of women often support it even more than men.

76. Women now account for almost 90 per cent of the labour force in Somalia. This situation has somewhat improved their status in society. While working outside the household has given women higher status, it has not reduced their work within the household, which remains entirely their responsibility.

I. Discrimination against minorities

77. Non-discrimination is a fundamental principle embodied in the first paragraph of common article 3 of the Geneva Conventions. Although Somali society appears to be homogeneous, there are several minority groups in the country. These minorities have been the main victims of the famine and the civil war. The Bantu minority lives along the banks of the Jubba and Shabelle rivers, which constitute the life lines of Somalia. The Rahanweyn minority lives between these two rivers, in Bay and Bakool. While the Bantus are largely unarmed, the Rahanweyn Resistance Army is armed to some extent, although insignificantly compared to the other groups. Other minorities live in the coastal areas.

78. The Bantus, who are thought to descend from slaves brought to Somalia from other east African countries in the eleventh century, are considered a low-status ethnic group. They frequently suffer discriminatory practices and violence. For instance, the Bantus in the Hiran region require permission to go to Belet Weyne, the main town of the region. They have their own market and they are not allowed to mix with the rest of the population. They are brought into town for hard labour. They have less access to education and fewer economic opportunities than other Somalis. Their villages have been burnt, and Bantu women have been raped. During the civil war, the Bantu

population has been systematically pushed off their land towards the river by militias or bandits. They are now so close to the river that they face a real risk of their settlements being washed away during floods.

79. The independent expert visited the village of Mioco, near Jowhar. The village, on the bank of the river, is home to 175 families. The villagers grow their own food. There is one school in the village with one local teacher. The 45 pupils, girls and boys, study religion, basic mathematics, Somali and basic English. The Italian charity INTERSOS used to assist the school. Militias looted and destroyed the old school building, and the school is now housed in a small hut in the village. External assistance has ceased.

80. The Rahanweyn minority lives on fertile agricultural land and is more advanced in agriculture. It too has been subjected to dispossession and displacement.

J. Displacement

81. Ordering the displacement of population for reasons related to conflict constitutes a war crime under the Rome Statute, unless it is done to preserve the security of the civilians involved or military reasons so demand.

82. Since 1991, there has been a huge outflow of refugees from Somalia. Millions of Somali refugees are living in refugee camps in Kenya, Ethiopia, Djibouti and Yemen. Inside the country, there is a huge and continuous flow of the internally displaced. While UNHCR organizes relief and protection for refugees, the internally displaced receive little attention. As a result, they often cross borders and become refugees for the purpose of receiving humanitarian assistance. The movement of population between Bossaso, in Somalia, and Yemen is a clear example of this trend. UNHCR is the main international agency operating in Somalia with a significant budget. It is the only agency with an office in Hargeisa dealing only with Somaliland. This Hargeisa office is responsible directly to UNHCR Headquarters in Geneva. The rest of the country is covered from Nairobi. In addition to running the refugee camps in the above-mentioned countries, the main work of UNHCR is the repatriation of refugees on a voluntary basis.

83. UNHCR reports that 681 individuals have been repatriated from Kenya to Bossaso; 1,000 from Yemen to Mogadishu and Bossaso; 265 were repatriated from the Mombasa Camp to the islands south of Kismayo in October 1997; and 1,500 still have to be repatriated from the Jonvu Camp for juvenile refugees in Mombasa. According to UNHCR around 10,000 additional individuals have expressed their desire to be repatriated to various parts of Somalia. These repatriations will start in 1999.

84. The receptions organized for returning refugees by UNHCR differs depending on the place. In Mogadishu, for instance, UNHCR maintains a low profile. Those repatriated are provided with US\$ 75, food for three months (cereals and, depending on what is available from the World Food Programme (WFP), beans, oil, salt, etc.), blankets, construction materials for those who return to the islands and transportation to their places of origin. The main problem is that there are no adequate programmes to facilitate the reintegration of returnees afterwards.

85. UNHCR insists that its policy is one of voluntary repatriation. As a standard procedure, UNHCR requests all refugees to fill in a form and sign a declaration indicating that they are going to Somalia at their own risk. For some safer areas, such as Somaliland, the form is considered enough and no declaration is required.

86. There are also Somalis in Western European countries. During the mission, the independent expert received reports that some Western countries dump rejected asylum seekers back into Somalia without making any arrangements with the local community. This has led to problems of safety for these rejected asylum-seekers.

87. The European Court of Human Rights has considered at least two cases of rejected asylum seekers who were facing deportation to Somalia. In the case of Amur v. France, decided on 25 June 1996, the Court did not examine the situation in Somalia. The case merely concerned the conditions in which asylum seekers were held at Orly airport. The Court unanimously found France to be in violation of article 5 (1) of the European Convention on Human Rights which deals with the deprivation of liberty. France was ordered to pay the applicant's costs and expenses, plus interest.

88. The case of Ahmed v. Austria, is perhaps more relevant to the present discussion. The case, which was decided on 17 December 1996, involved a Somali who was granted refugee status in Austria on 15 May 1992. In granting that status, the Austrian Minister of the Interior considered that Mr. Ahmed could not be required to return to Somalia, because of his activities in an opposition group and the general situation in Somalia. However, on 25 August 1993, the Graz Regional Court in Austria sentenced Mr. Ahmed to two and a half years for attempted robbery. The Austrian authorities considered that that conviction revoked his refugee status under Austrian law. The Court found Austria to be in violation of article 3 of the European Convention on Human Rights, which states: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment".

89. The Court essentially accepted the assessment that the situation in Somalia had changed hardly at all since 1992. In its decision, the Court stated that the country was still in a state of civil war and fighting was going on between a number of clans vying with each other for control of the country; there was no indication that the dangers to which the applicant would have been exposed in 1992 had ceased to exist or that any public authority would be able to protect him. The Court therefore reached the conclusion that "the applicant's deportation to Somalia would breach article 3 of the Convention for as long as he faces serious risk of being subjected there to torture or inhuman or degrading treatment".

90. This is a significant precedent that will undoubtedly affect the manner in which the European Court will view the case of Regina v. Secretary of State for the Home Department, Ex parte Aden, if it comes before it. This case was decided on 2 April 1998 by the Judicial Committee of the House of Lords of the United Kingdom of Great Britain and Northern Ireland. In the Aden case, the majority conclusion was, unfortunately, that where a state of civil war existed, the asylum seeker must be able to show what was termed a "differential impact", in other words that "he must be able to show fear of

persecution ... over and above the ordinary risks of clan warfare". However, it was clearly stated that the decision had been reached on the understanding that "there is no question of Mr. Aden being returned to Somalia as things stand. He and his wife and children have been given exceptional leave to remain in the United Kingdom on humanitarian grounds. The only effect of a decision to refuse refugee status is that they will be denied the additional benefits which refugee status attracts".

91. It is in the above-mentioned context, in particular the ruling of the European Court of Human Rights in the case of Ahmed v. Austria, that the independent expert views the question of rejected asylum seekers. On 20 November 1998, the independent expert appealed to the Government of Australia not to deport Mr. Sadiq Shek, a Somali asylum seeker who was facing imminent deportation to Somalia. The independent expert was pleased to learn later that the Government of Australia had heeded a request by the Committee Against Torture and had decided not to deport Mr. Shek as long as there was a risk of his being tortured in Somalia.

92. It was reported to the independent expert during her mission to Somalia that Scandinavian countries have been involved in a number of cases of rejected asylum seekers being dumped in various parts of Somalia. Canada, the Netherlands and the United States of America are also possibly implicated in similar practices.

93. The independent expert met with a representative of Denmark in Nairobi to clarify this issue. It seems that Scandinavian countries are changing their approach with regard to requests for asylum by Somalis. Since mid-1995, joint fact-finding missions have been carried out by the Nordic countries. They have concluded that some areas in Somalia, such as the north, excluding Sool and Sanaag, are safe. Some Scandinavian countries are returning people to these areas when their requests for asylum are rejected. Forced repatriations started a year and a half ago and since then seven individuals have been returned. To support the integration of the rejected asylum seekers, the Scandinavians have embarked on providing some development assistance to the local authorities in the areas concerned to encourage them to accept the rejected asylum seekers. This has created a fear that the refugees and returnees could be used as bargaining tools and a profit-making enterprise for these authorities.

94. On the other hand, IOM is currently implementing a selective pilot project to repatriate talented individuals to the safe area of Somaliland and possibly Puntland. A representative of IOM remarked that the contribution of returnees to Somaliland had already made a difference, as such individuals were importing new ideas, skills and attitudes. IOM, however, stressed the need to monitor the situation of returnees to ensure their integration and safety.

95. There is also a serious problem of internal displacement in Somalia. It is estimated that in Bossaso the internally displaced constitute up to 70 per cent of the population. UNDP and UNICEF provide some assistance, but this is highly inadequate. As a result, the crime rate in Bossaso is increasing, leading to considerable tension between the original population and the internally displaced.

96. The situation in the Bay, Bakool and Gedo regions seems to be very serious. A joint mission by the Somalia Food Security Assessment Unit (FSAU) and Action contre la Faim (ACF) to these regions, carried out between 14 to 18 November 1998 to investigate movements of people from Bay and Bakool to Gedo, concluded that most movements are not seasonal but a sign of crisis.

97. The food security and nutritional situation among the internally displaced persons is reported to be critical, and the risk of further deterioration over the coming weeks is serious. In addition, more movements are expected in the next few weeks. FSAU and ACF maintained that assistance, with appropriate follow-up, should be addressed to the place of origin of the internally displaced persons to avoid further population movements.

98. About 700 households have left the Wajir district over the past two months because of the lack of rain, shortage of food and looted or burned houses. These internally displaced persons are mainly women and children; men are often reported to be looking for job opportunities in the riverine areas. An additional 2,600 households in Bakool are at risk of being displaced. From Bay, the movement started four months ago, with a daily average of five households arriving at Burdhubo in the Gedo region, where a total of 370 families are settled. Nutritional screening carried out in Luuq, Burdhubo and Bullo Hawa showed that 50 per cent of the people are suffering from acute malnutrition and 20 per cent from severe malnutrition. Not much assistance is being provided to these displaced persons.

99. In this respect, the independent expert wishes to draw attention to the Guiding Principles on Internal Displacement prepared by the Representative of the United Nations Secretary-General on internally displaced persons contained in E/CN.4/1998/53/Add.2, which address the specific needs of the internally displaced and identify the rights and responsibilities relevant to their protection of the internally displaced. The Principles were welcomed by the Inter-Agency Standing Committee which encouraged its members to share them with their Executive Boards for further dissemination. Principle 3 states:

- "1. National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.
2. Internally displaced persons have the right to request and to receive protection and humanitarian assistance from these authorities. They shall not be persecuted or punished for making such a request."

Principle 5 states:

"All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons."

VI. VISIT TO HARGEISA

100. The independent expert visited Hargeisa from 9 to 12 November 1998. During her visit she met with the vice-president of Somaliland, the minister for foreign affairs, the minister of justice and the president of the supreme court, as well as various other officials, personalities and ordinary citizens. The independent expert also met with the United Nations representatives in the area, as well as NGOs. She is grateful to all those who met with her.

A. General

101. This was the third visit of the independent expert to the self-proclaimed and unrecognized state of Somaliland. The expert noted the steady improvement of security in Hargeisa. As a result of this enhanced security, there are sometimes up to 80 United Nations staff working in Somaliland. This is the largest concentration of United Nations staff in any part of Somalia. The Hargeisa airport has a new building and is now functioning with a proper airstrip.

102. There is, however, conflict in Sanaag and Sool. These regions, which fall within the historical British colonial borders of Somaliland, are mainly populated by the Darod clan, which opposes the Issac clan that controls Somaliland. The Darod clan is loyal to Puntland. Sanaag and Sool were represented at the Puntland Constitutional Conference that resulted in the creation of Puntland in July 1998. Because of these two regions, tension between Somaliland and Puntland is growing, especially as Somaliland moved towards separation from Somalia in 1991, claiming the areas which had been under British rule.

103. The economic situation in Somaliland is improving, although international assistance to the area is meagre. The economy is mainly based on revenues amounting to around US\$ 320 million a year from Somalilanders living abroad. The authorities are also trying to collect revenues through taxes, fees for certain services such as licensing vehicles, and import and export taxes. The port of Berbera, which is frequently used by Ethiopia, produces some income. The main source of income, however, is the livestock trade and the economy has been severely affected by the Saudi Arabian ban on livestock imports from Somaliland because of fear of disease,

104. The revenues that the authorities generate do not suffice to cover expenses. For instance, they have stopped issuing birth certificates because they lack the funds to do so.

105. Political opposition to the leadership of Mr. Ibrahim Egal is manifested in a peaceful way. An attempt to arrest the leader of the Somali National Movement (SNM), because of differences between him and Mr. Egal, created an uproar in Hargeisa and had to be abandoned by the authorities.

106. The newspaper Jamhuuriya, whose owner died on 9 November 1998, expresses many of the grievances of the population. As a result, its chief editor has

been frequently arrested and released. The independent expert has several times expressed her concern to the authorities regarding his being arrested. Nevertheless, there is some form of freedom of expression.

107. Several international and local non-governmental organizations are based in Hargeisa. However, the authorities perceive both local and international NGOs as their competitors for foreign aid and are therefore establishing rules and regulations governing NGO conduct. A proposed agreement between the authorities and the NGOs was circulated amongst NGOs for their consideration during the visit of the independent expert to Hargeisa. The agreement will eventually be endorsed by the parliament and thereafter will have force of law. The agreement is based on the Ethiopian centralized model. NGOs are not generally opposed to this agreement.

108. There is willingness on the part of the authorities to look favourably at human rights issues and concerns. Amnesty International conducted a useful seminar in Hargeisa from 17 to 19 October 1998, entitled "Human rights awareness and action". While the representatives of Amnesty International were in Hargeisa, all the members of the government signed Amnesty International's book on the Universal Declaration of Human Rights, and it seems that the government is considering incorporating the Declaration in the laws of Somaliland. This will be a very significant step forward. As for implementation, it appears that the authorities are open to elaborating an overall plan of action on human rights.

109. The independent expert was pleased to learn that the last prisoner held under the emergency law was released in October 1998 following Amnesty International's visit. The independent expert commends the authorities for this action.

110. The status of women has improved, but there seems to be some backlash. Although women have emerged in the business and NGO sector, the empowerment of women in the social and political sector has yet to take place. Currently, there are no women occupying public positions nor are there any women judges, although there are women law graduates. The women's groups mentioned that they had found the Amnesty International Workshop useful with regard to the rights of women. Several educated men mentioned to the independent expert that they believed that a woman's working outside the household created tension within the family, even divorce, especially when she had a separate income.

111. The independent expert visited the orphanage in Hargeisa, which falls under the jurisdiction of the ministry of justice. There are 352 children there, including small infants of a few days old. The children are attended to by 35 foster mothers. As a Moslem country, Somalia, including Somaliland, does not allow adoption. Islam, however, recognizes a similar system, known as Kafala. The Islamic system of adoption is not fully explored in Somalia and Somaliland.

112. Somalia, including Somaliland, is one of the most mined countries in Africa. The independent expert is pleased that work to de-mine Somaliland is finally under way, with the support of UNDP and its Somali Civic Protection Programme. So far, up to 500 mixed anti-personnel and anti-tank mines,

unexploded ordinances (UXO), artillery shells and bullets have reportedly been collected. The work is being carried out by 63 local people, trained by UNDP. for the National De-Mining Agency, which was established in 1996.

113. Hargeisa was de-mined, although not fully, in 1993. Work on de-mining the town of Burao, mined in 1995 during the civil war, started in July 1998. De-mining resolves some of the problems of displacement. It has been noted that as soon as an area is de-mined the population return to their former places of living. Although the government has recently passed a law committing itself to destroying the mines that are being collected, this is still not carried out.

B. The administration of justice

114. The independent expert visited the supreme court in Hargeisa, the ministry of justice, the office of the police commissioner and the Hargeisa central prison.

115. The independent expert described the judicial system in Somaliland in her two previous reports. The situation remains the same. Although five new judges were recently appointed, bringing the number of judges in Somaliland to 60, none of them were women. It seems that various officials support the appointment of women judges, but consider that they might be rejected by the society. The independent expert suggested that appointing women as juvenile court judges could be an appropriate start.

116. Various officials remarked that the court system is weak and in need of international assistance. They requested that the United Nations place 20 judges from Arab and Muslim countries in Somaliland for two years to carry out the administration of justice and to train judges and lawyers to take over eventually.

117. For the international community to embark on an effort to assist this region with the administration of justice, it is necessary for Somaliland to harmonize its laws with international human rights laws. The emergency law, which the authorities have resorted to on many occasions, contains many draconian provisions. For instance it permits the detention of a person for up to one year without charge or trial.

118. In addition, the courts are greatly under-resourced. Many crucial laws are out of print and copies of them can only be found on the bookshelves of some prominent jurists. The minister of justice informed the independent expert that once a law is adopted by parliament, every minister and court is eventually provided with photocopies of it. A special office in the ministry of justice was established to collect such copies and file them in the archives.

119. The independent expert was informed that there are eight prisons in Somaliland, in Boorama, Gabile, Hargeisa, Berbera, Bel Gubedli, Burao, Odweyne and Ergabo. They house 900 prisoners. Most are imprisoned on charges of theft and robbery.

120. The independent expert visited Hargeisa Central Prison. There were 407 prisoners in this jail, most of them male. Of these, 118 were sentenced prisoners and 189 were pending charges or trial. There are 24 prisoners on death-row. The physical conditions in the prison are harsh; it is dirty and overcrowded. The families are allowed to bring food to their relatives. The authorities do not have the means to improve the prison conditions and no foreign assistance is being provided for this purpose. Amnesty International also visited the prison.

121. The independent expert interviewed some prisoners whose cases before the courts have been pending for a long time - one case since 1992. The expert also met with one national of Cameroon who was arrested in September 1998 with his brother. He said that they were passing through the area and they had no family or friends in Somaliland. Because of the lack of diplomatic relations between Cameroon and Somaliland, the prisoners were not visited by anybody. The minister of justice informed the expert that he was willing to allow the ICRC to visit them. The expert therefore referred the case to the ICRC.

122. Adults and juveniles are not separated. The independent expert found a 12-year-old girl in the women's section and was informed that the girl was there for her protection as she had run away from home and that she was not remanded on any charge. The authorities indicated that she would be kept in prison until her family claimed her. The independent expert urged them to find a solution other than putting a child who had not committed any crime in jail. She brought this case to the attention of UNICEF, the women's NGOs and the human rights groups.

123. In this connection, an expert informed the independent expert that the number of troubled children had increased. At least one third of children between the ages of 5 and 15 suffer from nightmares, difficulties in concentrating, restlessness, aggressiveness and a sense of isolation. Adults are not immune either. At least two-thirds of families have members with mental problems. The expert also learnt that many mentally disturbed individuals are kept in chains at home. The network of family relations is breaking down and many changes are taking place in the traditional family structure. All these changes are the legacy of war.

124. The expert also visited the office of the police commissioner and met with the head of the training unit. She was informed that the Mandheera Police Training Centre had opened on 15 October 1998 and programmes for training the police in this facility were being carried out. At the time of the independent expert's visit a training course for 125 people aged between 25 and 35 who had been policemen before the outbreak of the civil war was being conducted. It was the second training course that was carried out for this group of former policemen. The four month training course will provide them with a basic knowledge of general police duties, financial laws and investigation methodology. Trainees are also provided with copies of the Somali Penal Code, which is explained to them with relevant examples.

125. This new establishment has logistical difficulties, however. For instance, it has no running water, adequate communication system, library, medical facilities or adequate space.

C. The mass graves

126. In her previous report, the independent expert examined the issue of the discovery of mass graves in Hargeisa in May 1998. She requested the Office of the United Nations High Commissioner for Human Rights to send a team of forensic experts to the site. Two forensic experts were sent to Hargeisa in December 1998. Their report is issued as an addendum to the present report (E/CN.4/1999/103/Add.1). The independent expert endorses the recommendations, contained therein, made by the team of forensic experts.

127. As the independent expert reported last year, the Technical Committee for the Investigation of War Crimes was established. In November 1998, she visited the premises of the Committee, which were equipped through a grant of US\$ 20,000 from the Embassy of the United States of America in Djibouti.

128. Many alleged mass graves have been identified by the Committee, including in Berbera. However, lack of human and financial resources made it impossible for the Committee to visit them all, and only the sites in the vicinity of Hargeisa could be explored. The Committee also lacks adequate expertise, such as that of forensic anthropologists and archaeologists, to organize workshops on war crimes, excavations and related investigations.

129. The independent expert had the opportunity to interview one key witness, a truck driver who was forced to dig the mass graves and bury the bodies found there. He informed the independent expert that, on 58 days in the spring of 1988, military officers came to his home and ordered him to accompany them. On the way, they stopped at the Ministry of Public Works, where he used to work, to retrieve an excavator. He said that he was then taken to the military headquarters where he was ordered to bury between 150 and 180 bodies a day. The individuals had just been summarily executed. In fact he sometimes heard the executions as he was digging. The bodies were tied together in groups and were lying dead. Some were in military uniforms, others were civilians, including women and children.

130. Mass killings constitute war crimes and crimes against humanity. The international community is strongly asserting individual criminal responsibility for genocide, war crimes and crimes against humanity as is evident in the establishment of the International Criminal Court, as well as the Spanish request for the extradition of General Pinochet during his visit to the United Kingdom, which were mentioned above. As was also indicated above, the establishment of an international tribunal for Somalia could also be envisaged at some stage. The independent expert continues to believe that the most important work at present, however, is the preservation of evidence in a professional manner. The Technical Committee for the Investigation of War Crimes should be assisted in its work.

VII. BUILDING A HUMAN RIGHTS NUCLEUS IN SOMALIA

A. Office of the High Commissioner for Somalia

131. In 1993, the Commission on Human Rights, in its resolution 1993/86, appointed an independent expert with a mandate to report on the human rights situation in Somalia and to find the best ways and means of implementing a

programme of technical assistance in the field of human rights. After undertaking two missions to Somalia, the independent expert recommended in her 1998 report several possibilities for building a nucleus for human rights work in Somalia and suggested the appointment of a human rights officer to fulfil this task. The High Commissioner for Human Rights endorsed this recommendation, and proceeded with the appointment of this officer who will be stationed in Nairobi, like other United Nations agency staff dealing with Somalia. The Commission on Human Rights welcomed this decision in its resolution 1998/59. The human rights officer was selected in the autumn of 1998. He has not so far been placed in Nairobi, however.

132. The independent expert visited Nairobi at the time when the international agencies were preparing the United Nations Consolidated Inter-Agency Appeal for Somalia for 1999. The independent expert and the Office of the United Nations High Commissioner for Human Rights (OHCHR) were invited to contribute to the appeal. Consequently, the appeal now contains a section on human rights as a cross-sectoral priority, including activities of OHCHR, UNIFEM, UNICEF, UNDP and the Office for the Coordination of Humanitarian Affairs (OCHA). In addition, a separate project document setting out the costs of placing the human rights officer in Nairobi for two years is being prepared by OHCHR.

134. The independent expert welcomes this attempt by the various agencies to integrate human rights into their activities. The mainstreaming of human rights within the activities of the agencies was undoubtedly boosted by the directions of the United Nations Secretary-General in his reform agenda, in which he considered human rights as a cross-cutting theme of all United Nations activities and called upon the agencies to integrate human rights, especially at the country level.¹⁰ The Secretary-General designated the High Commissioner for Human Rights as focal point to assess all United Nations technical assistance activities in this field.

134. The project for the placement in Nairobi of the human rights officer for Somalia will be implemented in the framework of the Memorandum of Understanding between the United Nations Development Programme and the United Nations High Commissioner for Human Rights of 4 March 1998. As a result, the human rights officer will be based in the UNDP-Somalia premises in Nairobi, and will use the logistical and administrative resources of that office. The High Commissioner for Human Rights will provide policy direction and the necessary substantive technical supervision. Administrative supervision and facilitation in Nairobi will be provided by the Chief of the United Nations Coordination Unit (UNCU) in UNDP-Somalia.

135. The human rights officer will pursue the following objectives:

- (a) Monitoring the human rights situation in Somalia;
- (b) Mainstreaming and integrating a human rights perspective into the work of all the United Nations agencies regarding Somalia;
- (c) Providing technical assistance in the field of human rights;
- (d) Supporting Somali human rights NGOs;

(e) Raising awareness in the area of the administration of justice;
and

(f) Assisting the independent expert in fulfilling her mandate.

136. The independent expert was extremely encouraged that various government representatives in Nairobi looked with enthusiasm at this project. The representatives of Italy, Denmark, the United States and the European Union were all positive about this initiative and expressed interest in supporting it financially.

137. The independent expert hopes that, as the resolution of logistical questions is well under way, the officer will soon start carrying out human rights duties for Somalia.

B. Current technical cooperation programmes in the field of human rights

138. A number of international groups and agencies carry out scattered technical assistance programmes in the field of human rights. They are not conducted in the framework of an overall strategy, or national plan, to enhance human rights protection in Somalia. Neither are they carried out by experts. A brief outline of some of the projects that are currently being implemented is provided below.

139. UNDP has been elaborating a civil protection programme as part of its strategy of strengthening human rights through governance. A helpful report on human rights within the civil protection project has been prepared by a consultant. It explores questions such as entry points for human rights education in the Somali context and the development of human rights training material.¹¹ Useful practical work has been done in Somaliland in the area of training the police and law enforcement agencies with respect to human rights. There are also activities under this programme to promote the participation of women in civil governance, as well as activities in the area of reconciliation and governance, conflict resolution and peace-building, and de-mining. The programme activities are included in the Inter-agency Consolidated Appeal for 1999. This programme is a natural counterpart to OHCHR in this field and it is fortunate that the OHCHR human rights officer for Somalia will be located in the same premises as the UNDP civil protection programme in Nairobi.

140. UNIFEM is starting a campaign to integrate women's rights into the work of the United Nations agencies. Its programme on Somalia is focused on female genital mutilation, as well as on building capacities and gender balance in local NGOs.

141. UNICEF has a major programme in Somalia. It is trying to take a rights-based approach in its activities. UNICEF has wide access throughout Somalia. It rehabilitates the water in most of the country; it carries out vaccination campaigns and supports the educational system. In 1999, UNICEF is planning to target the protection of children with special needs. It will focus on internally displaced children and the reintegration of children attached to militias.

142. UNESCO has produced a peace education kit. It has expressed interest in human rights issues and more specifically in developing a human rights-oriented curriculum.

143. The War-Torn Societies Project, under its Somalia programme, which was due to end in December 1998, has organized elaborate research workshops in north-east Somalia on questions relating to the basic institutions of government at the local level; social integration with particular focus on the militia in terms of poverty, criminality, and attitude; and essential social services.

144. Two local human rights groups are operating in Mogadishu, the most important of which is the Ismail Jumale Centre for Human Rights. There are also two human rights groups in Hargeisa: The Guardians of Liberties and the Horn of Africa Human Rights Watch. These groups monitor human rights abuses in their regions. They need substantial support.

145. Amnesty International has carried out two workshops concerning human rights work in Somalia. One workshop took place in Nairobi in 1997, the other in Hargeisa in 1998. The workshop in Hargeisa had a very positive impact (see para. 108 above).

146. The Life and Peace Institute (LPI) regional office in Nairobi started a programme of training Somali trainers in 1994. This programme includes a human rights component. Two more training courses were organized in 1996 and there has been a yearly two-week follow-up course, in Nairobi in 1997 and in Hargeisa in 1998. The team of more than 20 trainers developed a curriculum on civic education programmes on two cluster areas. The first includes questions of democracy, gender, development, leadership and human rights. The second focuses on peace-building issues, such as conflict transformation, environment, resources and conflict, small arms and handguns awareness-raising. In 1997, 30 such workshops were organized. For the period June 1998-May 1999, up to 48 further workshops have been programmed.

147. The independent expert commends all the international agencies that are integrating human rights into their work on Somalia. The early placement of a human rights officer in Nairobi should help these agencies to consolidate their efforts. The independent expert also considers that the United Nations should be willing to assist the regional administrations within Somalia in improving their human rights performance, especially if these authorities are willing to bring their laws into conformity with human rights standards. In this context, the international community should send a clear message that, while calling for security, it will not support law enforcement efforts the objectives and policies of which violate international human rights norms. The regional administrations should be encouraged to carry out their law enforcement work within structures that respect the rule of law and human rights.

148. The areas that are experiencing recovery in the north-west and north-east, otherwise known as Somaliland and Puntland, are ripe for structured technical assistance programmes. In the rest of the country, the focus should be on monitoring the human rights situation and raising awareness on human rights norms. In this respect, wide dissemination of human rights instruments

and their translation into Somali is essential. It is also important to simplify human rights texts and to work with UNICEF, UNDP and UNESCO on using oral media, such as BBC-Somalia to promote human rights principles.

149. In her previous report, the independent expert identified four areas the programme can begin to address. These are:

- (a) Support for Somali human rights defenders;
- (b) Integrating human rights into the work of the United Nations agencies;
- (c) Raising awareness on women's rights;
- (d) Raising human rights awareness in the area of law enforcement.

150. These areas remain of vital concern. To build a solid nucleus for human rights work in Somalia, better discussion and understanding of human rights issues, structures and dimensions are needed. The agencies themselves highlighted this need to the independent expert and expressed enthusiasm at the prospect of working with the human rights officer in this regard. In the complex situation of Somalia, it is important that an overall working strategy on human rights matters be developed.

151. The integration approach is not sufficient, however. A working strategy should be developed so that structured programmes, not piece-meal activities, are carried out. This is an important challenge for the human rights officer, who should serve as a focal point for these discussions within the United Nations agencies and beyond.

152. The clarification of this strategy within the United Nations agencies, the other international agencies, international and Somali NGOs should lead to a coordinated human rights work on Somalia. Only then can specific technical assistance programmes be worked out that can leave some lasting impact.

VIII. CONCLUSIONS AND RECOMMENDATIONS

153. Despite the crisis, the Somali people are still smiling, although their smile is steadily fading away. It is essential that their smile does not disappear completely. The international community should find ways to assure the Somali civilians, the unarmed minorities, women and children and the elderly that they are not deserted.

154. The international community is still negotiating with the warring factions, which ironically, still serve as the interlocutors of the Somali people with the outside world. It is appropriate that the Commission on Human Rights express its wish that human rights issues be integrated in the peace negotiations, especially those sponsored by the United Nations, its regional partners or its Member States.

155. Currently, human rights and humanitarian law do not have a prominent place in these talks. The parties should be called upon to refrain, at a

minimum, from committing the international crimes that are discussed in the present report, so that the lives of innocent civilians, women, children and the elderly are protected.

156. The independent expert commends the international agencies that are attempting to integrate human rights into their work. The time is indeed ripe for starting to develop a nucleus for human rights work in Somalia today, especially in the areas experiencing recovery.

157. The independent expert looks forward to the placement of the human rights officer in Nairobi in the near future, so that an overall strategy can be developed and meaningful programmes carried out.

Notes

1.This is at the average exchange rate in 1996-1997, giving a real GNP per capita (Purchasing Power Parity) of US\$ 600 to 700. See UNDP, Human Development Report Somalia 1998.

2.UNDP, Human Development Report Somalia 1998, p.12.

3.Michael Maren, The Road to Hell: The Ravaging Effects of Foreign Aid and International Charity, New York, Free Press, 1996.

4.Human Development Report Somalia 1998, p. 16.

5.See the report on the situation in Somalia of the Secretary-General of the Organization of African Unity (OAU) to the sixty-seventh session of the Council of Ministers of OAU held in Addis Ababa, Ethiopia, from 23 to 27 February 1998 (CM/2034 (LXVII) (d), p.6).

6.The OAU Council of Ministers resolved in February 1998 to call upon the international community "to closely coordinate their efforts with OAU and IGAD in order to facilitate a peaceful and sustainable settlement of the conflict in Somalia". See OAU document CM/Dec.(LXVII)Rev.1.

7.Humanity for All: The International Red Cross and Red Crescent Movement, Henry Dunant Institute, p. 556.

8.The Rome Statute of the International Criminal Court was adopted by the United Nations Diplomatic Conference of Plenipotentiaries for the Establishment of an International Criminal Court. The Statute was adopted by a non-recorded vote of 120 in favour to 7 against with 21 abstentions. See United Nations press release L/ROM/22 of 17 July 1998. The Court will come into existence after 60 States ratify the Statute. It will have jurisdiction

mainly with regard to nationals of States parties or to crimes committed on the territory of a State party. It will not apply its jurisdiction retroactively.

9. See analytical report of the Secretary-General on fundamental standards of humanity, submitted pursuant to Commission on Human Rights resolution 1997/21 (E/CN.4/1998/87).

10. "Renewing the United Nations: a programme for reform" (A/51/950).

11. Lisa Ann Kurbiel, "Human rights within the Somalia Civil Protection Programme, Somali Civil Protection Programme UNDP/UNOPS", (SOM/97/002), 30 April 1998.
