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## Human Rights Council

### Twenty-first session

Agenda items 2 and 10

**Annual report of the United Nations High Commissioner  
for Human Rights and reports of the Office of the  
High Commissioner and the Secretary-General**

**Technical assistance and capacity-building**

## **United Nations support to end human rights abuses and combat impunity in Somalia**

### **Report of the Secretary-General\***

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\* Late submission.

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## I. Introduction

1. In its resolution 19/28, the Human Rights Council requested the Secretary-General to submit to the Council, at its twenty-first session, a report assessing current United Nations support for efforts in Somalia to end all human rights abuses and combat impunity, as reflected in the report of the Working Group on the Universal Periodic Review on Somalia, and containing proposals for a more integrated approach across the United Nations system, considering in this context the role of the field presence of the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Somalia.

2. On 10 April 2012, OHCHR addressed a note verbale to all United Nations agencies, funds and programmes to solicit information on (a) United Nations programmes and projects that have brought positive results in the area of human rights, ending human rights abuses and combating impunity, as well as possible gaps; and (b) views and proposals on United Nations coordination in the area of human rights and how the United Nations could ensure a more integrated approach. Contributions to the report were received from the Office of Legal Affairs, the United Nations Office for Drugs and Crime (UNODC), the United Nations Children's Fund (UNICEF), the Child Protection Adviser of the United Nations Political Office for Somalia (UNPOS), the United Nations Development Programme (UNDP) and the Office of the Resident and Humanitarian Coordinator.<sup>1</sup>

3. The present report should be read against the background of the relevant periodic reports of the Secretary-General submitted to the Security Council<sup>2</sup> and in the context of the increased attention paid by the international community to the situation of human rights in Somalia, as demonstrated at the London and Istanbul conferences on Somalia. The outcome documents of both conferences underscore the importance of advancing the protection and promotion of human rights and the rule of law in Somalia.

4. In his most recent regular report to the Security Council on Somalia (S/2012/643), the Secretary-General provided an update on progress towards ending the country's eight-year political transition, in accordance with the road map for ending the transition, which sets out targets in the areas of security, the Constitution, national outreach and reconciliation, and good governance. All areas of the road map contain human rights elements. While not all tasks were completed by the original deadline of 20 August 2012, the transition process was completed with the election on 10 September 2012 of Hassan Sheikh Mohamud as the new President of Somalia.

5. The indivisibility of peace, security, human rights and development cannot be sufficiently emphasized. The active participation of Somalia in 2011 in the universal periodic review<sup>3</sup> was a major achievement, and the efforts made by the Transitional Federal Government to engage constructively in this process, in spite of numerous challenges, are to be commended. OHCHR, together with the UNPOS Human Rights Unit, supported Somalia throughout this process by organizing a preparatory workshop for senior Government officials, in collaboration with Djibouti and Italy, and provided technical assistance to support the Government in the drafting of the national report. The 155 recommendations made by Member States, most of which were accepted by Somalia, chart a comprehensive vision for improving the situation of human rights in Somalia.

<sup>1</sup> The original replies are available for consultation from the Secretariat.

<sup>2</sup> S/2012/50, S/2012/74, S/2010/234, S/2011/277, S/2012/283, S/2010/447, S/2011/549, S/2010/675, S/2011/759.

<sup>3</sup> See A/HRC/6/Add.1, A/HRC/DEC/18/104, A/HRC/18/6, A/HRC/WG.6/11/SOM/3, A/HRC/WG.6/11/SOM/2

6. The Somali authorities, supported by the Human Rights Council, have repeatedly solicited the assistance of the international community in their efforts to promote and protect human rights. In May 2012, as a follow-up to the universal periodic review, a memorandum of understanding on technical assistance in the field of human rights was signed by the Transitional Federal Government and the United Nations, represented by OHCHR and UNPOS. The areas for technical cooperation outlined in the memorandum include the signature, ratification and implementation of international human rights treaties; protecting and promoting the rights of vulnerable groups, including women, children, internally displaced persons and journalists; strengthening the rule of law and the administration of justice; building institutional capacity to protect and promote human rights; raising awareness about human rights through the media; advancing economic and social rights; and facilitating effective cooperation with the special procedures of the Human Rights Council.

## **II. Overview of the situation of human rights**

7. The present report does not seek to present an exhaustive overview of the situation of human rights or of the human rights violations committed in the country. It highlights key areas of concern, differentiating between different regions, as appropriate.

8. The present report draws on information from the UNPOS Human Rights Unit; the Independent Expert on the situation of human rights in Somalia;<sup>4</sup> the former Representative of the Secretary-General on the human rights of internally displaced persons;<sup>5</sup> the Special Rapporteur on violence against women, its causes and consequences;<sup>6</sup> and the Special Representative of the Secretary-General for Children and Armed Conflict.<sup>7</sup>

9. The situation of human rights in Somalia remains troubling, as characterized by the extreme brutality used against civilians during the protracted period of conflict and insecurity following the collapse of the Siad Barre regime in 1991. While no accurate casualty figures are currently available, it is estimated that over the years of armed conflict, thousands of civilians were killed or injured and hundreds of thousands forced to flee. Conflict also destroyed the institutions of the State and its ability to provide basic services and to ensure the enjoyment of economic, social and cultural rights.

10. OHCHR operates in Somalia through the Human Rights Unit of UNPOS, which has a broad mandate to monitor the situation of human rights and to build national capacity for their protection and promotion. Currently, the Human Rights Unit is small in size and thinly spread between offices located in Mogadishu, Garowe, Hargeisa and Nairobi. Severe challenges, including access to southern and central Somalia, the security of United Nations staff, and victim and witness protection considerations, have hampered human rights monitoring, investigation and technical assistance activities in Somalia.

11. Despite the challenging situation, the UNPOS Human Rights Unit has monitored certain cases and situations of human rights violations, activated a database for cases and developed a network of national and international partners striving to advance human rights protection. Through its technical assistance activities, the Unit has strengthened the capacity of national and regional authorities in Somalia, as well as civil society organizations. OHCHR and the Human Rights Unit have also supported the peace process,

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<sup>4</sup> See A/HRC/10/85, A/HRC/12/44, A/HRC/13/65, A/HRC/15/48, A/HRC/18/48 and A/HRC/21/61.

<sup>5</sup> See A/HRC/13/21.

<sup>6</sup> A/HRC/20/16/Add.3.

<sup>7</sup> A/HRC/18/38.

led by the Special Representative of the Secretary-General, and ensured that human rights and justice were kept on the national and international agendas.

12. The Transitional Federal Government, with the support of the African Union Mission in Somalia (AMISOM) and other neighbouring forces (namely Kenya and Ethiopia), recaptured Mogadishu in 2011 and has gradually established authority around the capital as well as areas bordering Kenya and Ethiopia. Nevertheless, a large part of southern and central Somalia remains under the control of the armed group, Al-Shabaab, and has witnessed grave human rights violations, including summary executions and torture (particularly of persons accused of spying for the Government), arbitrary arrest and detention, forced conscription and the recruitment of child soldiers, forced marriages and limitations to freedom of movement and assembly. Al-Shabaab has also been reported to prevent people, particularly boys and young men, from fleeing the areas under its control.

13. While there has been a significant improvement in the security situation in the areas controlled by the Transitional Federal Government, there have been disturbing reports of incidents in which civilians have been killed or injured in shooting incidents among different units of the Government in Mogadishu or by excessive use of force at checkpoints. Pro-Government militias have allegedly committed seven summary executions of civilians in towns recently recaptured by the Ethiopian defence forces. There have also been reports of torture and arbitrary arrest and detention, including large-scale round-up operations in response to Al-Shabaab attacks, and detention and torture of individuals alleged or perceived to support Al-Shabaab. Civilians have also been wounded or killed by improvised explosive devices and suicide bombings, the responsibility of which was claimed by Al-Shabaab.

14. Compared with southern and -central Somalia, “Somaliland” and “Puntland”, which are governed by regional State administrations, have both enjoyed relative stability. Armed conflict has, however, characterized the disputed border region between “Somaliland” and “Puntland”. Besides the impact of the armed conflict between “Somaliland” security forces and the Sool, Sanaag and Cayn militias on the civilian population, the dispute over the regions has also caused significant political violence, which has resulted in the assassination of a number of senior Government officials and members of the judiciary. Reports of cases of unlawful arrest and arbitrary detention of persons suspected of association with pro-“Puntland” militias were received following these assassinations. It is hoped that the agreement reached between the President of “Somaliland” State and the Sool, Sannag and Cayn leader in Dubai on 27 June 2012 will end human rights violations resulting from the conflict in the region.

15. In 2011, Somalia was at the epicentre of the severe food crisis in the Horn of Africa, the result of drought, rising food prices and the conflict. The Office for the Coordination of Humanitarian Affairs has estimated that 2.1 million Somalis are in urgent need of humanitarian assistance owing to the food insecurity caused by poor seasonal rainfall. Almost 40 per cent of the country’s estimated 9 million population live in extreme poverty and insecurity caused by the long-standing conflict, a situation that has diminished the people’s capacity to maintain their own food and nutrition security and their resilience against shocks.

16. According to the World Health Organization (WHO), the life expectancy in Somalia is 51 years. Cholera and malaria are the leading causes of mortality. Less than 30 per cent of the population has access to safe drinking water. Outbreaks of cholera in the urban areas and in the densely populated camps for the internally displaced have been exacerbated by a combination of malnutrition and prevalent communicable diseases.

17. Somalia has one of the highest maternal mortality rates in the world. Years of conflict have resulted in the destruction of virtually all basic facilities, such as referral

hospitals and maternal and child health facilities and services. Al-Shabaab has reportedly also destroyed water wells and other related facilities.

18. Space for humanitarian operations in southern and central Somalia has been limited by Al-Shabaab, and national and international staff have been threatened, abducted and killed. In parts of southern and central Somalia, the denial of access to humanitarian assistance by insurgents has deprived inhabitants of food and nutrition. This situation led the United Nations and international non-governmental organizations to withdraw almost all their international staff from the area and to reduce operations, thereby negatively affecting the enjoyment of social and economic rights of the Somali population, which heavily depends on international assistance. In the light of the improved security situation, however, in 2012, UNPOS commenced redeploying international and national staff to Somalia.

19. Al-Shabaab has also allegedly imposed taxation on the population under its control, which has increased hardship. According to AMISOM, more than 500 sacks of relief food that had been confiscated by Al-Shabaab were recovered from an Al-Shabaab training camp in July 2012.

20. An estimated 1 million Somalis have sought refuge in Ethiopia, Kenya, Uganda and Yemen, while another 1.5 million are internally displaced. A significant number of people have reportedly been displaced by clashes between the “Somaliland” security forces and the Sool, Sanaag and Cayn militia in the disputed region on the border between “Somaliland” and “Puntland”. In this way, a third of the estimated population of 7.5 million in Somalia lives in forced displacement.

21. In 2011, there was a massive influx into Mogadishu of people who were displaced by the conflict and famine in southern and central Somalia. Most reside in settlements with limited access to shelter, water, sanitation and health services. Poor living conditions combined with malnutrition have led to outbreaks of such diseases as cholera and polio. The diversion of humanitarian aid by agents of the Transitional Federal Government and allied militia members has also been reported. This has particularly affected the right to food of internally displaced persons in Mogadishu. A pattern of systematic extortion at checkpoints manned by armed forces in areas under control of the Government and allied militias has also been alleged.

22. There is an urgent need for a comprehensive policy on displaced persons and a comprehensive approach to urban poverty to improve the living conditions for the internally displaced and local residents alike. The protracted conflict, combined with a weak land tenure system, has impeded durable solutions to displacement. Earlier in 2012 year, long-term internally displaced persons were forcibly evicted from public buildings in Mogadishu, thus creating a homeless population in the capital. It is estimated that evictions in Mogadishu ordered by the Government and by private landlords account for 12 per cent of all displacement.

23. Violence and discrimination against women is rife, including a pattern of forced marriages and acts of sexual slavery of underage girls with Al-Shabaab fighters, which was documented by the Special Representative of the Secretary-General on Sexual Violence in Conflict (A/66/657-S/2012/33). Freedoms previously enjoyed by women in Somali culture have been curtailed, which has severely restricted women’s freedom of movement and employment opportunities.

24. Reports were received of persistent patterns of conflict-related sexual violence, in particular rape of women and girls in camps for the internally displaced, allegedly committed by State agents and allied militia members, and criminal rape by individuals as a result of the general conditions of insecurity in the camps. In total, some 20 cases of sexual violence per day were reported to non-governmental organizations and women’s

associations in Mogadishu. Some 30 per cent of victims are girls under the age of 18. Because of the stigma attached to rape, the actual number of rape victims is likely to be significantly higher.

25. Following the visit of the Special Rapporteur on violence against women in December 2011, the Prime Minister of the Transitional Federal Government pledged to establish a task force to prevent and respond to the phenomenon of sexual violence. The task force is, however, yet to be activated, and tangible measures to improve the safety of women in camps have yet to be adopted and implemented.

26. Women and girls displaced from southern and central Somalia and living in settlements for internally displaced persons in “Puntland” State have also faced conflict-related sexual violence. Lack of security, low social status and a lack of clan protection have exposed them to greater risk of sexual violence, both at the hands of members of the host community and of fellow displaced men. Women have been raped at night in their huts or while going about their chores, such as when collecting firewood or water, going to the market or working as housemaids. Despite pledges by the “Puntland” authorities, this chronic situation remains largely unaddressed.

27. Female genital mutilation in Somalia is estimated at 98 per cent. Early marriage and adolescent motherhood have contributed to a high incidence of obstetric fistula, for which no adequate medical treatment is available in the country.

28. The new Parliament that was inaugurated on 20 August 2012 is more representative than its predecessor, comprising members nominated by all clans, including 14 per cent women. The proportion of women is well below the 30 per cent target, but still a marked improvement. While representatives of women’s groups have expressed concern at their marginalization from key political consultations and decisions, ongoing developments reflect hope that women’s participation in political life will continue to improve with constant emphasis on the role of women and with support from the international community.

29. Violations of children’s rights constitute some of the most egregious human rights violations in Somalia. The ongoing conflict in southern and central Somalia has resulted in the killing and maiming of children, child rape and the recruitment and use of children by the armed forces and groups involved in the conflict. According to the Office for the Coordination of Humanitarian Affairs, in March 2012, one in five children under the age of 5 was malnourished. The mortality rate of children under 5 years of age is 22.5 per cent.

30. From January to May 2012, the country task force on monitoring and reporting, created pursuant to Security Council resolution 1612 (2005), documented 2,339 cases of grave violations of children rights, as against 1,800 cases in 2011.

31. Net primary school enrolment is estimated at 13 per cent for boys and 7 per cent for girls. The conflict has destroyed most formal primary schooling infrastructure. The right of children to education has been acutely eroded further by a general lack of protection and by displacement, exhaustion, family separation and emotional trauma.

32. The rights to freedom of expression and the press have been violated throughout Somalia. Radio stations accused of siding with the Transitional Federal Government have been forcibly closed in areas under Al-Shabaab control. In other regions of Somalia, numerous acts of aggression, including assassination or attempted assassinations, have targeted journalists. Since the beginning of 2012, eight journalists have been assassinated, six of which in Mogadishu. The fact that prompt, effective and thorough investigations into these assassinations have not been made is a matter of serious concern.

33. Cases of intimidation, harassment and arbitrary arrest of journalists and broadcasters, including public threats by local officials, were also reported in “Puntland”

and “Somaliland”. In March 2012, for example, the “Puntland” authorities temporarily closed a private radio station in Bossaso. In 2011, the UNPOS Human Rights Unit recorded 42 cases of media-related human rights violations (23 in Mogadishu and southern/central Somalia, 10 in “Somaliland” and 9 in “Puntland”). As at August 2012, some 22 cases of arbitrary arrest of journalists had been recorded by throughout Somalia.

34. Human rights defenders working in areas under the control of Al-Shabaab reported to OHCHR threats to their life. In areas of Somalia not currently enduring armed conflict, human rights defenders continue to face enormous constraints and risks in their work. Their protection remains a key challenge.

35. Judicial institutions are weak in Somalia. Traditional Somali law, *Xeer*, which operates in the context of the clan system, is a defining feature of Somali society. The erosion of the authority of clan elders, however, has made the application of *Xeer* difficult. Nevertheless, many Somalis feel that, given the widespread respect for *Xeer*, its principles could still be usefully applied. Islamic law has also been used widely as a means of resolving disputes. There are, however, significant disagreements with regard to its proper interpretation and practical application. The Somali justice system is male-dominated; for example, in 2008, there were only four women lawyers in “Somaliland” and no female judges or prosecutors.

36. In particular, the application by Al-Shabaab of extreme measures and punishments under sharia law violate international human rights law. Cases of extrajudicial executions and the corporal punishment of citizens, including amputation and flogging, on the basis of a strict interpretation of sharia law in criminal cases, in violation of the Somali Penal Code and of international human rights law, are common and carried out with impunity.

37. Many areas under control of the Transitional Federal Government, in particular the newly recovered areas in southern and central Somalia, lack a functioning police service and a judiciary. In Mogadishu, in 2011, six executions and 32 death sentences were reported following military court trials that lacked basic guarantees of fairness.

38. Cases of arbitrary arrests and illegal detention of civilians by the police and security forces of the Transitional Federal Government were also reported, as were requests for bribes or ransom by police or prison custodians. Detainees do not have access to adequate food or appropriate sanitation. Conditions in prisons and detention facilities do not comply with international human rights standards. People arrested by the authorities do not have access to a lawyer or a judge, and are released only once their case is settled among clan elders.

39. The absence of a well-functioning police service and judicial system has also deprived the population of “Puntland”, and especially detainees, of the right to a fair trial. Capital punishment is imposed; in 2011, four executions by firing squad were reported.

40. Impunity remains one of the greatest challenges in Somalia. Owing to the absence of State authorities, perpetrators of human rights violations are not held accountable and victims do not receive restitution. It is critical that the issue of impunity, including the legacy of past atrocities, is addressed and that justice and reconciliation are assured, as recognized by Somalia in its national report submitted for its universal periodic review.<sup>8</sup>

41. The Independent Expert on the situation of human rights in Somalia has flagged the importance of developing justice and reconciliation mechanisms, including during his recent visit to Mogadishu on 4 September 2012. Paragraph 12 of the Istanbul Declaration echoed this position. The pace and timing of any transitional justice-related activities

<sup>8</sup> A/HRC/WG.6/11/SOM/1.



should be carefully woven into the peace process and be conducted in the context of any consideration of the role of a commission of inquiry, truth commission, special tribunal, the International Criminal Court or other mechanism ensuring accountability.

42. The Provisional Constitution of Somalia provides under its article 111 (I) for the establishment of a truth and reconciliation commission, which could open the door to constructive discussion with the Government and other stakeholders on transitional justice.

### **III. International efforts to protect and promote human rights**

#### **A. Security Council**

43. In its resolution 1872 (2009), the Security Council recognized that serious crimes had been committed against civilians in the conflict in Somalia, affirmed the importance of ending human rights abuses and combating impunity and requested UNPOS to work with the Transitional Federal Government to develop its capacity to address human rights issues. It also expanded the sanctions regime to target individuals responsible for violations of international law, namely the obstruction of humanitarian assistance and the recruitment and use of child soldiers.

44. In addition, since 1999, the Security Council has adopted a number of resolutions to afford greater protection to civilians, including by strengthening the protection framework for women<sup>9</sup> and children.<sup>10</sup> As one of the most complex situations before the Council, there are no easy solutions for protection challenges in Somalia.

#### **B. Human Rights Council and special procedures**

45. The Human Rights Council has increased its attention to Somalia over recent years and adopted a number of resolutions thereon,<sup>11</sup> with a special focus on technical assistance. On 29 September 2010, pursuant to Human Rights Council decision 14/119, a stand-alone interactive dialogue was held by the Council on the status of technical cooperation, capacity-building programmes in the country and the effectiveness of United Nations support in the promotion and protection of human rights.

46. The Independent Expert on the situation of human rights in Somalia, was appointed by the Human Rights Council in its resolution 7/35. Since then, he has undertaken nine field visits to Somalia and neighbouring countries, including to refugee camps in Kenya and Yemen, and has also spoken out publicly, through press statements and radio interviews, about human rights concerns in Somalia.

47. Overall, special procedures mandate holders have addressed 23 communications (urgent action or allegation letters) to Somalia. As indicated previously, the Special Rapporteur on violence against women, its causes and consequences, the Special Representative of the Secretary-General for Children and Armed Conflict, the former Representative of the Secretary-General on the human rights of internally displaced persons and the Independent Expert on the situation of human rights in Somalia have raised in their

<sup>9</sup> See Security Council resolutions 1325 (2000), 1820 (2008), 1888 (2009), 1889 (2009) and 1960 (2010),

<sup>10</sup> See Security Council resolutions 1612 (2005), 1882 (2009) and 1998 (2011).

<sup>11</sup> See Human Rights Council resolutions 7/35, 10/32, 12/26, 15/28, 17/25, 19/28 and 20/21.

reports the need to strengthen coordination among United Nations agencies, including human rights coordination and monitoring and public reporting.

### **C. United Nations Political Office for Somalia**

48. UNPOS was established in 1995 to advance the cause of peace and reconciliation in Somalia.<sup>12</sup> In its resolution 1814 (2008), the Security Council requested the Secretary-General to establish an effective capacity within UNPOS to monitor and enhance the protection of human rights in Somalia, and to ensure coordination, as appropriate, between UNPOS, OHCHR and the Independent Expert on the situation of human rights in Somalia, which led to the creation of the UNPOS Human Rights Unit in 2008.

49. The three substantive components of UNPOS are (a) security sector development, (b) political, civil and gender affairs and (c) human rights and rule of law. In accordance with the decision of the Secretary-General and standing United Nations policy, human rights components are integrated into political and peace operations. OHCHR, as the lead United Nations entity for human rights, provides expertise, guidance and support to the UNPOS Human Rights Unit, which has a dual reporting line to the Special Representative of the Secretary-General for Somalia and the High Commissioner.

50. As an integral component of UNPOS, the Human Rights Unit identified the following thematic priorities for 2012–2013: (a) protecting human rights in situations of violence and insecurity; (b) combating impunity and strengthening accountability, rule of law, and democratic societies, with an emphasis on institution and capacity-building; and (c) countering discrimination, with a special focus on discrimination against internally displaced persons, women and children. Although human rights activities are concentrated in the Human Rights Unit, the work of the other two components has a direct bearing on the protection and promotion of human rights.

51. The efforts made by the international community to counter piracy also have human rights implications. In various resolutions, the Security Council has emphasized, *inter alia*, that respect for human rights and the rule of law are necessary to create the conditions for the durable eradication of piracy and armed robbery at sea off the coast of Somalia.<sup>13</sup>

52. In 2012, UNPOS began to deploy national and international staff inside Somalia in the context of the relocation of UNPOS from Nairobi to Somalia. The construction of additional accommodation and office space in Mogadishu is expected to be completed in the near future, allowing for the permanent relocation of UNPOS to Somalia. By 1 September 2012, the Human Rights Unit will have eight staff members (five internationals and three nationals) permanently deployed inside Somalia, and five in Nairobi, whose deployment inside Somalia is planned for 2013. The size of the Unit is modest when compared with the vastness and complexity of the human rights challenges in Somalia. With offices in Hargeisa (“Somaliland”), Garowe (“Puntland”) and Mogadishu, the Unit finds itself thinly spread between different regions with different human rights specificities and various needs for technical assistance. In the complex political environment of Somalia, the Unit is committed to working with the Somali authorities in a collaborative manner that ensures national ownership of the human rights agenda.

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<sup>12</sup> See Security Council resolutions 1814 (2008), 1863 (2009), 1910 (2010) and 1872 (2009).

<sup>13</sup> See for example Security Council resolution 2020 (2011).

## 1. Human rights monitoring

53. The security situation, the small size of the UNPOS Human Rights Unit and concerns for victim and witness protection have limited the Unit's ability to monitor human rights throughout Somalia, although it has been able to monitor and investigate patterns of human rights abuses in "Somaliland" and "Puntland". Since the Transitional Federal Government gained control over Mogadishu, the Unit has also started to monitor human rights violations in the Mogadishu area, although security and movement restrictions present a serious challenge to the verification of information. A database on human rights violations has been established by the Unit.

54. In collaboration with the United Nations Protection Cluster, the Human Rights Unit has strived to monitor the situation of civilians in areas directly affected by the armed conflict. It has been able to undertake one monitoring mission to southern and central Somalia. Preliminary findings seem to point to a reduction in civilian casualties directly resulting from the armed conflict; however, in the absence of a civilian casualty tracking system and lack of access to areas under the control of Al-Shabaab, no accurate conclusion can be drawn in this regard.

55. The Human Rights Unit has monitored detention facilities under the authority of the ministries of justice in "Somaliland", "Puntland" and Mogadishu, as well as police custody facilities under the Ministry of the Interior in "Puntland". It has thus been able to establish a pattern of arbitrary detention, lack of compliance with fair trial guarantees, and poor detention conditions across areas under Government control, as well as in the "Puntland" and "Somaliland" regions. UNPOS has also investigated allegations of ill-treatment and lengthy detention without charge or trial and lack of access to defence counsel in cases involving conflict-related detainees, including children.

56. In Mogadishu, the Human Rights Unit has conducted monitoring visits to Mogadishu Central Prison. At the time of the most recent visit, the facility hosted a population of nearly 800 inmates, including 32 children (20 of them detained for conflict-related offences) and 12 women (five for conflict-related offences). The Unit also participated in the assessment of Mogadishu Central Prison, in collaboration with the Ministry of Justice, UNODC and UNICEF. According to information provided by the Ministry of the Interior, 80 per cent of all detainees fall under the jurisdiction of military courts, which raises questions about judicial guarantees. Most inmates sentenced to death or life imprisonment are not granted affordable access to legal counsel. The Unit also investigated cases of women and girls detained for disobedience to their parents, which is not a punishable offence under Somali law. The release of two of these female inmates was obtained through a habeas corpus procedure.

57. In "Somaliland", the Human Rights Unit conducted monitoring visits to Hargeisa and Mandera prisons. In Mandera, it met with several adult males arrested for "hostile acts" against the "Somaliland" region in the context of the Sool and Sanaag conflict. The Unit registered its concern with the regional Government of "Somaliland" at cases of prolonged pretrial detention and military jurisdiction. It also monitored the case of 23 civilians sentenced to death or life imprisonment by the "Somaliland" Military Court of First Instance, and submitted a written opinion to the Ministry of Justice on the legality of military jurisdiction over civilians under international and domestic norms.

58. In "Puntland", despite the difficulty of obtaining authorization to conduct confidential interviews, the Human Rights Unit was able to monitor custody and detention conditions in three police stations, as well as Garowe and Bossasso prisons, where prisoners were found to be held in shackles. Overcrowding and poor conditions of detention were brought to the attention of the prison authorities.

## 2. Reporting

59. The Human Rights Unit contributes to the periodic reports of the Secretary-General on Somalia to the Security Council. It has also provided information for reports on conflict-related sexual violence (S/2012/33) and the protection of civilians in armed conflict (S/2012/376).

## 3. Technical assistance

60. The Human Rights Unit has translated into the Somali language and published core human rights treaties and documentation relating to the universal periodic review to promote awareness about the recommendations addressed to the Government of Somalia by the Human Rights Council.

### (a) *National laws, policies and institutions*

61. Security sector development was identified as a priority for Somalia in the road map to end the transition of September 2011. The Human Rights Unit has contributed to the work of the Military and Police Technical Working Group and the Joint Security Committee to ensure attention to such key issues as the accountability of security forces, civilian oversight and the treatment of ex-combatants in accordance with international standards. The Unit has supported the Security Sector Development Office of UNPOS in developing a code of conduct for Somali armed forces, and updated the human rights modules used in training Somali military recruits. The Unit has also disseminated the Human Rights Due Diligence Policy on United Nations support to non-United Nations security forces to armed forces of the Transitional Federal Government and AMISOM.

62. The adoption of a new Constitution for Somalia was identified as a second priority in the road map. The Human Rights Unit contributed to the drafting of the Constitution by providing opportunities to Somalia-based human rights defenders, civil society groups and Government officials to review the text from a human rights perspective and to provide their comments to the Federal Constitutional Commission.

63. In “Somaliland” and “Puntland”, progress has been achieved since 2011 towards the establishment and functioning of regional human rights institutions. Legislation establishing the “Somaliland” Human Rights Commission is based on a legislative framework that, although not fully compliant, is close to the spirit of the Paris Principles. The Human Rights Unit assisted the “Somaliland” Human Rights Commission in carrying out an assessment of its strengths and weaknesses as a baseline for the development of its future strategy. In “Puntland”, legislation was passed to establish the Office of the Human Rights Defender. The Unit commented on the draft law of the human rights institution and organized a series of consultations for civil society and regional authorities on the role and functions of human rights institutions. The Unit continues to support the “Somaliland” Human Rights Commission, and has advocated for an open and transparent selection process for the appointment of the Human Rights Defender in “Puntland”.

### (b) *Justice and accountability mechanisms*

64. The Human Rights Unit chairs the Justice and Corrections Technical Working Group, which seeks to strengthen cooperation among key national and international actors in the administration of justice and to agree on priority areas for the short, medium and long term. A wide variety of legal aid programmes exist across Somalia. The knowledge of legal aid providers and their practical use of human rights standards, however, varies greatly. In May 2012, the Unit conducted a human rights training course for 24 lawyers from “Somaliland”, “Puntland” and southern and central Somalia engaged in legal aid programmes. Specific attention was paid to the implementation of the Penal Code and the

compatibility of certain interpretations with international human rights norms and standards.

65. The Human Rights Unit also trained 24 law lecturers from Mogadishu University, East African University, “Puntland” State University and Hargeisa University on human rights in the administration of justice in order to strengthen their legal skills, increase understanding of their critical role in developing a human rights culture, and facilitate a unique exchange across different regions and legal traditions of Somalia. At a second meeting, in May 2012, 12 law lecturers came together to develop human rights modules in the Somali language for inclusion in the country’s formal education curriculum for legal professionals (post-graduate studies). The modules are expected to be completed by the end of August 2012 and ready for use in the educational curriculum of the next group of judges and judicial staff.

66. In “Somaliland”, the Human Rights Unit trained 30 prison officials from the “Somaliland” Custodial Department of the Ministry of Justice. It also technically and financially supported the Ministry of Justice in conducting an assessment of detention facilities. A prison monitoring committee was created by the Ministry of Justice to conduct inspections in the nine facilities, and is expected to publish its findings. The Unit also advised the Ministry of Justice of “Somaliland” on matters relating to military jurisdiction over civilians.

(c) *Strengthening of civil society*

67. In Mogadishu, the Human Rights Unit, together with the Eastern and Horn of Africa Human Rights Defenders Network, organized two training courses for human rights defenders on risk and security assessment. Thirteen representatives of Somali organizations participated in training and received guidance on the development of staff and office security management plans. The organizers visited each of the participating organizations to discuss challenges and progress in their plans.

68. In “Puntland”, a human rights working group, established with the support of the Human Rights Unit, meets on a monthly basis for training with the ultimate goal of empowering local non-governmental organizations to monitor and publicly report on human rights.

## **D. United Nations agencies, funds and programmes**

69. United Nations agencies, funds and programmes have operated in Somalia for more than 50 years. They conduct activities that help to alleviate poverty and suffering, encourage development and aim at mitigating the effects of the conflict. The United Nations country team comprises representatives of the Food and Agriculture Organization of the United Nations, the International Labour Organization, the International Organization for Migration, the Joint United Nations Programme on HIV/AIDS, UNDP, the United Nations Department of Safety and Security, the United Nations Educational, Scientific and Cultural Organization (UNESCO), the United Nations Population Fund, the United Nations Human Settlements Programme, the Office of the United Nations High Commissioner for Refugees, UNICEF, the United Nations Mine Action Service, the Office for the Coordination of Humanitarian Affairs, UNODC, the United Nations Volunteer programme, the World Food Programme, WHO and the World Bank.

70. The humanitarian and development efforts of the United Nations have a direct bearing on the enjoyment of human rights by Somalis and are a significant part of its Somalia strategy, outlined in the five-year United Nations Somalia Assistance Strategy.

**1. United Nations Children's Fund**

71. In its contribution to the present report, UNICEF reported on three projects relating to the right to health, namely strengthening childcare services, safe motherhood, and child immunization. In supporting the country's health system, UNICEF has worked closely with health sector partners, local authorities, the private sector and community-based organizations. It has delivered drugs and medical supplies for the primary health-care sector throughout Somalia. Some 400 health facilities, including hospitals, maternal and child health centres and health posts, have received essential drugs and basic medical equipment through UNICEF and its partners.

72. In addition to providing basic health-care services, UNICEF has supported the development of institutional capacities by training health-care personnel, supporting policy development and encouraging health sector reform. The UNICEF Expanded Programme on Immunization seeks, through routine immunization and polio national immunization days, to protect a progressively larger group of children against vaccine preventable diseases.

73. UNICEF, WHO, non-governmental organizations and local authorities have collaborated in regional cholera task forces, which responded to several outbreaks between January and June 2012, primarily in Mogadishu, Kismayo and Bossaso. Cholera supplies and chlorine tablets to purify water were made available by UNICEF to all health centres treating cholera patients.

74. UNICEF has also provided supplies, such as basic drugs, insecticide-treated nets to prevent malaria, vaccines and medical equipment.

75. Special emphasis has been placed on safe motherhood practices, support for prenatal care, home delivery assistance and emergency obstetric care. Health education is provided through community health workers, traditional birth attendants and the media. Clean delivery kits to ensure sanitary and safe conditions for women in labour and those assisting with the birth have been distributed to 99 maternal and child health facilities offering prenatal care throughout Somalia. The kits have been sold at subsidized prices and the revenue generated has helped health centres to support staff and rehabilitate facilities.

76. The UNICEF education programme in Somalia has addressed primary formal education and primary alternative education. The former has focused on increasing enrolment and helping students who are returning to the classroom to advance through learning levels. The latter has focused on building alternative, non-formal learning opportunities for young people without access to formal education. UNICEF has provided education materials to both formal and informal classroom settings, teacher training and support for community education committees. Local authorities have been helped to establish and set standards for the education system, and to develop standardized curricula and text books. In these endeavours, UNICEF has worked closely with UNESCO and members of the Education Sectorial Committee of the Somalia Aid Coordination Body. Important national partners include the local authorities, communities and non-governmental organizations, where they exist.

77. The focus of UNICEF on education in Somalia has been on system-wide education reforms, developing a curriculum in the Somali language, text books, improving standards of learning and developing education management information systems.

**2. United Nations Office for Drugs and Crime**

78. UNODC reported that, in general, its work to promote United Nations standards and norms in crime prevention and criminal justice throughout the criminal justice system sought to improve the human rights of suspects, the accused, detained and imprisoned

persons, as well as victims, while addressing the needs of special groups, such as women and children.

79. As part of the UNODC counter-piracy programme, a piracy prisoner transfer programme has been developed to allow pirates convicted in countries of the region to return to Somalia on a voluntary basis to serve their sentences. The programme will include the construction of a new prison and the refurbishment of existing ones, with separate facilities for children, in order to allow prisoners to be located close to their families and to take part in suitable educational and training programmes. The programme also includes the training of prison staff, while an independent international committee will guarantee compliance with human rights standards and outreach to young Somalis, with the aim of preventing them from becoming involved in piracy.

80. In its submission for the present report, UNODC informed that joint activities with the Special Representative of the Secretary-General for Children and Armed Conflict were being developed in the areas of justice for detained children, child trafficking and child pirates.

81. As the guardian of the United Nations standards and norms on crime prevention and criminal justice, including the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and author of the *Handbook on police accountability, oversight and integrity*, UNODC also offered to complement existing training activities for law enforcement officials, with the overarching aim of preventing human rights abuses.

### **3. United Nations Development Programme**

82. UNDP development strategies have a particular relevance for human rights in that they seek to increase public participation through partnerships with civil society, empower vulnerable groups such as women, children, minorities and the internally displaced, and strengthen rule of law and governance. Its efforts in the area of rule of law have focused on strengthening legal assistance, bringing justice to rural areas and promoting access to justice for women.

83. UNDP supports lawyers and paralegals throughout “Somaliland”, “Puntland” and in Mogadishu to provide no-cost legal aid, in partnership with law faculties, bar associations, women’s associations and non-governmental organizations. Through the programme, women in camps for the internally displaced, individuals in pretrial detention and detainees on remand or in appeal process receive legal representation. In “Puntland”, legal aid was provided to 850 clients, 402 of whom were released or acquitted, many of them internally displaced. A further 830 cases were assisted by paralegals, who may either refer cases for assistance or seek to settle them through arbitration or mediation at the level of the camp for the displaced. In “Somaliland”, legal aid providers represented 500 people in 2008 and more than 6,000 in 2011. The programme is also an important avenue for collecting information regarding human rights violations in prisons, police stations and camps for the internally displaced.

84. Regional and appeal courts in “Somaliland”, “Puntland” and Mogadishu travel to around 50 districts and villages in mobile courts once every quarter. The court sessions have proved useful in settling disputes where local problem-solving mechanisms have failed. They also help to educate communities on existing legislation. Judges in mobile courts are perceived as neutral arbiters in that they are not from the same subclan. The beneficiaries of the programme have reported that, without mobile courts, they would not have been able to seek justice, considering the distance between the villages and their regional capitals, as well as associated costs.

85. Since May 2012, four mobile courts have started in Mogadishu to focus on four priority districts covering 20 camps for the internally displaced. In the first month alone they judged 167 cases ( 91 penal and 76 civil). Some 56 female clients were assisted. Given that most cases concern internally displaced persons or returnees who would be unable to afford court costs, the Chief Justice has issued a circular exempting them from court fees.

86. With the support of UNDP, 50 female law students currently study in law faculties in Boromo and Hargeisa. Former graduates from the programme have formed the first women's bar association, which has a membership of more than 60 graduate women lawyers, many of whom practice law in the courts. UNDP has also supported internships for women in the public sector, with 23 women currently the beneficiaries. Earlier in 2012 year, the Attorney General of "Somaliland" appointed the first four female deputies attorneys general. Moreover, a dedicated unit has been established for sexual offences.

87. UNDP has suggested that training on human rights be made compulsory for all staff members of the United Nations in order to strengthen coordination in the area of human rights. Training would improve the ability of staff members to identify relevant human rights issues and to adopt a human rights approach to programming. UNDP has also suggested that human rights training for national partners be harmonized in order to avoid duplication and gaps, and that all agencies be requested to report, on a quarterly basis, any human rights concerns encountered in the implementation of their programmes. UNDP has also encouraged greater oversight and more frequent field missions by OHCHR.

#### **4. Coordination of technical cooperation**

88. The United Nations is present in Somalia through UNPOS, led by the Special Representative of the Secretary-General for Somalia, the United Nations Support Office for the African Union Mission in Somalia, and humanitarian and development agencies under the umbrella of the United Nations country team, led by the Resident and Humanitarian Coordinator. The Transitional Federal Government has, as have some Member States, voiced concern over a perceived lack of coordination among members of the United Nations family in Somalia.

89. The Secretary-General is committed to ensuring maximum coordination of United Nations efforts in Somalia, in accordance with his policy of integration of United Nations operations, which seeks to strengthen the impact of the Organization's activities. While structural integration of all United Nations operations for Somalia into one integrated United Nations office was not deemed advisable, significant progress has been made in recent months to ensure greater coordination. The Senior Policy Group, in which the various United Nations presences are represented, ensures the coherence of political, security and humanitarian aspects of the Organization's activities and international efforts in Somalia in terms of joint policy and programme implementation.

90. In 2011, an integrated strategic framework was developed to allow the United Nations to leverage the different strengths of its agencies, funds and programmes in a coordinated manner. The third progress report for the framework for Somalia confirmed major progress towards the completion of the Constitution-making process. In May 2012, framework working groups in charge of security sector development and rule of law reviewed areas of prioritization and coordination mechanisms.

91. The United Nations Somalia Assistance Strategy lays out the framework for the engagement of the United Nations country team for 2011–2015 in the area of access to basic services, poverty reduction and livelihood, good governance and human security, and feeds into the integrated strategic framework.

92. As explained above, the Human Rights Unit is integrated into UNPOS in accordance with established United Nations policy and practice. While this has ensured adequate



security and logistical and administrative support for the Unit, its integration into a political mission has been perceived by some as having compromised independence and impartiality. The Unit is also a member of the United Nations country team.

93. With the end of the transition period in sight, a comprehensive review of the strategy and presence of the United Nations in Somalia will be undertaken with a view to establish a sound basis for the Organization's presence and activities during the next phase. This strategic review, however, goes beyond coordination in the realm of human rights and will be considered by the Security Council in due course.

#### **IV. Observations and recommendations**

94. Ending the conflict in Somalia will have a significant positive impact on the situation of human rights in the country. Years of violent conflict have taken a toll on the Somali population, with serious violations of international human rights and humanitarian law over the years. The recent progress in the country's political transition, including the formation of the National Federal Parliament, the adoption of a provisional Constitution and the election of a new President in September 2012, is a welcome development and presents an unprecedented opportunity to advance human rights. It is therefore critical that international assistance to the Government of Somalia be strengthened in the field of human rights, including through an increased presence of the United Nations.

95. The participation of women in decision-making processes and the protection and promotion of civil, cultural, economic, political and social rights are essential to sustainable peace and must therefore remain a central pillar in the political process in Somalia. Existing military and political strategies must therefore be accompanied by an increased engagement in the area of human rights.

96. While the Somali authorities bear the primary responsibility to protect and promote human rights, international human rights law and humanitarian law also impose obligations on non-State armed groups to respect and protect the rights of persons in areas under their control. All parties to the conflict should therefore adhere strictly to them.

97. In keeping with the United Nations human rights due diligence policy, security sector assistance provided to the parties to the conflict in Somalia should take into account the parties' obligations under international humanitarian law and human rights law and should be suspended when serious violations continue or remain unaddressed. Furthermore, when there are substantial grounds for suspecting a recipient of United Nations support of committing human rights abuses or anyone with command responsibility over those committing human rights abuses, they should be suspended from duty, pending credible investigations. The Somali authorities should put in place vetting processes, command structures, internal disciplinary mechanisms and independent oversight mechanisms to ensure human rights-compliant forces and integrate human rights in police training programmes. A civilian casualty tracking system should be prioritized and conflict-related detention brought into line with international standards. Measures should also be taken to prevent violence, including sexual violence against women, and to ensure safety for women and girls in camps for the internally displaced. This should include activating the Transitional Federal Government task force to develop a strategy to prevent and respond to the phenomenon of sexual violence. The Somali authorities are also responsible for the protection of journalists and human rights defenders and should

ensure that they can exercise their professional activities in a safe environment, free from intimidation.

98. It is critical that the issue of impunity, including the legacy of past atrocities, be addressed, and that justice and reconciliation be ensured, as recognized by Somalia in its report for the universal periodic review. All victims of violations of human rights or of international humanitarian law have a right to obtain remedy and reparation for the harm suffered. In this regard, it is important that adequate national mechanisms be established to investigate alleged violations of international human rights law and humanitarian law, and that those responsible be prosecuted and punished. In the light of the serious violations described in the present report, Somalia is encouraged to consider acceding to the Rome Statute of the International Criminal Court to complement national mechanisms and ensure accountability for gross violations of international human rights law and humanitarian law that amount to crimes against humanity or war crimes.

99. The establishment of a human rights commission, as envisaged by the Provisional Constitution, will be an important step towards the establishment of a national architecture for the protection and promotion of human rights in Somalia, provided such institution is compliant with the Paris Principles.

100. Re-establishing the rule of law involves strengthening the legal framework and building institutions in the areas of security, law enforcement, the judiciary and corrections, both in terms of infrastructure and capacity, guided by a rights-based approach. Civilians should not be subject to military jurisdiction. The United Nations is committed to continue to partner the Somali authorities to support efforts in these areas. The harmonization of sharia law, customary law and international human rights law in Somalia should be addressed in this context.

101. Importantly, the country's leaders should accelerate and intensify efforts to fulfil the obligations of Somalia in the area of economic and social rights, in particular the rights to food, health and education, taking into account the rights-based principles of consultation, non-discrimination, transparency, accountability and special attention to the most disempowered members of the population. The imperative of international cooperation furthermore imposes an obligation on the international community to support and complement efforts made by national and regional authorities.

102. Significant progress has been made over the past months by the United Nations to ensure greater coordination to strengthen the impact of its activities. In this regard, the Secretary-General looks forward to proposing the new strategy for the United Nations to support post-transition Somalia in December 2012.

103. The signing of the memorandum of understanding on technical cooperation by the United Nations with the Somali authorities heralds an important step towards reinforcing the latter's human rights capacity. It is important that efforts to build the capacity of the authorities be accompanied by the empowerment of civil society. Monitoring, investigations and public reporting are also essential to identify human rights concerns, inform appropriate remedies by duty-bearers, and ascertain technical assistance needs. Therefore, strengthening the United Nations human rights presence on the ground and endowing it with the capacity to fulfil its comprehensive mandate is critical, and should be considered in the context of the upcoming strategic review of the presence of the United Nations in Somalia.